



COUNT de SANT (*GRAF* von SANT)

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NOTICE: The purpose of this paper is to further substantiate what I have already written about this matter in my Book “*The Peerage & Knighthood in Malta*” (2017) pp. 266 *et seq.*

This Paper is divided into the following sections:

- (1) Origin of the title and its registration and precedence in Malta
- (2) Internal objections
- (3) Background
- (4) *Primogenitura?*
- (5) The Grant
- (6) Grand Master’s interpretation
- (7) Royal Commission
- (8) Special Remainder
- (9) The *Oberhaupt* and its application to a Maltese family
- (10) Commentary
- (11) Austrian interpretation
- (12) Conclusion
- (13) Outlook
- (14) Genealogical Table

The following documents are reproduced:

- PLATES I, II, III, IV, V and VI - Transcription of the original Grant
- PLATE VII -Record of permission to register title
- PLATES VIII and IX -Copy of Protest
- PLATE X -Recommendation by the Empress’s ambassador
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(1) ORIGIN OF THE TITLE OF COUNT SANT TOGETHER WITH ITS REGISTRATION AND PRECEDENCE IN MALTA

On 22 December 1770, The Empress Maria Theresa of Austria granted the title of *Count* to Baldassare Salvatore Sant (Baldassare *senior*) as can be seen from a transcription of the original Latin grant (PLATES I to VI).

The title is described as having been created within “*Our Italian Provinces in Lombardy*”. It thus descends under the *Jus Longobardum*.

It will be remembered that honours emanating from a *fons honorum* in a jurisdiction applying the *Jus Longobardum* are ordinarily regarded as being *generous*, that is to say they are succeeded by more than one person at a time. On the other hand, honours derived from a *fons* in a *Jus Francorum* environment are ordinarily limited to one successor at a time, usually by Primogeniture.

The same Baldassare (senior) was also later given permission by Grand Master Pinto to register this honour in Malta at the Chancery of the Order and the High Court of the *Castellania*. This would have been made against payment of 116 scudi - in accordance with an earlier law promulgated by Grand Master Despuig of 16 September 1739.

Registration (PLATE VII) was made on 12 December 1775 (*A.O.M. 571, fol. 351. Boll. F. 350, p.2*). The title was thus considered to rank in the third group for the purposes of determining precedence amongst those eligible for appointment as Jurats of the Universities of Notabile and of Valletta.

That the Sant family came to be prominent as part of the Nobility of Malta throughout the transition from Gerosolimitan to British rule can also be determined by the following:

(a) In John Attard Montalto’s book “The Nobles of Malta”, p. 212 one reads that a Count Sant was appointed Jurat in 1776.

(b) In the list of *Giurati della Notabile* “in Baron Azopardi’s “*Raccolta di varie cose antiche u moderne*”, (p.50-96) we find that the Capitano della Verga for the years 1801-1813 was the “Conte Giovanni Francesco Sant”. He was effectively the last holder of that office because he was succeeded by Dr. Giuseppe Bonnici who is indicated as “*Reggente*” (Acting) between 1814 and 1818 when the office was finally abolished.

(c) by the treatment given to one of its members by Governor Maitland who in his Proclamation of 15 June 1815, established the offices of Lords Lieutenant, reserving such appointments for members of the Maltese Nobility. Amongst the various appointees we find the name of “The Count Baldassare Sant” (junior) (see (7) and PLATE XX below) who held two appointments one between 1815 and 1819, the other between 1827 and 1839 when the office

was abolished. This gentleman held the title of Count by virtue of the *Jus Longobardum*. (see also (7) below)

This registration of 1775 was later (in 1877) taken by the Royal Commission as proof to the effect that this title like other “*Titles granted by Foreign Sovereigns during the Government of the Order of the Knights of St. John*” formed part of the Nobility in Malta.

It was thus recognized by the British Colonial Government as part of the “*Maltese Nobility*” and it was ranked 20th in precedence, that is to say immediately after the title of Count Fournier (29-01-1770) and before Count of Mont’Alto (28-12-1776) retaining the date of creation (not registration) of 22-12-1770.

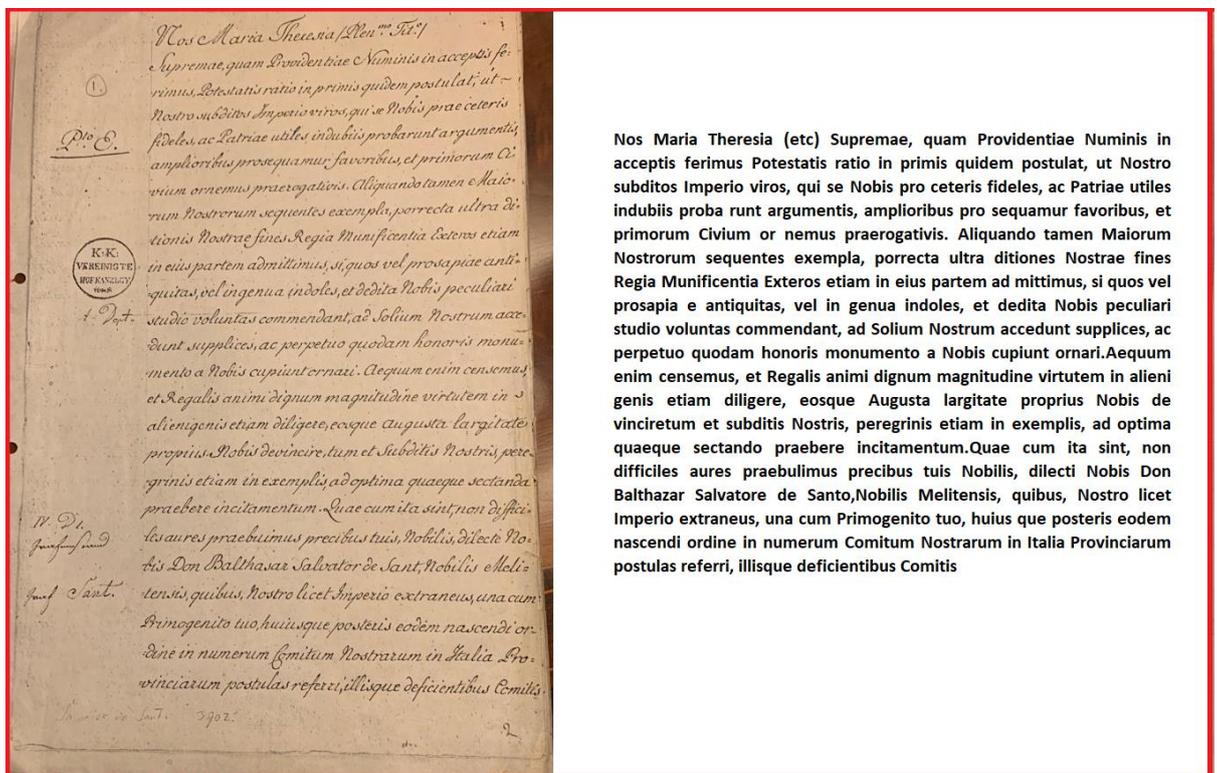
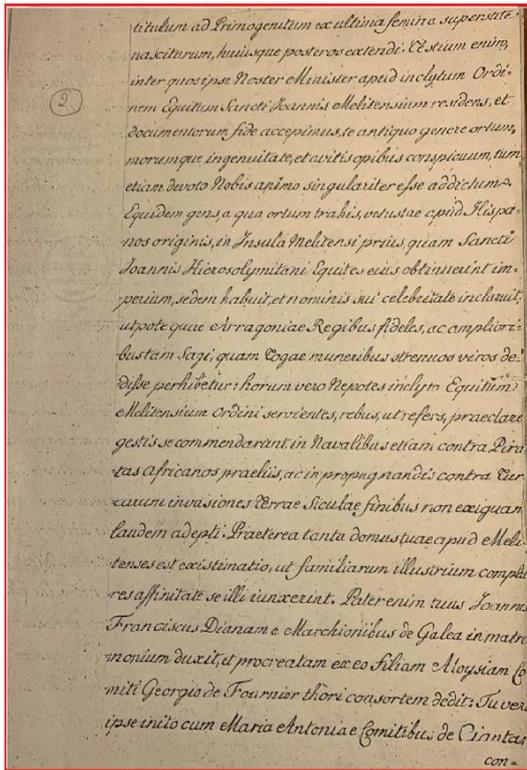
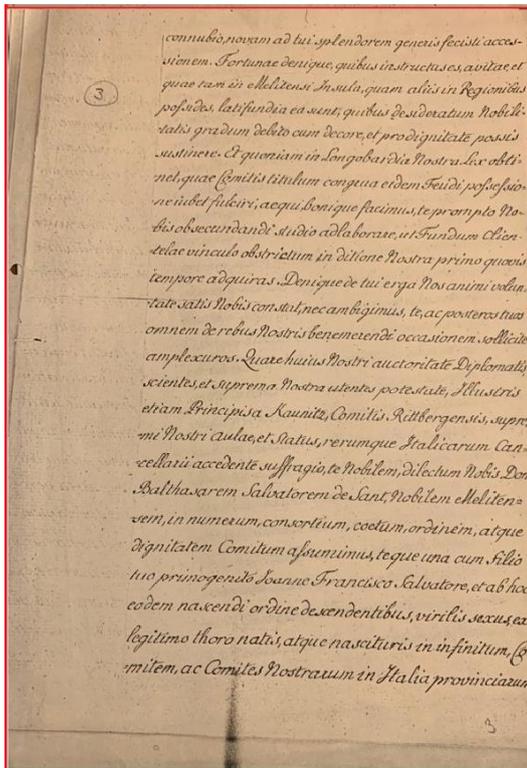


PLATE I



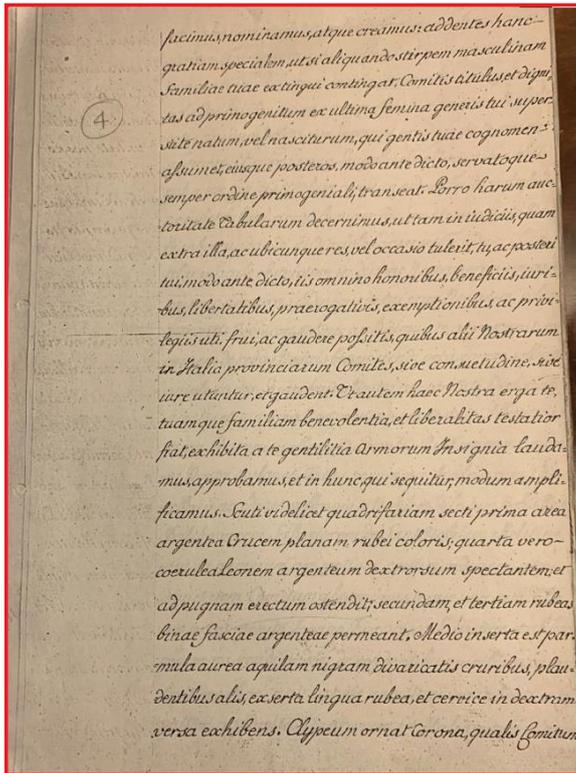
titulum ad Primogenitum ex ultima femina superstate nasciturum, huiusque posteros extendi. Testium enim inter quos ipse Noster Minister apud inclitum Ordinem Equitum Sancti Iohannis Melitensium residents, et documentorum fide accepimus, te antiquo genere ortum, morumque ingenuitate, et a vitis opibus conspicuum, tum etiam devoto Nobis animo singulariter esse ad dictum. E quidem gens, a qua ortum trahis, vetusta e apud Hispanos originis, in Insula Melitensi prius quam Sancti Iohannis Hierosolymitani Equites eius obtinuerint imperium sedem habuit, et nominis sui celebritate in claruit utpote quae Arragoniae Regibus fidelis ac ampli ori bustiam Sagi, quam togae muneribus strenuos viros dedisse per hi be tur: horum vero Nepotes incliti Equitum Melitensium Ordini servientes, rebus, ut refers, praeclare gestis se commendarant in Navalibus etiam contra Piratas Africanos praeliis, ac in pro pugnan dis contra Turcarum invasiones Terra Sicula finibus non exiguan laudem adepti. Praeterea tanta domus tuae apud Melitenses est existimatio, ut familiarum illustrium complures affinitate se illi iunxerint. Pater enim tuus Iohannes Franciscus Dianam e Marchionibus de Galea in matrimonium duxit, et pro creatam ex eo filiam Aloysiam Comiti Georgio de Fournier thori consortem dedit: Tu vero ipse inito cum Maria Antonia e Comitibus de Ciantar

PLATE II



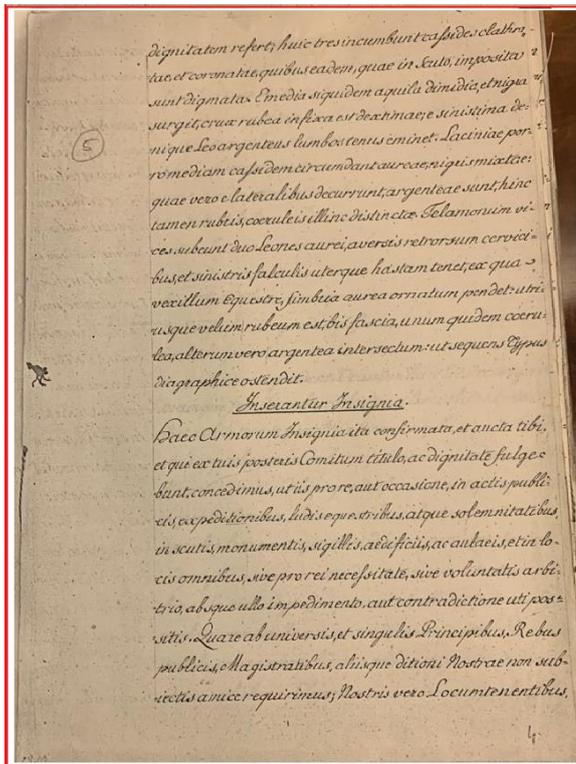
connubio, novam ad tui splendorem generis fecisti accessionem. Fortunae denique, quibus instructus es, avitae, et quae tam in Melitensi Insula, quam aliis in Regionibus possides, lati sUNDIA easunt quibus desideratum Nobilitatis gradum debito cum decore, et pro dignitate possis sustinere. Et quoniam in Longobardia Nostra Lex obtinet, quae Comitibus titulum congrua eidem Feudi possessione iubet fulciri, aequi bonique facimus, te prompto Nobis ob secundandi studio ad laborare, ut Fundum Clientela vinculo obstructum in ditione Nostra primo quo vis tempore acquiras. Denique de tui erga Nos animi voluntate satis Nobis constat, nec ambigimus, te, ac posteros tuos omnem de rebus Nostris benemerendi occasionem sollicitè amplexuros. Quare huius Nostrae auctoritate Diplomaticis, scientes, et suprema Nostra utentes potestate, Illustris etiam Principis A Kaunitz, Comitis Rittbergensis, supremi Nostrae Aulae, et Status, rerumque Italicarum Cancellarii accedente suffragio, te Nobilem, dilectum Nobis Don Balthasarem Salvatorem de Sant, Nobilem Melitensem, in numerum, consortium, coetum, ordinem, atque dignitatem Comitum assumimus, teque una cum filio tuo primogenito Joanne Francisco Salvatore, et ab hoc eodem nascendi ordine descendenti- bus, virilis sexus, ex legitimo thoro natis, atque nascituris in infinitum, Comitem, ac Comites Nostrarum in Italia provinciarum

PLATE III



facimus, nominamus, atque creamus: Addentes hanc gratiam specialem, ut si aliquando stirpem masculinam familiae tuae extingui contingat, Comitatus titulus, et dignitas ad primogenitum ex ultima femina generis tui superstitem natum, vel nasciturum, qui gentis tuae cognomen assumet, eiusque posteros, modo ante dicto, servatoque semper ordine primogeniali, transeat. Porro horum auctoritate Tabularum decernimus, ut tam in iudiciis, quam extra illa, ac ubicunque res, vel occasio tulerit, tu, ac posterius tui, modo ante dicto, iis omnino honoribus, beneficiis, iuribus, libertatibus, praerogativis, exemptionibus, ac privilegiis uti, frui, ac gaudere possitis, quibus alii Nostrarum in Italia provinciarum Comitatus, sive consuetudine, sive iure utuntur, et gaudent. Ut autem haec Nostra erga te, tuamque familiam benevolentia, et liberalitas testatur fiat, exhibita a te gentilitia Armorum Insignia laudamus, approbamus, et in hunc, qui sequitur, modum amplificamus. Scuti videlicet quadrifariam secti prima area argentea Crucem planam rubei coloris; quarta vero coerulea Leonem argenteum dextrorsum spectantem et ad pugnam erectum ostendit; secundam et tertiam rubearum fasciarum argenteae permeant, Medio inserta est parmula aurea aquilam nigram divaricatis cruribus, plaudentibus alis, exserta lingua rubea, et cervice in dextram versa exhibens. Clypeum ornat Corona, qualis Comitum

PLATE IV



dignitatem refert; huic tres incumbunt cassides clathratae, et coronatae, quibus eadem, quae in scuto, impositae sunt digmata. E media siquidem aquila dimidia, et nigra surgit, crux rubea in fixa est dextimae; e sinistima demique Leo argenteus lumbostenus eminet. Laciniae porro mediam cassidem circumdant aureae, nigrae mixtae: quae vero e lateralibus decurrunt, argenteae sunt, hinc tamen rubris, coeruleis illinc distinctae. Telamonum vices subeunt duo Leones aurei, aversis retrorsum cervicibus, et sinistris falcibus uterque hastam tenet, ex qua vexillum Equestre, simbria aurea ornatum pendet: Utri usque velum rubeum est, bis fascia, unum quidem coeruleum, alterum vero argenteum intersectum: ut sequens Typus diagraphice ostendit.

Inserantur Insignia

Haec Armorum Insignia ita confirmata, et aucta tibi, et qui ex tuis posteris Comitum titulo, ac dignitate fulgebunt, concedimus, ut iis pro re, aut occasione, in actis publicis, expeditionibus, ludis equestribus, atque solemnitatibus, in scutis, monumentis, sigillis, aedificiis, ac aulaeis, et in locis omnibus, sive pro rei necessitate, sive voluntatis arbitrio, absque ullo impedimento, aut contradictione uti possitis.

Quare ab universis, et singulis Principibus, Rebus publicis, Magistratibus, aliisque ditioni Nostrae non subiectis amice requirimus; Nostris vero Locum tenentibus,

PLATE V

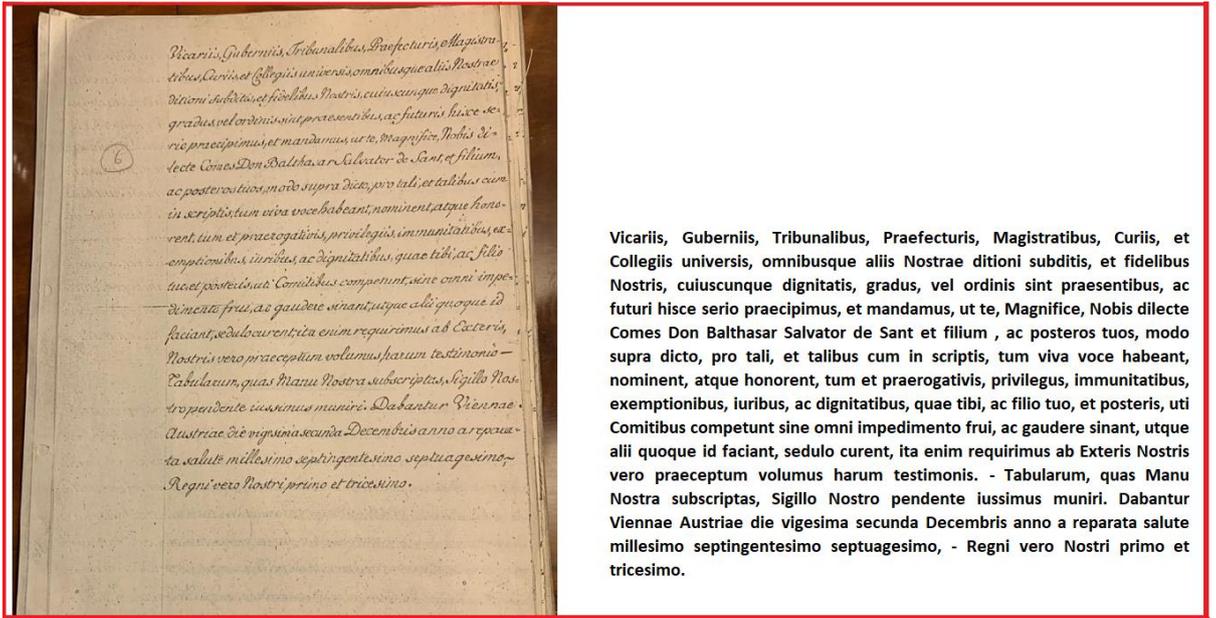


PLATE VI

4
 Dorel } Nob. D. Gio: Francesco, vacato
 Falzon } per morte del Nob. D. Giovan-
 ni Antonio Benigno Azzopar-
 di Castelletti, il Titolo di Ba-
 rone della Morsa Feudo Ma-
 gistrato, fu lo stesso, dal Gr.
 Mro dato al pronome Nobile
 Dorel Falzon V. Boll. 1775. -
 fog: 345. e datagli l'investi-
 tura, in seguito del solito Giu-
 ramento, sotto li 14. Marze-
 di dell'Anno 1775. ab Inc. ^{no} 2

Fu sotto il di 2. Dicembre 1775. -
 Fournier } concesso al Nob. Conte Giorgio
 Fournier, di far registrare ⁱⁿ
 nei libri di questa Cancella-
 ria, ed in quelli della G. C. della
 Castellania, il Diploma del
 Titolo di Conte, consochi da
 S. M. Cesarea l'Imperatrice
 Vedova Regina d'Ungheria. V.
 Boll. f. 349. p. 2.

Fu similmente concesso al Nob.
 Sant } Conte Baldassare Salvatore
 Sant di far registrare il Di-
 ploma di Conte nei surriferi
 luoghi, accordatagli, come sopra,
 sotto il di 12. Dicembre 1775. V.
 Boll. f. 350. p. 2.

Nobile Francesco...
 Barone della Morsa...
 Magistrato...
 Luglio 1777. f. 248. p. 2.
 Il med. Nob. Azzoparati, sotto il
 di 27. d. Luglio ha preso l'in-
 vestitura di d. Baronia, avon-
 do fatto fatto il solito Giura-
 mento. f. 247. p. 2.
 Il Nob. Conte D. Gaetano Azzopar-
 di, ottenne sotto il di 4. 8bre.
 1777. di poter far registrare
 nei libri di questa Cancelleria
 le Lettere patenti d'Accade-
 mico aggiunto con facoltà G.
 della Regia Accademia
 Medica di Parigi. f. 258.
 p. 2.
 Il Conte Serafino Ciantar, avendo
 comprovato per via d'un veridico,
 ed autentico documento d'essere
 Egli il legittimo Successore nella
 Baronia di S. Giovanni, con-
 cessa al fu Vincenzo Abela, dalla
 q. mem. del fu S. M. Martino
 De Redin allora Vice-Re di Sici-
 lia, e come tale aver conseguito
 sotto il di 16. Luglio 1777. dal
 Principe Ortalio Colonna Vice-
 Re di S. Sicilia, l'investitura del
 Titolo della enunciata Baronia,
 ottenne dal Gr. Mro di far re-
 gistrare in questa Cancell. ~~per
 pagare il solito dritto, e memento po-
 dal registro, e pagamento de dritti~~

PLATE VII

(2) INTERNAL OBJECTIONS

It would appear that a dispute over the remainder to this title first appeared in the 19th century i.e. long after the dates when the title was initially created and subsequently registered in Malta.

The then head of the Sant Cassia family (the “*Oberhaupt/Capostirpe*” (see **(9)** below) who is noted as the “4th Count Sant” objected to the use of the title of *Count Sant* by his collaterals.

These collaterals comprise the agnatic lines of Sant Manduca, Sant Barbaro (which is extinct) and that founded by the progenitor of the *Sant Fournier* branch, Baldassare Sant (*junior*) who was married to the Fournier heiress, the 2nd Count Fournier’s daughter, Luigia.

A simplified genealogical table of descent from the grantee is shown at **(14)** below.

Basically, the then *Oberhaupt/Capostirpe/* Head of the Family, *argued* that the title descended exclusively in the male Primogenial line “*di primogenito in primogenito*”.

A copy of his objection termed a “Protest” (**PLATE VIII**) was reproduced in “*The Nobles of Malta, and The Maltese Gentry holding Foreign Titles as at present existing* by Geo. G.C.’A. Crispo Barbaro Marquis of St. George “Malta: - A.D. MDCCCLXX (page 28).

As seen in his protest, Sant Cassia emphasised three phrases found in the Operative clause namely (a) “*Primogenito Joanne Francisco Salvatore*” (discussed in **5 (C)** below). (b) “*ad Primogenitum*” and (c) “*Modo ante dicto, servotoque semper Ordine Primogeniali*” (both discussed in **5(D)** below).

He did not mince his words: As far as he was concerned, he was the only one entitled to the title of Count Sant and that should any other member of the family assume this title, then the latter “*should be regarded as a usurper*”.

This vehement objection by the 4th *Oberhaupt/Capostirpe/*Head of the Family contrasts sharply with the other extreme being applied during the lifetime of the 2nd *Oberhaupt/Capostirpe/*Head of the Family (see **(6)** below).

The protest (objection) would, arguably, have been strengthened had the title been created in a jurisdiction observing the *Jus Francorum*, but in this case as will be seen *infra*, the title was indisputably created and granted and remained regulated under the *Jus Longobardum*.

Countess Maria-Teodora, *m.*, 30 August 1717, Count Giovanni-Antonio Ciantar, and had issue,

Count Giorgio-Serafino Ciantar-Paleologo, Baron of San Giovanni, *m.*, 16 February 1756, Elena, daughter of Sig. Moneta Vella, and had issue,

Count Giovanni-Battista Ciantar-Paleologo, *m.*, 10 February 1805, Margaret, daughter of Sig. Giuseppe Farrugia, and had issue,

SERAFINO, the present Count, and
Giuseppe Ciantar.

† PROTEST.—According to the Diploma of Maria Theresa, dated 22 December 1770, the title of Count Sant is granted solely to the first born of the Family, therefore, the present Count Francesco Sant, Baron Cassia, as first born of the elder branch of the Family protests against any one of the Family holding the title of Count Sant, he being the only one who has a right to that title.

EXTRACTS FROM NEWSPAPERS, &c.

CASA SANT.

“ We have much pleasure in reproducing the following article from the *Corriere Mercantile* of 18th inst., relative to this noble family, and which we find exact and true:—

“ Su questa nobile prosapia sorsero negli ultimi tempi, degli equivoci—che noi siamo in grado di rettificare, coi documenti alla mano.

Con diploma, in data del 22 Dicembre 1770, l'Imperatrice Maria Teresa accordava a Baldassare Salvatore Sant, patrizio Maltese, il titolo e le dignità di Conte, da trasmettersi a' suoi discendenti—di primogenito in primogenito—come risulta dalle seguenti parole che noi ricaviamo dal suddetto diploma:

“ *te nobilem dilectum nobis DON BALTHASSAREM SALVATOREM DE SANT, Nobilem Melisensem, in numerum Comitum assumimus, teque una cum filio tuo PRIMOGENITO JOANNE FRANCISCO SALVATORE, et ab hoc eodem nascendi ordine descendenti- bus, virilis sextus, ex legitimo thoro natis atque nascituris in infinitum Comitem et Comites Nostrarum in Italia Provinciarum facimus, nominamus, atque creamus: addentes hanc gratiam specialem, ut si aliquando stirpem masculinam familie tue extingui contingat, Comitatus titulus et dignitas AD PRIMOGENITUM ex ultima femina generis tui superstite natum vel nasciturum, qui gentis tue cognomen assumet, ejusque posteros, MODÒ ANTE DICTO, SERVOTOQUE SEMPER ORDINE PRIMOGENIALI, transeat.*

Esso diploma veniva—come d'uso allora—registrato nella Cancelleria dell'Ordine gerosolimitano, a foglio 351, *a to.* e l'*exequatur* magistrale ottenevasi il 12 Dicembre 1775.

Come si vede, il diploma parla che non si può con maggior chiarezza: il titolo di Conte è ad ereditarsi *da primogenito in primogenito*. E però quel titolo si trasmise, fino all'attuale possessore, nell'ordine che segue:

Conte BALDASSARE SALVATORE SANT, a cui veniva concesso il titolo di Conte come sopra.

Conte GIO: FRANCESCO SANT, figlio primogenito del precedente.

Conte LUIGI SANT, BARONE CASSIA, figlio primogenito del precedente.

NOTES.

Conte FRANCESCO SANT, BARONE CASSIA, figlio primogenito del precedente, ed attuale possessore del titolo summenzionato.

Avrà osservato il lettore che agli ultimi due conti Sant si trova aggiunto l'altro titolo di *Barone Cassia*—e noi gliene daremo ragione.

Con atto di transazione (pel Notaro Michele Ralli, 14 Aprile 1838) tra Giacinto Cassia ed il Governo dell'Ordine—transazione ratificata dal Gran Maestro e Consiglio il 16 del mese suddetto—la Baronia di Ghariesciem e Tabia veniva riconosciuta appartenere al detto Cassia—coll'obbligo di chiederne ed il diritto di ottenere l'investitura (*petere et optinere investituram*) e così di padre in figlio. Essa Baronia veniva fondata con primogenitura li 10 Giugno dell'anno medesimo.

N'era ultima erede la Baronessa Chiara Felicita Bonici Cassia, moglie al Conte Gio. Francesco Sant. Dalla quale passava al primogenito Luigi, che avea a successore l'attuale Conte Francesco Sant.

Egli è dunque il solo che possa intitolarsi CONTE SANT, BARONE CASSIA. Se qualche altro individuo della stessa famiglia assume quei titoli, va qualificato quale usurpatore.

N. B.—I Conti Sant, di padre in figlio, chiedono ed ottengono dal Governo la investitura della Baronia Ghariesciem e Tabia, osservando i patti della transazione di cui sopra è parola."—*The Malta Observer*, 23 April 1868, No. 889.

The following is an extract from the *Diploma of Count Sant*,
 " *te nobilem dilectum nobis DON BALTHASAREM SALVATOREM DE SANT, Nobilem Melitensem, in numerum, consortium, coetum, ordinem atque dignitatem Comitum assumimus, teque una cum Filio tuo PRIMOGENITO JOANNE FRANCISCO SALVATORE, et ab hoc eodem nascendi ordine descendentibus, virilibus sexus, ex legitimo thoro natis atque nascituris in infinitum Comitem ac Comites Nostrarum in Italia Provinciarum facimus, nominamus atque creamus: addentes hanc gratiam specialem, ut si aliquando stirpem masculinam familie tue extingui contingat, Comitis titulus et dignitas AD PRIMOGENITUM ex ultima femina generis tui superstite natum vel nasciturum, qui gentis tue cognomen assumet, ejusque posteros, modo ante dicto, servatoque semper ordine primogeniali, transeat.*"

I have quoted the above a second time, there being in the extract of the *Corriere*, some slight mistakes.

CRISPO-BARBARO-ST.-GEORGE.

(3) BACKGROUND

One can only speculate. about why Baldassare Sant (senior) - a person domiciled in a *Jus Francorum* jurisdiction - had aspirations for a hereditary title in a *Jus Longobardum* jurisdiction. His action was curious inasmuch as this Maltese Nobleman was asking for a bespoke title which repudiated the standard mode of succession practiced in that land so far.

Equally one can only speculate why the foreign monarch acceded to Baldassare's commixture of legal principles. Money and opportunity may be the reason: We know (see *infra*) that the title cost Baldassare a small fortune, and it may be no coincidence that the "*Prince Kauntiz of Reitberg*" mentioned in the grant (**Plate III**) was the State Chancellor of Austria, Wenzel Anton Reichsfürst von Kaunitz-Rietberg (2 February 1711 - 27 June 1794) who sought various measures to stem the great financial haemorrhages known to everyone else as the Third Silesian War and the Seven Years' War.

In any case, there exist documentary records dated 10 June 1770 and 26 November 1770 respectively which do shed some light on the circumstances culminating in the grant of December 1770.

(A) The document of 10 June 1770 (**PLATE X**) is a recommendation, in Italian, signed by the Empress's ambassador (indicated as 'Minister') in Malta. It extolls the respect and riches enjoyed by the family of Gian Francesco Sant and his son our friend Baldassare (senior) assuring Her Imperial Majesty that the proposed title would be borne with full decorum.

It reads as follows:

"Noi Giovanni Caspar-Fedele, Balio e Libero Barone del Sagro Rom. Impero de, ed a Schoenau Wehr, Ministro delle Loro Sagre Cesare e Reali MMte. Apliche appresso la Sagra Religione Gerosolm. in Malta, Commendatore di San Giovanni, Pasel, Sorkisheim, Lagen, e Hervorden dell istesso Sagro Ordine Gerosolimi.e

Attestiamo che il Sig. Gian Francesco Sant, Gentilhuomo Maltese, colla sua Sagra. consorte Diana, nata Baronessa de Galea, li qualli hanno procreato il Sig.re Baldassare, Sig.re Giuseppe, Comend.re e Prete Conventuale ora dell' Ordine Gersolimiatano e Sig.ra Aloysia, gia coniugata con il Sig.re Giorgio Barone Fournier, ed il Primogenito, cioe' Sig.re Baldassare Sant, accasato colla Signora Ma. Antonia Contessa di Ciantar, li quali hanno procreato un figlio, e tre figlie, cioe' il Sig.re Gian-Francesco-Salvatore-Mario-Giuseppe-Tomaso-Saverio-Felice-Giorgio-Gaspero: la Sig.ra Giovanna-Francesca-Maria-Generosa-Felicita-Saveria-Teodora-Carla: la Sig.ra Diana-Maria-Antoni-Modesta: e Finalm.te la Sig.ra Maria-Margarita-Chiara-Anna-Modesta: e visse il Primo co suoi descendenti sempre da Gentilhoumo al pari de suoi antenati; e questa Famiglia e' stimatissima in Malta per

la sua Onoratezza, ed e' considerata per le sue gran Ricchezza superiore a quello di qualunque Gentiluomo, benché Titolato di quest' Isola; onde sostera', certam.te con pieno decoro quel Titolo, col quale le Prefato MM.LL.Impl. e Reali Ap.le saranno per aggraziarlo. In fede di che si sian di proprio pugno sottoscritti coll' aggiunta del Nro. Sigillo, Malta ad 10 Giugno 1770.
(L.S.) Signed

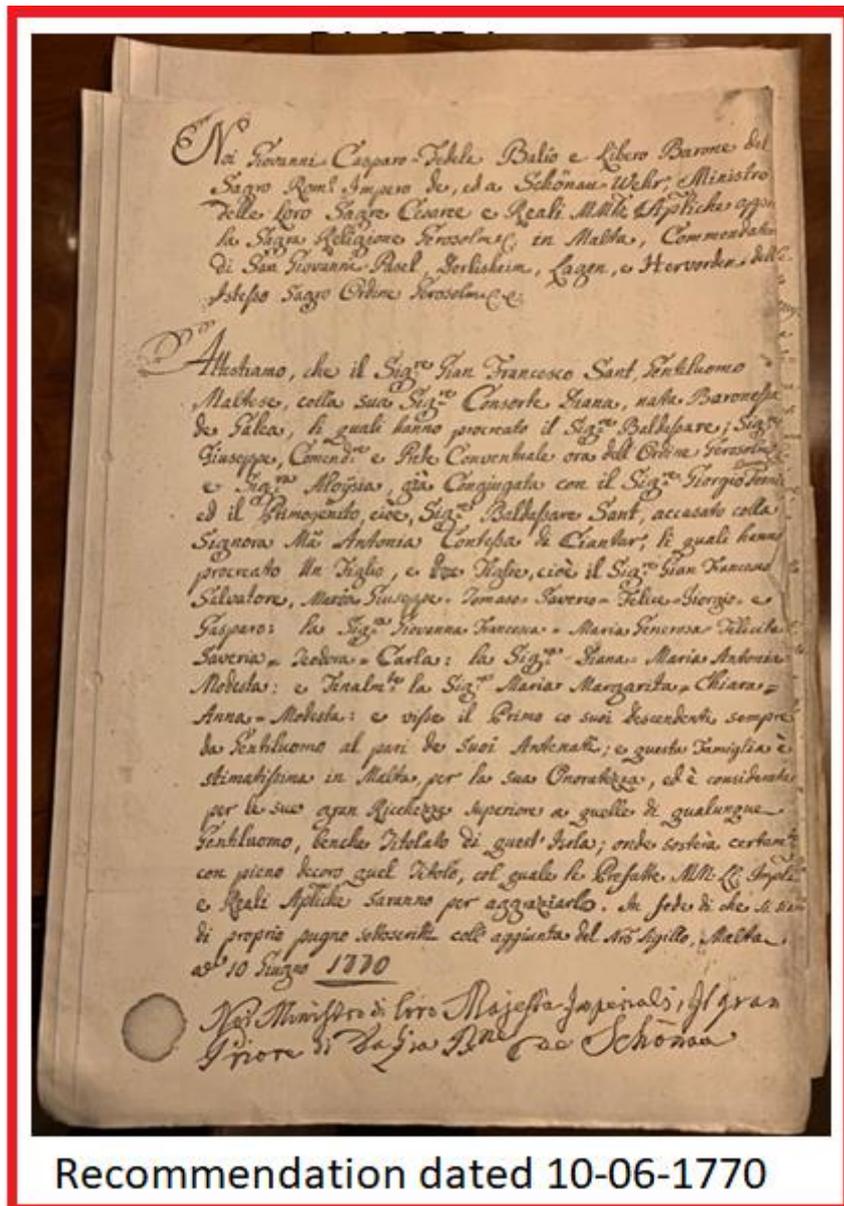


PLATE X

(B) The second document (PLATE XI), dated 22 November 1770, is a copy in Italian of the formal application/petition for the title where the *Supplicante* Baldassare (senior) in his capacity as “*capo di essa famiglia Maltese de Sant*” asks the Empress Maria Teresa for the title of Count in her Italian Province of Lombardy in consideration of 3,000 Florins by way of

Taxes and Royal rights. The price for this honour works out at approximately 50,000 US Dollars in today's money.

(<https://futureboy.us/fsp/dollar.fsp?quantity=3000¤cy=florins&fromYear=1770>).

In this application, Baldassare informs Her Imperial Majesty that he has already initiated the process of acquiring a fief in an Italian province of Austria. Sant also requested that the title descend to his first-born son (his *primogenito*) Gian. Francesco and thereafter to the agnatic descendants of his said son by primogeniture and that should the latter's agnatic descent be extinguished, the said title would be transmitted to the primogenial male of the last surviving female descending from him without deviating from the order of Primogeniture "*dal maschio che nascerà dalla femina ultima superstite, con la continuazione dello Stemma e cognome di Sant senza deviare dal prestabilito ordine di Primogenitura*".

In other words, Gian Francesco's as yet unmarried sisters mentioned in the petition ("*e tre figlie ancora nubile*") were excluded from the succession. It appears that no thought was given to the possibility that they might one day marry, have issue of their own and possibly contribute to a restarted line in case of failure of the strict agnatic pool- *More on this below.*

The application reads as follows:

Sacra Cesarea Reale Apostolica Maesta'
Ricorre al Real Trono della M.ta V.ra colla qui annessa Supplica. La Famiglia Nobile Patrizia Maltese de Sant, ed in nome di essa il Nobile Baldassare Salvatore de Sant, qual capo di essa, per implorare dalla Reale Munificenza della M.V. un maggior lustro alla di lui persona, e famiglia, colla sua elevazione al grado di Conte, unito alle prerogative solite gioiosi dagl' Insignite di tale carattere.
Questa Famiglia, originaria dalla Spagna, espone essersi distinta fino ne' Secoli addietro in riguardevoli Cariche Civili, e Militari, sotto il Dominio de' Re d'Aragona in Sicilia, prima che i Cavalieri Gerosolimitani si fossero stabiliti nell' Isola di Malta; indi sotto l'Imperiale, e Reale Austriaco fino dal tempo di Carlo V negli eserciti Navali contro li Corsari Affricani, e Le invasioni de' Turchi sulle frontiere di Sicilia, con aver secondato le difese, ed imprese della predette Sacra Religione.
Si trova innoltre questa famiglia mediante i vaj successivi matrimonj, congiunta con altre Famiglie delle piu' nobili, e caratterizzati di quell' Isola: di che fanno fede gli annessi Documenti, da quali si rileva, aver il Padre del Supplicante Don Gianfrancesco de Sant contratto matrimonio con Donna Diana Baronessa di Galea; i quali procrearono una figlia, conjugata col Conte Giorgio de Fornier; e due Figli, de' quali il Primogenito, e Supplicante Don Baldassare de Sant, parimenti e' accasato con Maria Antonia Contessa de Ciantar: la figliuolanza di questi consiste in un primogenito Don Gianfrancesco Salvatore, e tre figlie ancora nubili.

Questa famiglia finalmente e' fornita di mezzi sufficienti a sostenere con lustro il carattere di Conte tanto per le facolta', situate nell' Isola di Malta quanto ancora per li redditi ne' vicini Principati, come da' detti Documenti si rileva. E poiche sta' fissata la massima, che alli Titoli venga accompagnato il Feudo, a cui applicarsi, ha preso il Supplicante le sue misure per l'acquisto di tal Feudo ne' Stati di V.M. in Italia.

Domanda il Supplicante, che il titolo di Conte sia limitato bensì alla Primogenitura, con passare però dopo la mancanza del Primogenito ai figli e discendenti maschj di legittimo matrimonio, ma venga in difetto di questi esteso poi a favore del maschio, che nascerà dalla femina ultima superstite, con la continuazione dello Stemma, e cognome de Sant, senza deviare dal prestabilito ordine di Primogenitura.

Dipende unicamente dalla Sovrana Munificenza di V.M. il concedere alla Famiglia Supplicante le implorate Grazie; e sarei pertanto di sentimento, che, attesi i succennati motivi, possa la M.V. degnarsi condecorarla nel modo sopra esposto col Titolo di Conte, con che però sia essa obbligata al pagamento di Fiori 3000 a titolo di Tasse, e Diritti Reali, da pagarsi a questa Tesoria.

Vienna 26 Novembre 1770

The application was accepted and in fact we read the word “**Placet**” which confirms that the Empress was pleased to give her assent. The formal grant, as we have seen, was issued on 22 December 1770.

It must be noted, however, that there are some important differences between the approved *application* and the text of the *final grant*.

Significantly, there is no mention in the final grant of the phrase in the application which reads “...*che il titolo di Conte sia limitato bensì alla Primogenitura*”.

Likewise, in the concession of Special Benevolence (*see below*) shown by the Empress in the grant, the “*continuazione dello Stemma e cognome de Sant*” is cut down to only “*cognomen assumet*”.

These two points are discussed in (4) and (8) below. However, it must be emphasised that between the text of the approved *application* and the text of the *grant*, it is the latter which prevails.

(4) PRIMOGENITURA?

In the two documents leading to the grant of December 1770 and indeed in the grant itself, there is absolutely no connection between the title of nobility applied for and any indivisible fideicommissary entail (a.k.a. *primogenitura*).

This conclusion will necessarily exclude any argument that the title was legitimately linked to a *Primogenitura* that may have been held by the Sant family.

- (A) The words “*Primogenito*” and “*Primogenitura*” as used in the petition do **not** mean anything other than either describing a given familial relationship or an order of succession.

Thus, the *Supplicante* Baldassare (senior) is described as the *primogenito* (first born son) of his own father Gianfrancesco (senior), whilst Gianfrancesco (junior) is in turn described as the *primogenito* of the same Baldassare.

“*Che il titolo di Conte sia limitato bensì alla Primogenitura*”, and “*senza deviare dal prestabilito ordine di Primogenitura*”, refer to a **desired** descent by primogeniture.

The application also requests a special mechanism of succession in case of the total extinction of male descendants. The following extract (**PLATE XII**) from Baldassare Sant’s petition makes this fact abundantly clear: -

“...Domanda il Supplicante, che il titolo di Conte sia limitato bensì alla Primogenitura, con passare però dopo la mancanza del Primogenito ai figli e discendenti maschj di legittimo matrimonio, ma venga in difetto di questi esteso poi a favore del maschio, che nascerà dalla femina ultima superstite, con la continuazione dello Stemma, e cognome de Sant, senza deviare dal prestabilito ordine di Primogenitura.”

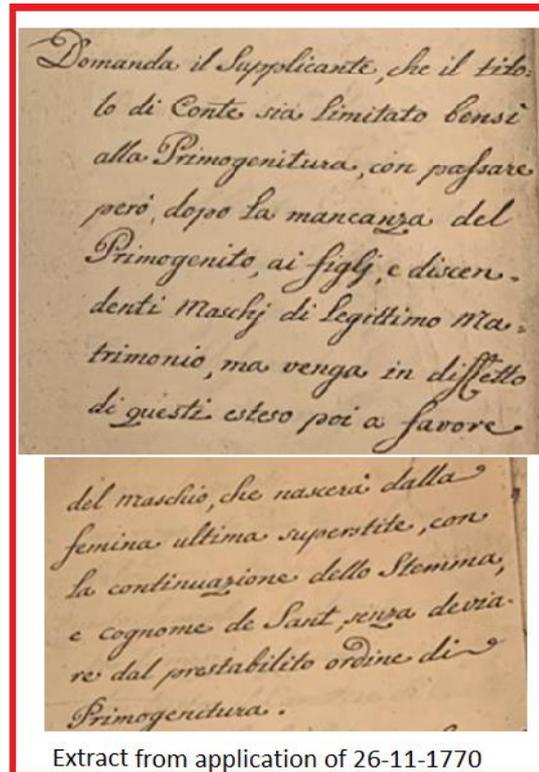


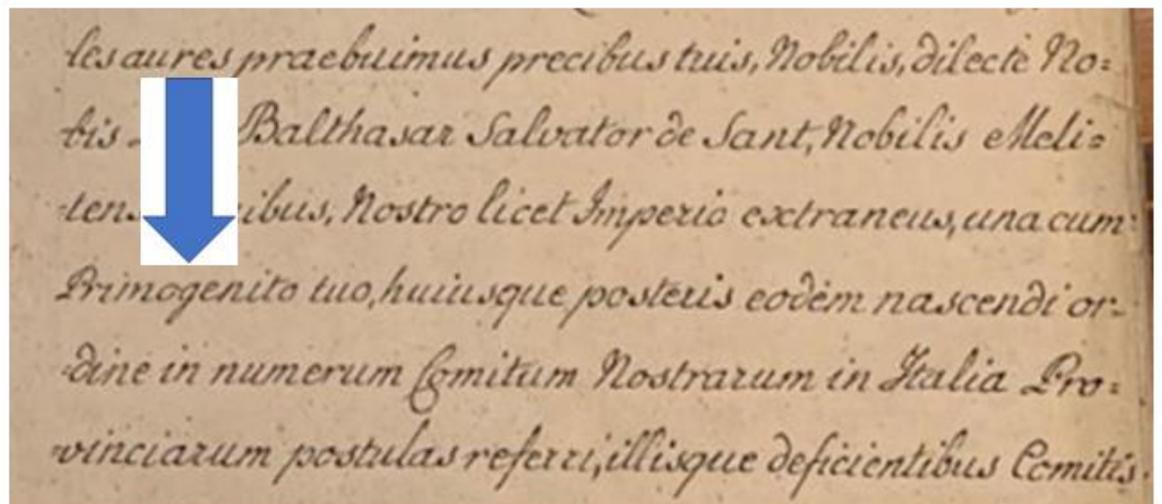
PLATE XII

- (B) Turning to the text of the Grant itself (PLATES I to VI), the context of the word “*Primogenitum*” (first born) and of its derivatives is clear.

It will be noted that nowhere in the grant is there any reference whatsoever to the title being linked to a “*Primogenitura*”. The word *Primogenitum* and its derivatives obviously refer to the order of birth and to nothing else.

For the avoidance of any further doubt, I am here presenting (PLATES XIII - XVII) the relevant excerpts from the (Latin) grant, highlighting the text wherever even slight mention is made of the word *Primogenitum* or of its derivatives

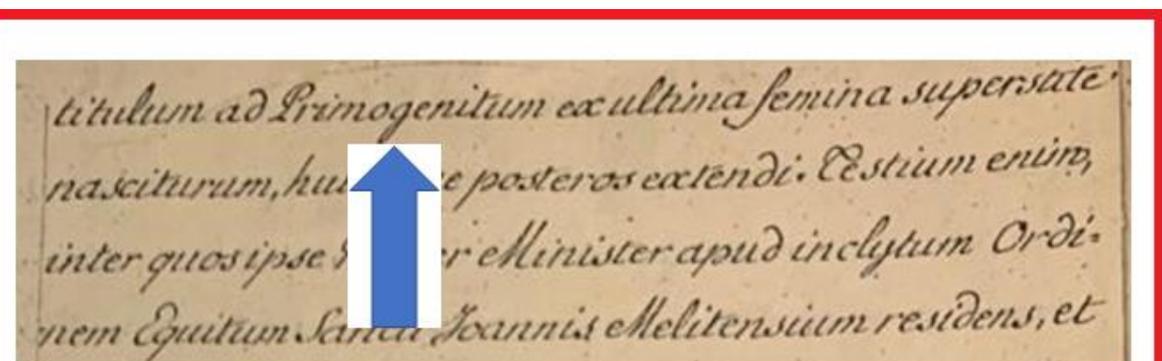
Thus:



les aures praebulimus precibus tuis, Nobilis, dilecte No-
 bis. Balthazar Salvator de Sant, Nobilis e Meli-
 ten. quibus, Nostro licet Imperio extraneus, una cum
 Primogenito tuo, huiusque posteris eodem nascendi or-
 dine in numerum Comitum Nostrarum in Italia Pro-
 vinciarum postulas referri, illisque deficientibus Comitibus

(Quae cum ita sint, non difficile) aures praebulimus precibus tuis Nobilis, dilecti Nobis Don Balthazar Salvatore de Santo, Nobilis Melitensis, quibus, Nostro licet Imperio extraneus, una cum Primogenito tuo, huius que posteris eodem nascendi ordine in numerum Comitum Nostrarum in Italia Provinciarum postulas referri, illisque deficientibus Comitibus (titulum ad Primogenitum ex ultima femina superstite nasciturum, huius que posteros extendi).

PLATE XIII



titulum ad Primogenitum ex ultima femina superstite
 nasciturum, huius que posteros extendi. Testium enim,
 inter quos ipse Noster Minister apud inclitum Ordi-
 nem Equitum Sancti Joannis Melitensium residens, et

(Quae cum ita sint, non difficile) aures praebulimus precibus tuis Nobilis, dilecti Nobis Don Balthazar Salvatore de Santo, Nobilis Melitensis, quibus, Nostro licet Imperio extraneus, una cum Primogenito tuo, huius que posteris eodem nascendi ordine in numerum Comitum Nostrarum in Italia Provinciarum postulas referri, illisque deficientibus Comitibus) titulum ad Primogenitum ex ultima femina superstite nasciturum, huius que posteros extendi.

Testium enim inter quos ipse Noster Minister apud inclitum Ordinem Equitum Sancti Joannis Melitensium residens, et (documentorum fide accepimus te antiquo genere ortum, morumque ingenuitate, et a vitis opibus conspicuum, tum etiam devoto Nobis animo singulariter esse ad dictum).

PLATE XIV

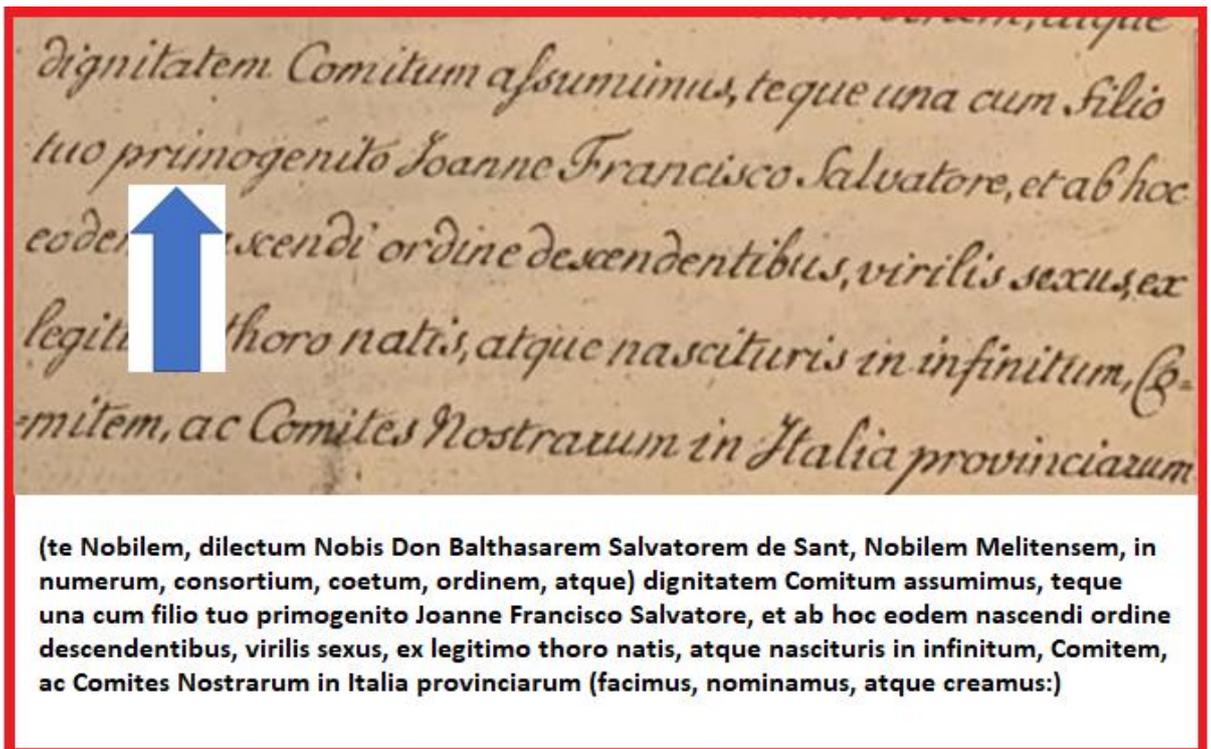


PLATE XV

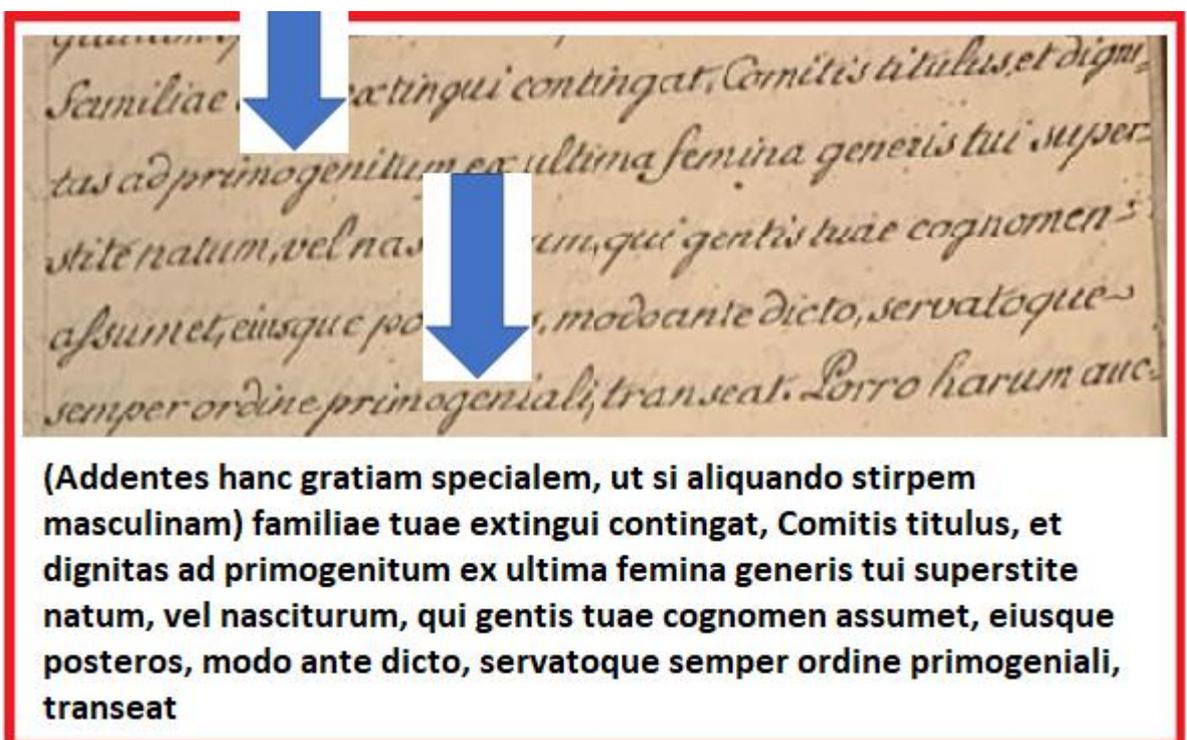


PLATE XVI

(5) THE GRANT

I now present excerpts taken in a strict chronological order from the Latin transcription of the grant (**Plates I-VI**), together with their English translations. Some of the material covered has already appeared above.

(A) (Preamble) “...*tuis Nobilis, dilecti Nobis Don Balthazar Salvatore de Santo, Nobilis Melitensis, quibus, Nostro licet Imperio extraneus, una cum Primogenito tuo, huius que posteris eodem nascendi ordine in numerum Comitum Nostrarum in Italia Provinciarum postulas referri, illisque deficientibus Comitum titulum ad Primogenitum ex ultima femina superstite nasciturum, huius que posteros extendi. ..*”

[“...You, our dear Don Baldassare de Sant, Maltese gentleman although not one of Our subjects, have asked together with your eldest son and your future descendants to be included in the number of Counts in Our Italian provinces, always conserving the order of birth and that in case of a deficiency in this order, the title of Count be extended to the first-born descendant of the last living female and then to her descendants...”]

Comment:

In this excerpt which is part of the preamble, the Empress sets out Baldassare’s two wishes, the first for himself, his first born son and “*huius que posteris eodem nascendi ordine*” to be admitted amongst her body of Counts in her Italian Provinces, the second that should his agnatic line become extinct then the title is to devolve to the first born son of the last surviving female descendant.

The *literal* meaning of “*cum Primogenito tuo, huius que posteris eodem nascendi ordine*” is that generational succession is limited to the first born male in the agnatic male line. This “order of birth” is broadly in line with the position obtaining under a jurisdiction applying the *Jus Francorum*.

On the other hand, “*huius que posteris eodem nascendi ordine*” when **taken separately** from identifying Baldassare’s first born son would merely mean that enjoyment of the title is generational: In this way one could not style oneself “Count” until one’s father dies. This is broadly speaking the general rule of “order of birth” in terms of the custom of the *Jus Longobardum* (see **(7)** below). Thus, if a Count in Lombardy has two sons, both will only enjoy the title after the Count’s death. Their own sons would, in turn, enjoy the title after the respective deaths of the aforesaid brothers and so on and so forth.

(B) (Preamble) “...*Et quoniam in Longobardia Nostra Lex obtinet, quae Comitum titulum congrua eidem Feudi possessione iubet fulciri, aequi bonique facimus, te prompto Nobis ob secundandi studio ad*

laborare, ut Fundum Clientela vinculo obstrictum in ditioe Nostra primo quo vis tempore adquiras...”

[“...and whereas in Our Lombardy, the law requires that whosoever has the title of Count must possess a fief appropriate to his standing, with reason and justice we will permit you to please Us by speedily seeking and acquiring such (fief) within Our domain as soon as possible, thereby providing a secure legal basis ...”]

Comment: In continuation of the preamble, the Empress again refers to her Italian Provinces and specifically to the local rule that the grant of a comital title presupposes the acquisition of a property tenure within said provinces. In this case, the Empress is favourably considering Baldassare’s requests on condition that he meets this requisite as soon as possible thereby providing a secure legal basis (for the title). Not having acquired a fief would logically have meant that the Empress would not regard Baldassare as having a legal basis for his title.

Unfortunately, we do not know for sure whether this requirement was ever complied with. In other words, we do not have any proof whether or not the fief was actually acquired.

The later Royal Commission in Malta (**PLATE XVII**) opined (in 1877): “We are not aware that the fief referred to in this part of the patent was acquired by the claimant’s ancestors, but as this condition is not peremptorily laid down in the patent, we do not think that its non-performance invalidates the grant.” Such a conclusion is at best completely gratuitous and flies in the face of what the Empress herself was telling Baldassare to do.

A stronger argument is that, as seen in the petition above, Baldassare (senior) had already initiated the acquisition of a fief in Lombardy. It is therefore reasonable to assume that he did in fact acquire the said fief.

This would appear to have been the most plausible (and dignified) outcome. This conclusion is further strengthened by the consideration that the title was registered in Malta almost five years later. It is reasonable to draw the conclusion that the Maltese receiving authority gave permission (**PLATE VII**) to Baldassare to register the title only after ensuring that the registrant was fully compliant with the terms of the grant.

X.—Title of “Conte” conferred by Empress Maria Theresa on Salvatore Baldassare Sant.

216. Gio Francesco Sant “Barone di Ghariescem and Tabia” claims likewise the title of *Conte* in virtue of the patent granted, on the 22nd December 1770, by the said Empress Maria Theresa, to Salvatore Baldassare Sant, of which the operative clause has already been given. That patent having been duly registered, and the said claimant being the first-born son of the Conte Luigi Maria, eldest son of the Conte Gio Francesco, who was the eldest son of the first titled person, we have no hesitation in declaring that the claimant has satisfactorily shown an indisputable right to the title above mentioned.

217. We must not, however, omit mentioning that in the preamble of the said grant the following expressions occur: “Et quoniam in Longobardia nostra lex obtinet, quæ Comitis titulum, congrua eidem feudi possessione jubet fulciri, æqui bonique facimus, te prompto nobis obsecrandi studio ad laborare, ut feudum clientelæ vinculo obstrictum, inditione nostra, primo quovis tempore adquiras.” We are not aware that the fief referred to in this part of the patent was acquired by the claimant’s ancestors, but as this condition is not peremptorily laid down in the patent, we do not think that its non-performance invalidates the grant.

PLATE XVII

- (C) (Operative clause) *“te Nobilem, dilectum Nobis Don Balthasarem Salvatorem de Sant, Nobilem Melitensem, in numerum, consortium, coetum, ordinem, atque dignitatem Comitum assumimus, teque una cum filio tuo primogenito Joanne Francisco Salvatore, et ab hoc eodem nascendi ordine descendentibus, virilis sexus, ex legitimo thoro natis, atque nascituris in infinitum, Comitem, ac Comites Nostrarum in Italia provinciarum facimus, nominamus, atque creamus”*:

[We accept you, Noble Don Balthassar Salvatore de Sant, beloved to Us, a Maltese Nobleman, as Count and Counts into the number, fellowship, gathering, Order and dignity of Our Counts, you with your first-born son, Gian. Francesco Salvatore, and with the descendants (reckoned) from this (son) in the same order of birth, of male sex, born and to be born in lawful wedlock, for ever, we make, nominate, and create Count and Counts in our Provinces which we possess in Italy].

Comment: This is the moment when the title of Count Sant is created and granted specifically in the Italian Provinces in favour of Baldassare, his first-born son and the male descendants thereafter born within lawful wedlock.

Beyond the first-born son the qualifying criteria or *ordine descendentibus* in favour of the *nascituris in infinitum* read (a) *sexus virilis* that is to say of sex male and (b) *ex legitimo thoro natis* that is to say born in lawful wedlock.

As seen in (2) (the protest), the objector (**PLATES VIII and IX**) did not give any importance whatsoever to this specific formula *et ab hoc eodem nascendi ordine descendentibus, virilis sexus, ex legitimo thoro natis* and argued instead that the primogenial order (“*di primogenito in primogenito*”) results from the next part of the operative clause.

On the one hand, one might concede that the formula *et ab hoc eodem nascendi ordine descendentibus, virilis sexus, ex legitimo thoro natis* should be taken to mean in the same order of birth i.e. from first-born to first born in the male line. On the other hand (see below) there is nothing to suggest in this operative part that the *Jus longobardum* has been altered or withdrawn altogether.

- (D) (Special Operative clause) “*Addentes hanc gratiam specialem, ut si aliquando stirpem masculinam familiae tuae extinguere contingat, Comitatus titulus, et dignitas ad primogenitum ex ultima femina generis tui superstite natum, vel nasciturum, qui gentis tuae cognomen assumet, eiusque posteros, modo ante dicto, servatoque semper ordine primogeniali, transeat*”:

[“...adding this special grace that should the male descent of your family be extinguished, the title and dignity of Count shall devolve to the first-born male of the last surviving female who will, together with his descendants bear your surname in the manner described above, always observing the primogenial order (of descent)...”]

Comment: This special concession as requested by Baldassare is discussed in (8) below. There is however one phrase in this special clause namely *modo ante dicto, servatoque semper ordine primogeniali* which raises a flag in regard to the true meaning of the rule described immediately before (*eodem nascendi ordine descendentibus*). If as seen in the previous comment the *ordine descendentibus* is taken to mean primogenial male descent as per the *Jus Longobardum*, why is the Empress here distinguishing between the *modo ante dicto* (meaning as aforesaid) and *ordine primogeniali* (meaning always following the order of primogeniture)?

- (E) (Operative clause) “*Porro horum auctoritate Tabularum decernimus, ut tam in iudiciis, quam extra illa, ac ubicunque res, vel occasio tulerit, tu, ac posteri tui, modo ante dicto, iis omnino honoribus, beneficiis, iuribus, libertatibus, praerogativis, exemptionibus, ac privilegiis uti, frui, ac gaudere possitis, quibus alii Nostrarum in Italia provincialium Comites, sive consuetudine, sive iure utuntur, et gaudent...*”

“Moreover, we authorize, decree that in judicial and extrajudicial matters and in any situation, whatever the occasion may be, that you and after you your descendants in the aforementioned manner, are to

use and enjoy as aforesaid all those honours, benefits, rights, freedoms, prerogatives, exemptions and privileges of which the other Counts do use and enjoy in our Italian provinces whether by custom or by right.”]

Comment: In continuation (*Porro*) of the operative clause, the Empress is enabling the recipient and his successors to the full enjoyment of the title of Count. That formula *modo ante dicto* reappears, this time without the added *servatoque semper ordine primogeniali*. By using the phrase “*quibus alii Nostrarum in Italia provinciarum Comites, sive con suetudine, sive iure utuntur, et gaudent*”, the Empress is confirming that the title is to be enjoyed as per Custom or by right (*sive con suetudine, sive iure utuntur*), as obtaining in her Italian Provinces. She is therefore acknowledging that “Custom” coexists with the strict letter of a right. In this way she is confirming in the fullest terms possible the of the *Jus Longobardum*. (*see below*).

A further observation is that the remainder in favour of the ulterior descendants comes into play, not after the death of Baldassare’ first born son but specifically after Baldassare himself (thus *ac posteritui*).

- (F) (Universal order and assurance) “*Quare ab universis, et singulis Principibus, Rebus publicis, Magistratibus, aliisque ditioni Nostrae non subiectis amice requirimus; Nostris vero Locum tenentibus, Vicariis, Guberniis, Tribunalibus, Praefecturis, Magistratibus, Curiis, et Collegiis universis, omnibusque aliis Nostrae ditioni subditis, et fidelibus Nostris, cuiuscunque dignitatis, gradus, vel ordinis sint praesentibus, ac futuri hisce serio praecipimus, et mandamus, ut te, Magnifice, Nobis dilecte Comes Don Balthasar Salvator de Sant et filium, ac posteros tuos, modo supra dicto, pro tali, et talibus cum in scriptis, tum viva voce habeant, nominent, atque honorent, tum et praerogativis, privilegis, immunitatibus, exemptionibus, iuribus, ac dignitatibus, quae tibi, ac filio tuo, et posteris, uti Comitibus competunt sine omni impedimento frui, ac gaudere sinant,*

[“To every and each friendly Prince, public Authority, Magistrate, however called, not being our subjects we request; To our true Lieutenants, Viceroys, Governors, Courts, Prefectures, Magistracies, Offices and Colleges and to all our other faithful subjects, however called, of any rank, degree, present and future, we formally recommend, and command, that you, the Magnificent, Our beloved *Count Baldassare Sant together with your son and his descendants in the manner above described, can enjoy in writing or orally be styled and honoured as Counts without any hindrance the prerogatives, privileges, immunities, exemptions, rights and dignities which fall to you, to your son and future generations ...*”

Comment: In this part of the grant, the Empress is also addressing friendly foreign nations as well as her own subjects, asking and

ordering (as the case may be) to afford the unimpaired use and enjoyment all the rights and privileges competent to Counts not only to *Magnifice, Nobis dilecte Comes Don Balthasar Salvator de Sant*, to his son *et filium* but also to Baldassar's ulterior descendants *ac posteros tuos* in the manner described (*in modo ante dicto*). All said, there is nothing to suggest that the Empress deviated from the *Jus Longobardum*.

(6) GRAND MASTER'S INTERPRETATION

Back in Malta, where this title was registered, the Grand Masters themselves regarded the title of Count (*de*) *Sant* as being one which benefits all male-to-male descendants.

Thus, in the "*Commendatizie, Naturalizzazione, e Cittadinanze Maltese*" (NLM AOM 627), one finds record of a passport issued in 1793 to the three sons of Gio Francesco Sant (the same *primogenito* of the original grantee Baldassare Sant, to further their studies in Monza, Italy. Monza is firmly within the Lombardy region of Italy, about 15 kilometres north of Milan.

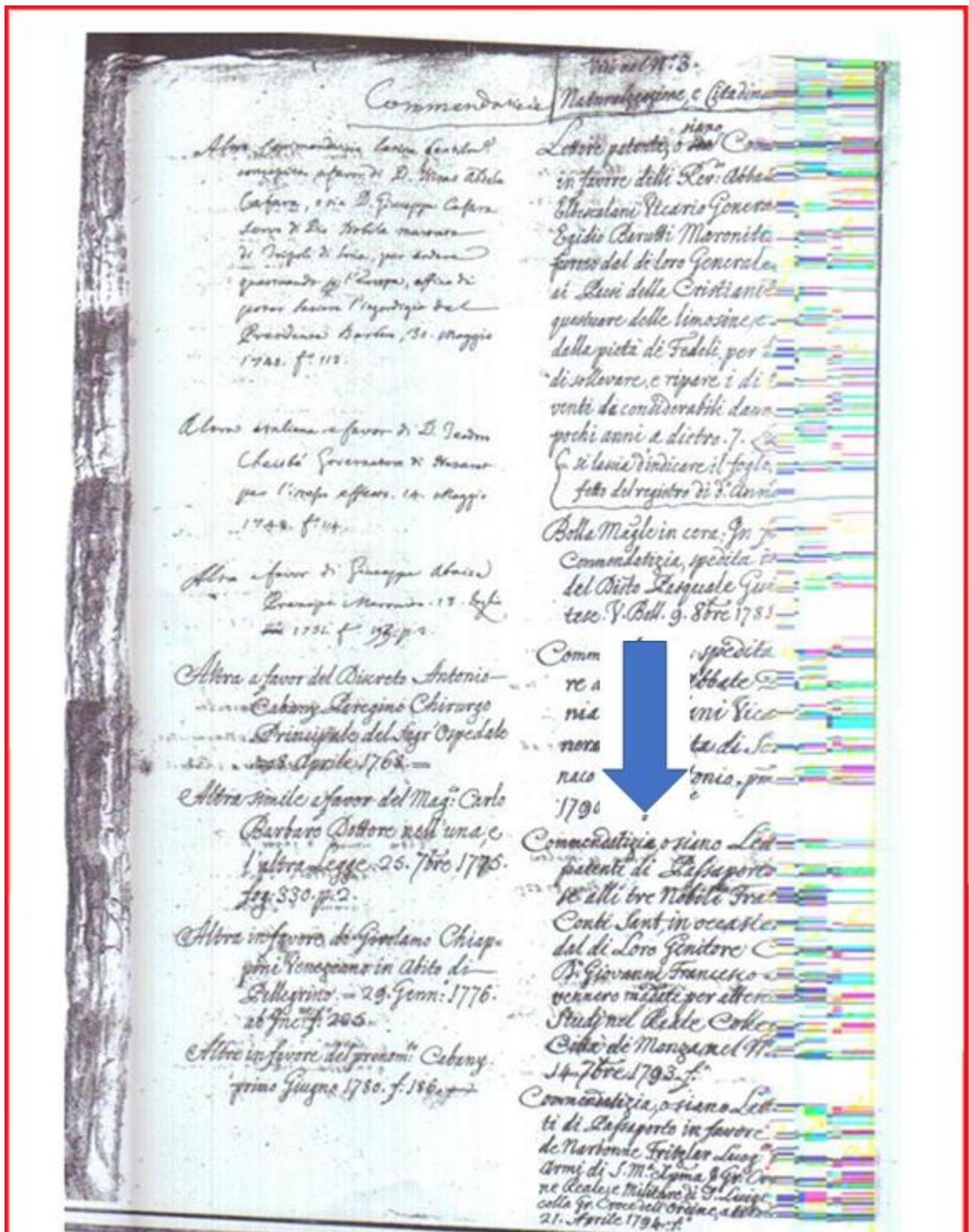
In this document (**PLATE XVIII**) there is no mention of the sons' names but they are described as "*three noble brothers, Counts Sant, sons of the Count Don Giovanni Francesco Sant*". This means that the Grand Master's interpretation of the remainder of the title of Count Sant is that all males descending in the male-to-male line from the original grantee of the title are entitled to the noble title of "*Count*", as per the *Jus Longobardum*.

The *Jus Longobardum* does indeed allow all the sons of a Count to become Counts, after their father's death, (*see 5(A)*, above) but here the father was still alive! This was an official document emanating from the government of Malta, so it *cannot* be ignored, but it is still something of a mystery.

All this might be explained by the further observation given in **5(E)** above.

It is also not amiss to observe that the Grand Master's generous interpretation may have been influenced by local developments. One must remember that the Nobility in Malta like everything else, was also evolving. Whilst the earlier grants of nobility issued by the Grand Masters were worded to either benefit one successor at a time or simply no successor at all, the last period ushered in new formulae in the relative grants of nobility. Thus in 1790, we find that the *Talia* grant (Alessi) was worded to also benefit the grantee's *legitimis descendentibus* in general. Similarly, in 1792, we find *Ghain Toffieha* (Teuma Castelletti) worded to benefit the grantee and his issue. In 1794 *Senia (Fontani)* was granted to the grantee and to benefit *tuosque ultrisusque sexus filios et descendentes*. Other contemporary grants are *S. Cosmo posto nel Gozo* (Calleja) granted *per se e suoi discendenti Maschi in infinito* and *Gnien Is-Sultan (Apap)* with its peculiar "*tuisque descendentibus masculi legitimis et naturalibus ipsisque deficientibus, foemina majori natu*". Meanwhile some titles originally non-inheritable were extended at request. Thus *San Giorgio*

was extended in 1792 to all descendants in perpetuum whilst that of *Santi* was extended to include the grantee's male descendants. Such grants contrast with e.g. the title of *Ghain Kajet* (4.06.1796) which is limited to primogenal succession and the extension (17.06.1793) of the title of *Fiddien* which only benefitted "*pro primogenitis maribus tantum.*" - More details about these titles are to be found in my book "*The Peerage & Knightage in Malta*" (2017).



Record of Passport issued by Grand Master: "Commendatizia, o siano Lettere patente di Passaporto concesse alli tre Nobili Record of Passport issued by Grand Master: "Fratelli Conti Sant, in occasione, che dal di Loro Genitore Conte Don Giovanni Francesco Sant vennero mandate per attendere agli studj nel Reale Colleggio della Citta' di Monza, nel Milanese 14 Settembre 1793 "

(7) ROYAL COMMISSION

Any commentary about a title forming part of the Nobility of Malta would, of course, be incomplete without taking into consideration the various principles described in the Royal Commissioners' Report. The relevance of this report is enormous when one considers that it actually made *specific* observations (PLATE XIX) about titles in Lombardy: -

".....In Germany, in Lombardy and in other parts of Italy, including the Duchy of Savoy, a custom since a distant period obtained under which the titles of nobility that are annexed to fiefs (which in those countries are divisible), as well as those which are purely nominal, descend after the decease of a count or marquis to all his sons, who all assume the title of count or marquis, as the case may be....."

This means that all the male to male descendants of the grantee are by ancient Lombard Custom (described in the Report as "*the Custom of the Longobards*") entitled to the style of Count (*Graf*) (and women have the courtesy use of the style of Countess (*Gräfin*) for life or until marriage).

168. If by that grant it was intended to raise Mario to the nobility of Savoy, we fully concur in the opinion that it is inheritable by all the grantee's contemporary descendants. In Germany, in Lombardy, and in other parts of Italy, including the Duchy of Savoy, a custom since a distant period obtained under which the titles of nobility that are annexed to fiefs (which in those countries are divisible), as well as those which are purely nominal, descend after the decease of a count or marquis to all his sons, who all assume the title of count or marquis, as the case may be. But if the succession to the grant is to be regulated by the feudal law which was in force in Sicily, considering that the title was created by a King of Sicily and registered in the Office of the Privileges of the Kingdom of Sicily, the consequence is widely different. In Sicily, as a general rule, (admitting of course some exceptions) fiefs are not divisible, and the joint possession of titles by more than one person is unknown in that country. As an illustration of this fact, we beg to submit the following important quotations from eminent feudists. Cumja, a leading Sicilian writer on feudal law, "In capite 'si aliquem mortis' num. 176 and 177," says, "Sed in hoc nostro Siciliae Regno hodie non inveniuntur feuda dividua per Cap. 'Volentes. In fin. secundum communem interpretationem, ibi ' feudo integro et indiviso ' perdurante,' et etiam per istud C. Si aliquem, ubi ab intestato Francorum jure vivitur, ' ut discimus secundum communem intellectum in verbo Francorum. Unde hodie in hoc Regno, . . . quia feuda omnia individua sunt, et ille textus de dividuis ' loquitur." Octavius Corsetus, who is also a Sicilian feudist, Con. 23, Num. 2, observes, "Bene tamen verum est quod cum in Regno feuda sint indivisibilia ex dispositione ' constitutionis *Divæ Memoræ* et capituli *Volentes*, et utrobique dicunt Doctores ad unum ' tantum est necesse quod deveniat corpus feudi illeque erit primogenitus masculus, ita ' dicunt passim nostrales," and in the second annotation appended to the said "Consilium," the author remarks, "Dignitatis feudum integre capiat primogenitus." In the Commentaries of Muta, on the "Capituli Regni Siciliae," cap. 33, n.n. 96, 97, tom. I., the following passage is worthy of notice: "Et hoc ex quodam iure medio succedendi in feudis nam

LEGAL MWS.
Laws and
customs
prevalent in
Lombardy
and other
countries
respecting
the succes-
sion to fiefs.
Different
laws and
customs
obtained in
Sicily.

Royal Commissioners' observations distinguishing the Jus Longobardum from the Jus Francorum

PLATE XIX

On the other hand the Commissioners appear to have made a noticeable effort (PLATE XX) to single out Baldassare Sant (junior), a younger son of the Count Gian Francesco Sant and progenitor of the Sant-Fournier family) as one not being entitled to the title of *Count Sant*, therefore implying that this title is one which is to be succeeded only in the male Primogenial line.

The Report's self-contradiction is obvious.

- On the one hand “.... *We may mention that in several Government notices, the late Baldassare Sant was styled Count, to which title he had no right. His son and heir, Lazzaro Sant, does not claim but the titles of Conte and Barone Fournier de Pausier, which he inherited from his mother Luigia, wife of the said Baldassare, to whom they were not certainly communicable.....*” (PLATE XX)
- On the other hand, we have the Custom *of the Longobards* described by the Commissioners themselves (PLATE XIX)

It is incomprehensible as to why the Commissioners, who detailed the right of succession under the Jus Longobardum, dismissed the right of Baldassare Sant (junior) who was a male-to-male descendant of the grantee of a title based in Lombardy and thus descending under the *Jus Longobardum*. In this regard one could proffer the observation that Baldassare (junior) was already deceased at the time of the Commission and that the Commissioners were tasked with only the claim of Gio. Francesco Sant (see 5 (B) above) to the title of Count Sant.

No importance formerly attached by Government to the use of titles.

165. The above stated circumstances lead us to conclude that no great importance was formerly attached by the Local Government to a proper use of the titles of nobility. In confirmation of this statement, we may mention that in several Government notices the late Baldassare Sant was styled Count, to which title he had no right. His son and heir, Lazzaro Sant, does not claim but the titles of Conte and Barone Fournier de Pausier, which he inherited from his mother Luigia, wife of the said Baldassare, to whom they were not certainly communicable. It must, however, be remarked that since 1870 the said Gio Paolo Testaferrata and Lorenzo Cassar Desain have been styled Marchesi in several Government notices concerning the Agrarian Society, and the Society of Arts, Manufactures, and Commerce.

Royal Commissioners' opinion about entitlement of Baldassare Sant (junior)

PLATE XX

(8) SPECIAL REMAINDER

As a rule, according to the “*Custom of the Longobards*”, in the absence of a strict agnatic line, the title would ordinarily become extinct.

However, in this case there is what the Empress herself terms a “*Special Benevolence*” allowing for the preservation of the title (but not the armorial bearings) to be by exception transmitted to the first-born male of the last surviving female descendant in such an eventuality. This Special Benevolence was given - as the grant itself says - at the request of Baldassare himself (see **5(D)** above).

It is easily understood that the Special Benevolence, worded as it is, does not feature as part of the main Operative Clause (see **5 (C)** above) but is only an addendum for a contingency. The wording is specific: *Addentes hanc gratiam specialem, ut si aliquando stirpem masculinam familiae tuae extingui contingat, Comitatus titulus, et dignitas ad primogenitum ex ultima femina generis tui superstite natum, vel nasciturum, qui gentis tuae cognomen assumet, eiusque posteros, modo ante dicto, servatoque semper ordine primogeniali, transeat.*”

- (A) As seen in **(2) (protest)**, the objector (**PLATES VIII and IX**) relied not on the main operative clause but only on this *Special Benevolence*. As a matter of basic interpretation, one need not go to any great length to explain that of the three phrases quoted by the objector from the grant, two can only be read in the context of the act of Special Benevolence. There is therefore nothing to justify transposing the sense of the Special Benevolence to the main clause which is the act of creation of the title, thereby attempting to limit the remainder to one of primogenial succession. In fact, close reading of the Special Benevolence throws strong doubts on the validity of the claim that *modo ante dicto* should ever have been taken to mean *di primogenito in primogenito* as intended by the objector. The cumulative effect of the considerations made above in **5(C)**, **5(D)**, **5(E)** and **5(F)** cannot by any stretch be taken to mean with absolute certainty that the phrase *modo ante dicto* is to be construed as *di primogenito in primogenito*. This conclusion is reinforced not only by what is the general practice under the *Jus Longobardum* as described - ironically enough by the Royal Commission itself - but also by the interpretation given by the Order of St. John during its government of Malta.
- (B) There is admittedly some lack of clarity of what is meant by “*ultima femina generis tui*”: Whilst the Grant is undoubtedly written in the second person singular, therefore implying that the descent of the last surviving female descendant is reckoned from Baldassare, it must be remembered that the grant contemplates Baldassare and “*cum Primogenito tuo, huius que posteris eodem nascendi ordine*”.

Given that the petition (see **3 (B)** above) specifically mentions “*Gianfrancesco Salvatore, e tre figlie ancora nubile*”, it appears that the

“last surviving female” must be reckoned from Gianfrancesco and not from any one of Baldassare’s other daughters. That is to say the Grant prevails.

The daughters so ‘side-lined” are Giovanna-Francesca, Maria-Generosa-Felicita and Diana-Maria (see 3 (A) above) who in the application are all described as being unmarried.

A further uncertainty is the true construction of “*ultima femina*”: In the contingency of total extinction of male to male issue but where there is a generous pool of agnatically descended females, does succession have to wait until the death of all but one female? The rider “*servatoque semper ordine primogeniali*” (always according to the rule of primogeniture) does not appear to be of help to resolve this problem, indeed it muddles it further!

(9) OBERHAUPT AND ITS APPLICATION TO A MALTESE FAMILY

In German nobiliary law, the Head of the House, by primogenial male descent (German: *der Oberhaupt*, Italian: *Capostirpe*) ordinarily inherits the family estates and is regarded as the Senior holder of that title.

Successive members of the Sant Cassia line are numerated as correlating successive holders of the title of Count Sant. However, a more correct descriptive term for them would be, apart from the title of Count itself, one of being the successive “*Oberhaupt*s” of the Comital Sant Family. By enumerating the *Oberhaupt*s one is emphasising the true origin and descent of the title as created under the *Jus Longobardum*.

As a rule, according to the “*Custom of the Longobards*”, in the absence of a strict agnatic line, the title becomes extinct with the logical consequence that there is no longer an *Oberhaupt*. However, in the case of the Sant family, the Empress exceptionally allowed the restarting of a new agnatic line in the event of the line descending from Baldassare’s first-born son running out of males. In this way the person who would so succeed would become the next *Oberhaupt*.

Malta is by tradition, a *Jus Francorum* jurisdiction. On the other hand, there are a number of locally-created honours which contain noticeable examples (see 6(D) above) of “generous remainders” to varying extents.

These remainders are very similar in effect to the norm found in a *Jus Longobardum* jurisdiction but the later Royal Commission curtailed the effect of these local creations by introducing the practice of benefitting only the primogenial descendant of the family so ennobled. (See my book, “*The Peerage and Knightage of Malta*”)

The title of Count Sant is not, however, a local creation. Even if Baldassare Sant’s descendants took to applying this local practice to the title of Count

Sant, this cannot negatively impact in any way whatsoever on the legitimate rights and expectations of the many agnatic descendants. These rights exist by reason of the *Jus Longobardum* where this particular title originated and continued to be regulated.

On this basis, one needs to distinguish the *Oberhaupt/Capostirpe/Head of the family* from the other members of this particular Maltese Noble family who also partake in the enjoyment of the title of Count.

(10) COMMENTARY

It is important to highlight the fact that the title was specifically created by the Empress in Lombardy. The Germanic form of the inheritance of titles is referred to as the *Jus Longobardum*. This means that:-

- All male descendants of the first grantee can freely use the title. In this case, the title was granted to Baldassar Sant and his *Primogenito* Gian Francesco as ordered by the Empress to enjoyed “*Comites, sive consuetudine, sive iure utuntur, et gaudent*”.
- There is a successive order of inheritance (“*tu, ac posteritui*”) in that one cannot style oneself “Count” before one’s father dies (but see (6) above). This order is described by the Royal Commission “*after the decease of a count or marquis to all his sons, who all assume the title of count or marquis, as the case may be*”.
- Although usually transmitted *en bloc*, Germanic fiefs are also divisible under the *Jus Longobardum*
- Females are allowed use of the title only until marriage or death, but they cannot transmit the title to their issue. In this case it appears that the only reason to name Gian. Francesco was to discreetly side-line Baldassare’s daughters from the grant, were the special concession referred to above ever to be triggered.

Of note to the particular title of Count Sant: -

- The Empress did not rule out the Germanic right of all male descendants to use the title. Indeed, she entrenched these rights as enjoyed by “*all others*”. Thus, the Counts Sant were to enjoy without any let or hindrance all the prerogatives, privileges, immunities, exemptions, rights and dignities as presently enjoyed by others (*i.e. other Counts in Lombardy*). These rights included the rights under the *Jus Longobardum* of all males being able to use the title under the rules outlined above.
- Importantly no provision for succession by Primogeniture *specifically* results from the grant (see (4) and (5) above).
- The Empress only specifically deviated from the norm of German titles when she provided that should the agnatic line fail it could be re-started through primogenial male descent from the “last surviving female descendant”.

- When creating the grant of the Sant title, the Empress, specifically and at the request of Baldassare Sant, reinforced the principle of descent down the line of Baldassare Salvatore's first-born son, Gian Francesco. The latter's sisters and their descendants were effectively excluded from the succession.
- There is no evidence that the grantee did not comply with the rule to acquire a fief in Lombardy but there are enough circumstances which indicate that he did.
- As stated above, it must be further emphasized that close study of the terms of the 1770 grant does not tie the succession of the title to any entailed property or "*Primogenitura*".
- The total cost for this purchase of hereditary honour was not less than (a) 3,000 Florins (b) 116 Scudi and (c) the cost of a fief.

Finally, it must be noted that the generous remainder under the *Jus Longobardum* was specified, not once but twice, in the grant by the Empress herself. Therefore, any practices that Baldassare's descendants may over time have adopted (such as annexing the title to a *primogeniture* thereby deeming the holder thereof as the only Count) would not and could not have any effect whatsoever on the other agnatic male descendants' rights which are safely entrenched in the *Jus Longobardum*. Such practices without obtaining the consent of the relevant *fons honorum* would only be tantamount to "private transactions".

In regard to the exceptional provision allowing succession *ex ultima femina* there appears to be (limited) cause for disagreement, namely what happens if the last surviving female happens to belong to a more junior line? One for the lawyers!

(11) AUSTRIAN INTERPRETATION

The above Commentary is corroborated also by the following certificate issued by the Vienna state archives (**PLATE XXI**). A relative translation (**PLATE XXII**) is also reproduced below.

Bearing in mind the fact that Austria (and its Italian provinces) operated under the *Jus Longobardum* and invoking the legal maxim *Ubi voluit dixit, ubi noluit tacuit*, we read:

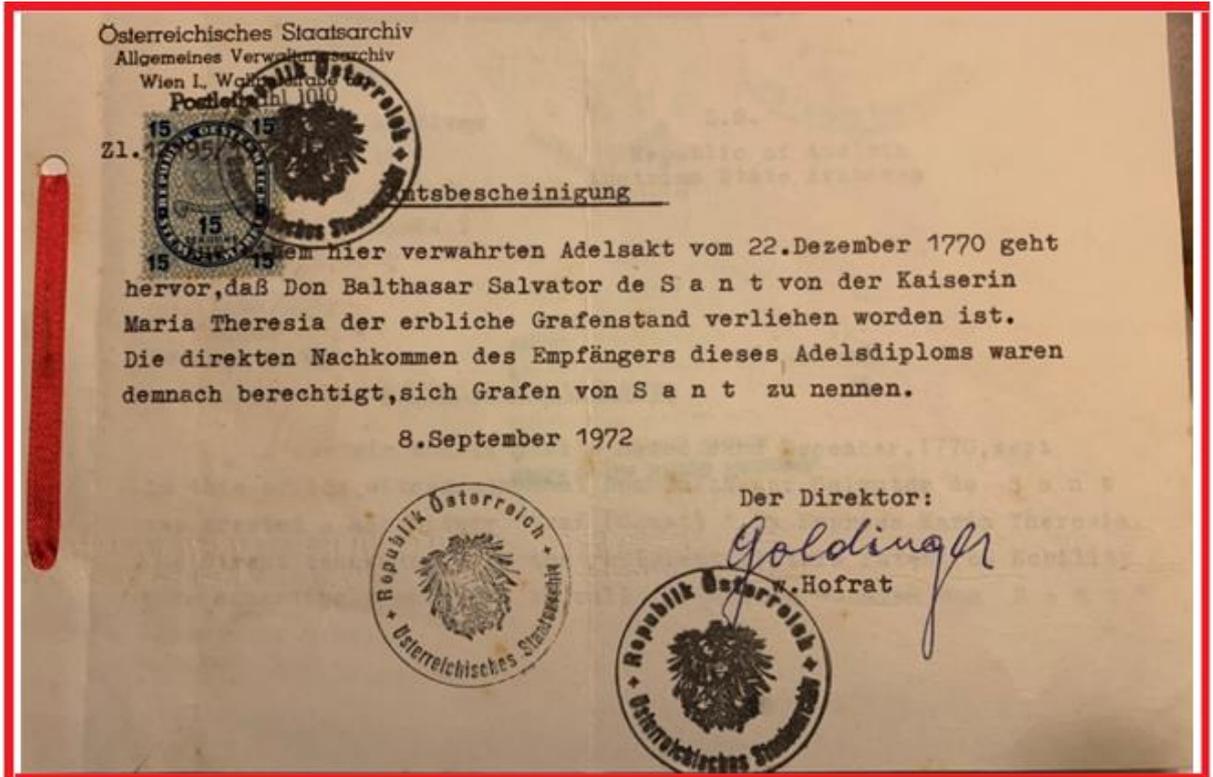


PLATE XXI

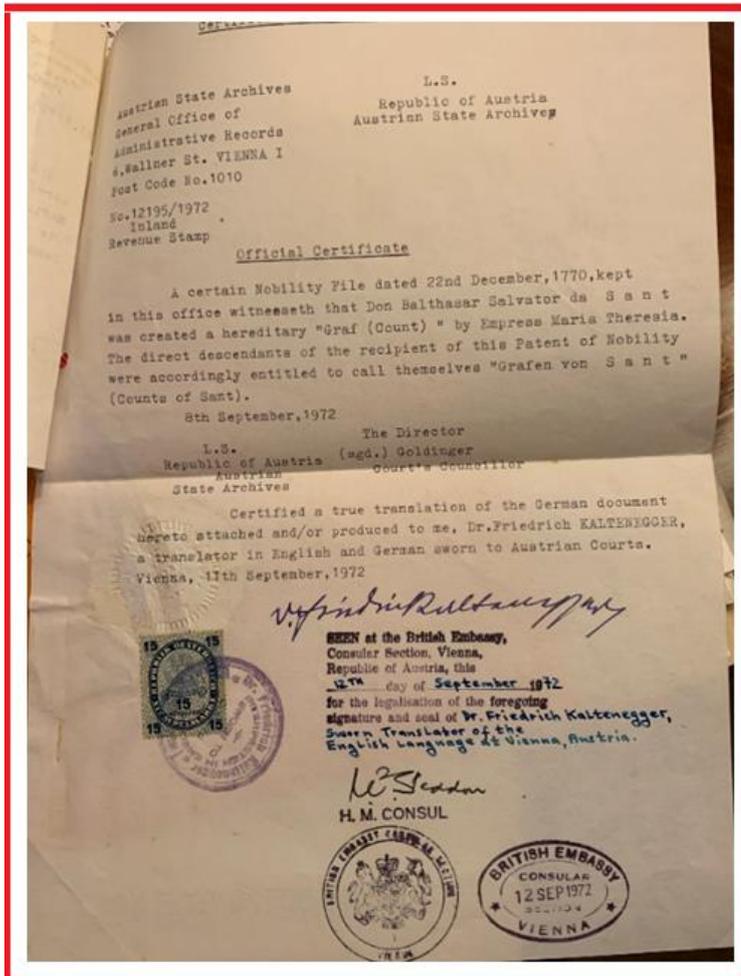


PLATE XXII

(12) CONCLUSION

There is no good reason for denying the generational, generous enjoyment of the title of Count to all the agnatic male descendants of Count Baldassare Salvatore Sant. They are perfectly entitled to enjoy the title as is their right under the *Jus Longobardum*.

The *Oberhaupt/Capostirpe*/Head of the family was, is and remains the primogenial male in the agnatic line and under local practice is the person enumerated as the “title-holder”.

(13) OUTLOOK

There are today three extant agnatic lines of the Sant family, namely Sant Cassia, Sant Manduca and Sant Fournier. Each one of them is therefore included within the remainder made in 1770.

The present “Count Sant” i.e., the *Oberhaupt/Capostirpe*/Family Head, John Sant Cassia, listed as the “8th Count Sant” is unmarried and has no issue of his own. (John is also the 13th holder of the title of “Baron of Ghariexem and Tabia”)

He has a sister, Chiara who is married and has a son of her own Miles Damant. The 8th *Capostirpe*’s father, the late Francis Sant Cassia had a younger brother Philip.

In line with the principles of the *Jus Longobardum*, and more importantly the terms of the 1770 grant and the genealogical table of Baldassare’s descendants (*see below*) Chiara is not within the remainder of the title of *Count Sant* or even have the right to transmit the title to her son.

On this basis, the person presently in line to succeed as the 9th *Capostirpe* of the Counts Sant would be the primogenial male in the line descending from the aforesaid Philip Sant Cassia (1921-2009). The latter’s eldest son Francis (born 1949) has two Sons, Sean born 1979 and Russell born 1981.

Had the title originated in a *Jus Francorum* jurisdiction the title being reserved for males would unquestionably devolve to Miles.

There appears to be a school of thought calling for Miles to succeed as 9th *Capostirpe*.

At this juncture one must remember that the Royal Commissioners did not determine every title of the Nobility in Malta. Some questions were referred to the British Secretary of State for the Colonies. The title of Count Fournier (also granted by Empress Maria Theresa) was one such title so referred (PLATE XXIII). Thus on pp. 58, 59 of the report, we read:-

III.—TITLE OF "CONTE" GRANTED BY THE EMPRESS OF GERMANY, MARIA THERESA, TO
GIORGIO FOURNIER DE PAUSIER.

14. The title of Conte was, as already adverted to in our former Report,† bestowed on Giorgio Fournier de Pausier, by Empress Maria Theresa, by a charter issued on the 29th January 1770. The granting clause of the imperial charter runs thus :

"Teque una cum filiis tuis atque posteris virilis sexus, ex legitimo thoro natis atque nascituris in infinitum, primogeniali ordine servato, Comitem et Comites Regnorum et Provinciarum Nostrarum, facimus nominamus atque creamus . . ."

15. The first titled person Giorgio Fournier had no male issue, but left one daughter, Luigia wife of Baldassare Sant, of whom Lazzaro Sant, the present claimant, is the first-born son. The question which arises out of his claim is, whether he may, under the charter issued by the Empress of Germany, enjoy a title granted to the grantee's descendants of the male sex, according to the order of primogeniture.

16. If this title had been created by a local sovereign, the question would present but little difficulty. It has already been observed that, looking to the principles of law prevalent in these islands, the sons of daughters are called to the succession to lands, and consequently to a title granted to the male descendants of a person without limitation. But, in the present case, the claim must be considered under the German Feudal Law in force at the time of the issuing of the patent of this title.

17. Diligent as our researches have been, we did not succeed in ascertaining what were the legal effects of a grant issued in Austria towards the close of the last century and limited to the male descendants of a person. With our inadequate information we do not feel justified in expressing any opinion on this point.

18. We must not, however, omit to remark that in the same year in which the present title was granted, the said Empress Maria Theresa issued another charter conferring on Salvatore Baldassare Sant the title of Conte. The operative clause of the latter charter, as may be seen on reference to § 211 of our former Report, appears to be (with some exceptions noticed hereafter) equipollent to that contained in the patent of Giorgio Fournier. In the patent of the Conte Sant, however, the following clause occurs :—

"Addentes hanc gratiam specialem ut si aliquando stirpem masculinam familiae tue extingui contingat, comitis titulus et dignitas ad primogenitum ex ultima femina generis tui superstite natum vel nasciturum, qui gentis tue cognomen assumit, ejusque posteros modo antedicto, servatoque semper ordine primogeniali, transeat."

19. That clause providing that on the failure of the grantee's male line, the son of the surviving female descendant should succeed to the title, is not to be found in the diploma issued in favour of Giorgio Fournier. It may, consequently, be that the will and intendment of the grantor was to limit the succession to the title originally conferred on Giorgio Fournier to his male descendants belonging to his male line.

20. The two said patents, however, differ in some respects. That of Giorgio Fournier grants the title of Conte in the Kingdoms and Provinces of Germany; and the other of Salvatore Baldassare Sant confers a similar title in the Italian provinces annexed to the German Empire. In the latter grant, a condition is attached by which the grantee is required to purchase a fief in Lombardy, a condition which does not appear in the patent granted to Giorgio Fournier.

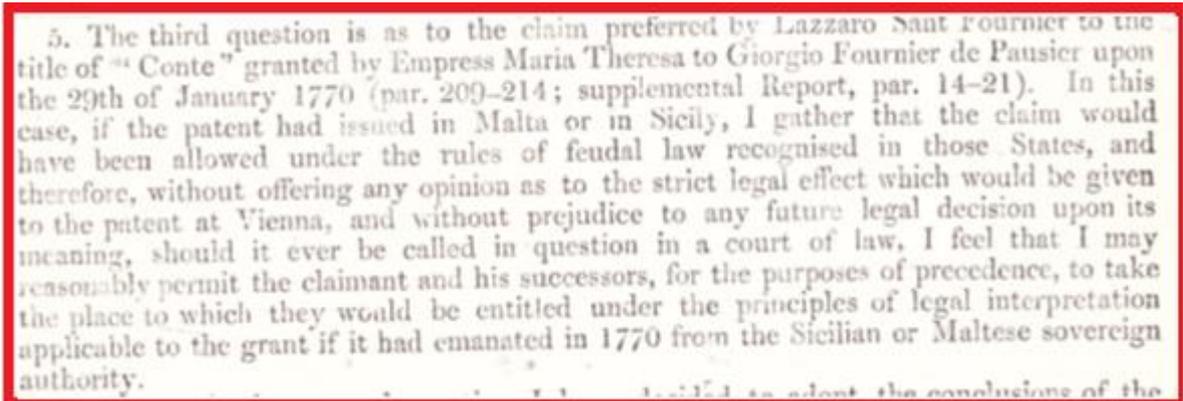
21. We are unable to determine whether such differences can legally have any influence respecting the succession of the sons of female descendants to the title under consideration; we are, therefore, of opinion that the present claim may be more satisfactorily settled by a reference to more competent persons fully acquainted with the laws and statutes in force in the German Empire and its Italian dependencies, in or about the year 1770. Consequently we think ourselves justified in refraining from expressing an opinion as regards the claim of the said Lazzaro Sant to the above-mentioned title.

To the Honourable
Sir Victor Houlton, G.C.M.G., M.A.,
Chief Secretary to Government.

We have, &c.
(Signed) S. NAUDI.
E. PULLICINO.

This missive, was directed to Sir. Victor Houlton, Chief Secretary to the Government in Malta by Her Majesty's Royal Commissioners on the Maltese Nobility, on 11th March 1878. He, in turn, referred it to his superior The Rt. Hon. Sir M.E. Hicks Beach, Secretary of State for the Colonies.

The latter skirted the question altogether. Instead, on 30 April 1878, he recommended a what at best can be termed a “*legal fiction*” (PLATE XXIV). With the benefit of hindsight, the result which I shall call the “*Fournier solution*” was obviously based purely on expediency since a contrary decision would have meant extinction of the Fournier title.



5. The third question is as to the claim preferred by Lazzaro Sant Fournier to the title of “Conte” granted by Empress Maria Theresa to Giorgio Fournier de Pausier upon the 29th of January 1770 (par. 209-214; supplemental Report, par. 14-21). In this case, if the patent had issued in Malta or in Sicily, I gather that the claim would have been allowed under the rules of feudal law recognised in those States, and therefore, without offering any opinion as to the strict legal effect which would be given to the patent at Vienna, and without prejudice to any future legal decision upon its meaning, should it ever be called in question in a court of law, I feel that I may reasonably permit the claimant and his successors, for the purposes of precedence, to take the place to which they would be entitled under the principles of legal interpretation applicable to the grant if it had emanated in 1770 from the Sicilian or Maltese sovereign authority.

PLATE XXIV

Thus, Miles Damant Cassia could hypothetically invoke this ‘precedent’ of sorts to justify “his” hypothetical claim. Such a claim, would undoubtedly be rebutted with cogent counter-arguments including: -

In the first place, it was decided “*without prejudice in a court of law*”, thereby making this “Fournier solution” not final and therefore not a ‘precedent’.

Second, the “Fournier solution” specifically never offered any opinion on the strict legal effect according to the law where that title originated.

Third, the “Fournier solution” specifically never decided the matter placed before the Secretary namely a Germanic title. What the Secretary recommended was permitting the claimant a right of precedence on the gratuitous hypothesis that that title originated in a different jurisdiction.

Fourth, that it would be fundamentally and morally wrong on all counts (pun intended) to arbitrarily exclude those descendants who are within the remainder from enjoying what is rightfully theirs. As seen in the Genealogical Table (see (14) below) there are many thriving agnatic lines of the original grantee.

Fifth, the title of Count Sant is classified as one of those “*Titles granted by Foreign Sovereigns during the Government of the Order of the Knights of St. John*” and the 1775 registration did not in any way change the origin and nature of the 1770 grant.

If on the other hand, one were to concede - for purely-speculative purposes - that Miles Damant were to somehow succeed within the terms of the exception

contemplated by the 1770 grant, then he and his own descendants would be *obliged* to assume the surname (but not the armorial bearings) of Baldassare Sant as a consequence of having succeeded the title.

Taking this hypothesis one step further had Miles had a younger brother of his own and had Miles succeeded as aforesaid, such younger brother would not be entitled to either title or surname because ulterior generous succession would in such a case be reckoned only from the *primogenitum ex ultima femina*.

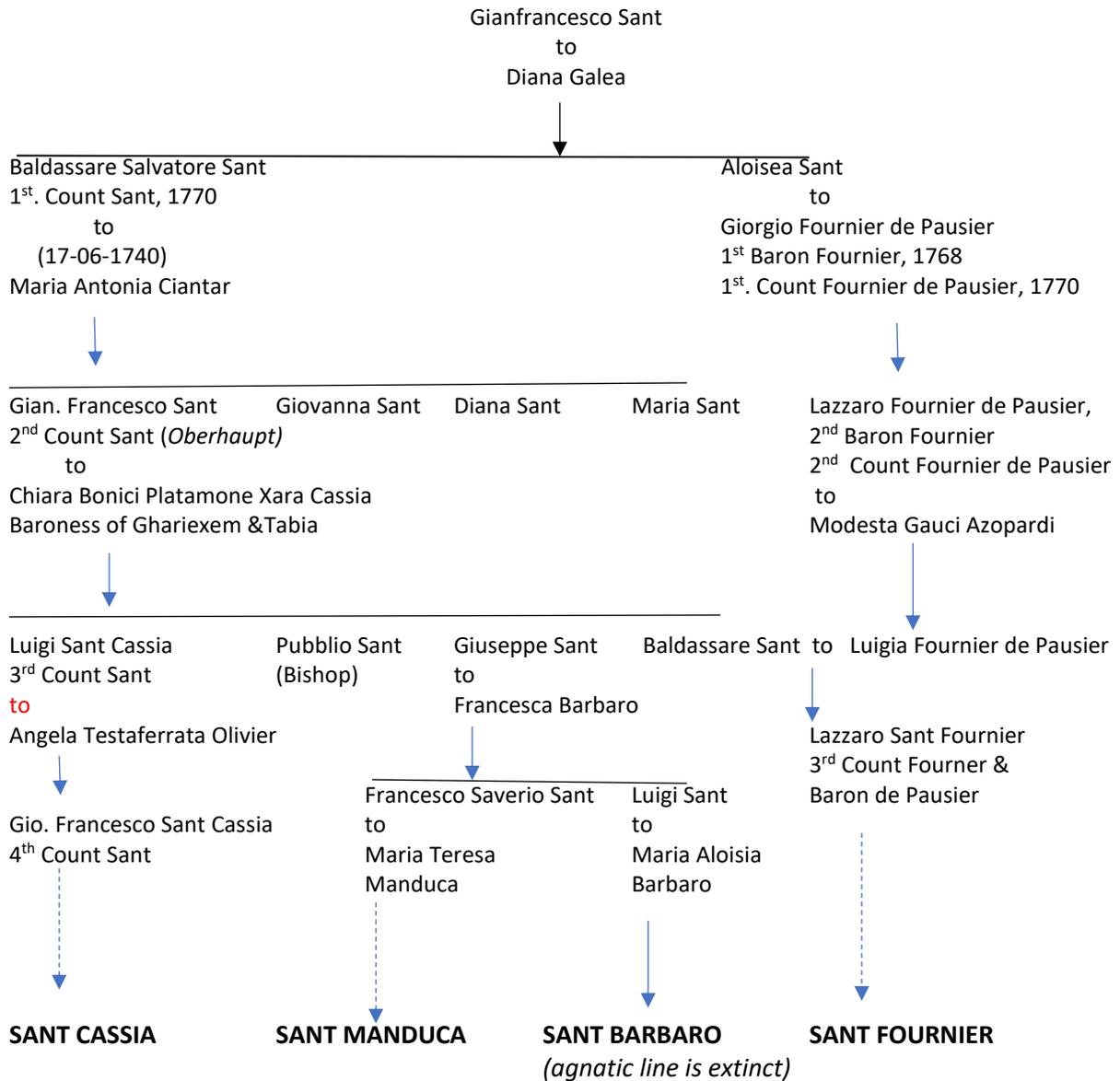
Hence: “Comitis titulus, et dignitas ad primogenitum ex ultima femina generis tui superstite natum, vel nasciturum, qui gentis tuae cognomen assumet, eiusque posteros, modo ante dicto, servatoque semper ordine primogeniali”,

[“...(if your male descent were to be extinguished), the title and dignity of Count shall devolve to the first born son of the last surviving female born or to be born of your gens (and) who as well as his own descendants are to assume your surname...”]

Genealogical Table follows below

(14) SIMPLIFIED GEANEALOGICAL TABLE

(OUTLINES OF THE SANT FAMILY)



Dr. Charles A. Gauci,
 Count Gauci
 Malta, 30 May 2020