

ACC

10000/142/6

COURT OF APPEAL
JAN. - MAR. 1944

10000/142/6

COURT OF APPEAL SECTION AT FOGGIA, LUCERA
JAN. - MAR. 1944

FILE CLOSED 5 March 44 -



PARTITO FASCIS REPUBLICANO
FEDERAZIONE DELL'URDO

IL COMMISSARIO FEDERALE

TO: CLO, Rear HQ, ACC, Legal Subcommittee, APO 394.

FROM: HQ, AMG, Region V, APO 394.

SUBJECT: Court of Appeal Section, Lucera.

REF: R5/511/12

DATE: 5 March 1944.

1. Receipt is acknowledged of your letter ACC/4001/4, dated 22 February 1944 but it is regretted that the letter and Gazette referred to in paragraph 4 have not been received.

For the Regional Commissioner:

W. E. Behrens
W. E. BEHRENS,
Lt Col
RLO

REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Sub-Commission
APO 394

11 March 1944

Ref. 4001/4/1

SUBJECT : Court of Appeal Section of Foggia, Lucera
TO : R.L.O. (Thru RC) Region 5

1. Ref. para 2 of your R5/511/12 of 4 March 1944 I brought up the matter at our yesterday's meeting with the Minister. He feels that there is no immediate need for the suggested extension of the jurisdiction of the above Court over civil appeals.

2. Your letter R5/511/12 dated 5 March 44 has just been received and a further copy of G.U. No. 5 is hereby enclosed.

Col. A.R. THOMPSON,
Major,
Deputy Chief Legal Officer.

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4001/4

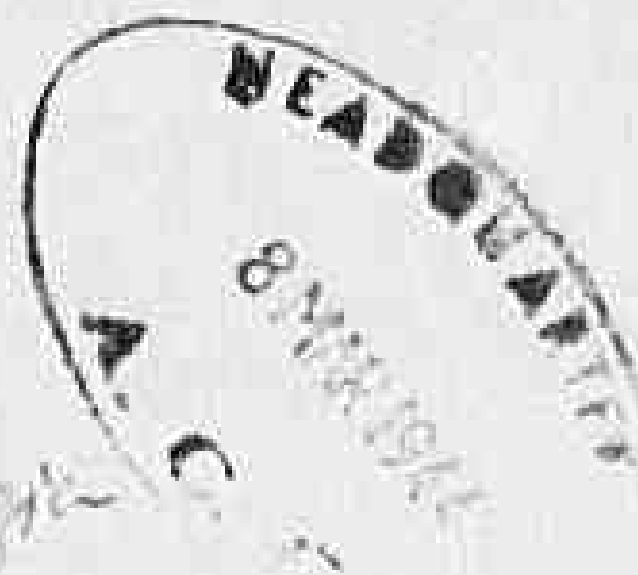
TO : C.L.G. Q. A.C.C.

FROM : HQ. A.M.G. Region 5.

SUBJECT: Italian Court of Appeal

REF : R5/511/12

DATE : 4 March 1944.



1. In connection with the detached section of the Court of Appeal to be opened in Lucera, A.M.G. Foggia Province has been approached by the Procurator del Re for authority to be granted to the Court of Appeal to deal with civil as well as criminal matters.

2. A reply has been sent to the effect that the matter would be submitted to you, but that in any case the following points arose:-

(a) The Italian decree gives jurisdiction to the court only over criminal cases and initiative to extend the jurisdiction must be taken by the Italian government.

(b) Any civil cases could be heard only after all outstanding criminal appeals had been tried.

Subject to these points it was thought that there would probably be no objection by HQ. A.C.C.

3. On the further point of the limiting effect of Article I of the decree as now framed, to which your attention has already been drawn, may this HQ. please be informed whether it is intended to amend the wording of the decree in any way, so that the necessary Provincial Order can be drafted to correspond.

For Regional Commissioner

W. E. Bethrens
W. E. BETHRENS,
Lt. Col.,
R.L.G.

File

REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee
APO 394

ART/gmf

*3**not sent*

21 February 1944.

ACC/4001/4

SUBJECT: Italian Civil Courts at Lucera.

TO : H.E. The Minister of Pardon and Justice.

The following information received from the Commission's Legal Officer in the Province of Potenza is transmitted for your guidance:

1. Arrangements are being made for the provision of the necessary transport and accomodation to enable the Court of Assize and the Court of Appeal to sit in Lucera.

2. The session of the Court of Assize opens on 18 Feb and is expected to continue until about 24 March 1944.

3. It is possible but not convenient for both the Court of Assize and the Court of Appeal to sit simultaneously; the Presidents of the Tribunali and the Procuratori del Re now in Lucera suggest therefore that the opening date for the Court of Appeal shall be the 1st April 1944. This has been agreed.

4. A question has arisen on the construction of Article I of the Royal Decree establishing this Court of Appeal. Its jurisdiction would appear to be limited (a) to appeals in cases which have already been heard in first instance and (b) to those cases where no appeal has yet been filed in the Court of Appeal in Bari. In fact in many of the cases in category (a) appeals have already been filed in Bari, so that on a strict construction the work of the Section will be severely curtailed.

Your observations on the remarks contained in the last paragraph will be appreciated.

A. R. THACKRAH
Major
for Chief Legal Officer.

HEADQUARTERS REGION 5
ALLIED CONTROL COMMISSION

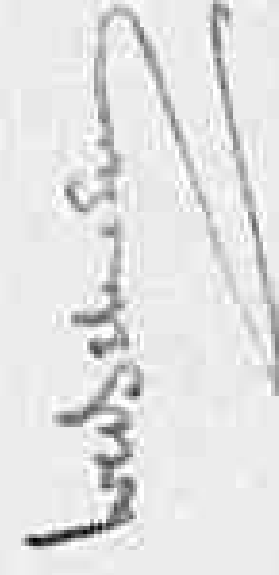
11 Febr. 44

TO : C.L.O. HQ. A.C.C.

SUBJECT : Italian Civil Courts in Lucera.

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W.E. Behrens, Lt. Col.
R.C.I.O.

For R.C.A.O.

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4. A question has arisen on the construction of Article I of the Royal Decree establishing this Court of Appeal. Its jurisdiction would appear to be limited (a) to appeals in cases which have already been heard in first instance and (b) to those cases where no appeal has yet been filed in the Court of Appeal in Bari. In fact in many of the cases in category (a) appeals have already been filed in Bari, so that on a strict construction the work of the Section will be severely curtailed. However unless a further notification is received from you it is proposed to publish a provincial order in the terms of the draft herewith.

For R.C.A.O.

W.E. Behrens, Lt. Col.
R.C.L.O.

copy to 4001/4

PROVINCIAL ORDER

Whereas it is necessary for appeals in criminal cases originating from the jurisdictional districts of the Tribunals of Foggia and Lucera to be heard without further delay, and whereas, by Royal Decree the Italian Government has established a detached section of the Court of Appeal at Lucera, now, therefore IT IS ORDERED AND AUTHORIZED

AS FOLLOWS.

ARTICLE I.

A detached section of the Court of Appeal shall be established at Lucera with authority over the Tribunals of Foggia and Lucera and shall hear appeals in criminal cases which are heard in the first instance by the said Tribunals and in which no petition for appeal has (yet) been filed with the Court of Appeal at Bari.

ARTICLE II.

There shall be assigned to the Section of the Court of Appeal established by Article I hereof a Councillor of Cassation with the functions of a President of the Court of Appeal together with five councillors of the Court of Appeal.

ARTICLE III.

There is (shall be) assigned to the Office of the Pubblico Ministero a Sostituto Procuratore Generale di Cassazione with the functions of an Avvocato Generale and there may also be attached to that Office a Sostituto Procuratore del Re.

ARTICLE IV.

There shall be attached to the above mentioned section of the Court of Appeal Registrars and Judicial Secretaries up to the number required for the administration of the work of the Court.

ARTICLE V.

Lucera with authority over the Tribunals of Foggia and Lucera and shall hear appeals in criminal cases which are heard in the first instance by the said Tribunals and in which no petition for appeal has (yet) been filed with the Court of Appeal at Bari.

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ARTICLE IV.

There shall be attached to the above mentioned section of the Court of Appeal Registrars and Judicial Secretaries up to the number required for the administration of the work of the Court.

ARTICLE V.

This order shall come into operation and effect on the first day of April 1944.

Remarks on Art 1 ~~xx~~ of Royal Decree on Court of Appeal Section, Lucera

ACC/4001/4/L

21 Feb 44

(a) What does "non ancora trasmessi per il giudizio di secondo grado" mean? Does it mean merely that petition for appeal has been filed or does it assume that the record has been forwarded to Bari?

I think that it is the latter which the Italians had in mind and not the mere filing of a petition. The Italians will have to explain this.

(b) I think that Col. Behren's remarks as to a possibility of misconstruction of the 1st Art are quite justified and a proviso could easily be inserted in our Regional Order eliminating any ambiguity. The 1st Art might read ~~as~~ somewhat as follows:

"A detached section of Court of Appeal shall be established at Lucera with jurisdiction over appeals in criminal cases originating in the first instance in the Tribunals of Foggia and Lucera provided that if the record of any such cases has been transmitted before the effective date of this *9 Feb 44* ~~decree~~ to the Court of Appeal of Bari for an appellate proceeding, such proceeding will be completed before that court." Such proviso will express the original intention of the drafters.

(c) The idea expressed implicitly in Art 1 of the Royal Decree and explicitly in the proviso above tended to avoid further expenses resulting from transfer of appellate proceedings, already initiated at Bari, to Lucera. It might of course happen that in some instances it will cause hardship e.g. where both parties live in Lucera and initiated ~~their~~ appeal at Bari. These cases I think cannot be avoided.

(X) The ambiguity exists in the following: under ~~the~~ a narrow construction of the Italian Art I only appeals in cases already decided by the Tribunals of Foggia & Lucera would be heard by the detached section at Lucera.

STEIN/gmf

MINISTERO DI GRAZIA E GIUSTIZIA

Copy with (al Behem

Bari, 28 Gennaio 1944

Count of Cens. Foggis

ALLA COMMISSIONE ALLEATA DI CONTROLLO

Sottocommissione Legale

Brindisi

Con riferimento agli accordi presi nell'incontro con codesta Sottocommissione Legale del 14 Gennaio corrente, si porta a conoscenza dell'avvenuta firma da parte di S.M. il Re, in data odierna, del R.D.L., già approvato dal Consiglio dei Ministri nella seduta del 25 stesso mese e relativo alla temporanea istituzione in Lucera di una Sezione staccata di Corte d'Appello.

Per il funzionamento di essa è stato altresì autorizzato, con altro provvedimento, il richiamo in servizio di funzionari già collocati in pensione.

Si allega per conoscenza copia dello schema del R.D.L. in parola e si resta in attesa di conoscere da parte di codesta Sottocommissione Legale sotto quale data la Sezione di Corte di Appello dovrà cominciare a funzionare.

IL SOTTOSGEGNATARIO DI STATO
(G. de Santis)

G. de Santis

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IL SOTTOSEGRETARIO DI STATO
(G. de Santis)

M. L.

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SCHEMA DI D.D. RELATIVO ALLA TEMPORANEA ISTITUZIONE IN LUCERA
DI UNA SEZIONE DISTACCATATA DI CORTE DI APPELLO. -

Visto il R.D. 30 gennaio 1941 n. 12 e le tabelle annessa;

Visto l'art. 18 della legge 19 gennaio 1939 n. 129;

Visto il R.D.L. 30 ottobre 1943 n. 2/B;

Visto il R.D.L. 10 novembre 1943 n. 5/B;

Ritenute la necessità assoluta ed urgente per cause di guerra;

Ritenute la opportunità che si svolgano senza ulteriore ritardo i processi in grado di appello in materia penale, relativi alle circoscrizioni territoriali dei Tribunali di Foggia e Lucera, compresi nella zona controllata dalle truppe dei governi alleati;

Sulle proposte del nostro sottosegretario di Stato alla Grazia e Giustizia di concerto con il sottosegretario di Stato alle Finanze;

Sentito il Consiglio dei Ministri;

ABBATANO DICHIARATO E DECRETANO:

ART. 1.

E' istituita temporaneamente in Lucera una sezione distaccata di Corte di Appello, avente giurisdizione sui tribunali di Foggia e di Lucera, per la trattazione dei processi penali decisi in primo grado da detti tribunali e non ancora trasmessi per il giudizio di secondo grado alla Corte di Appello di Bari. -

ART. 2.

Alle sezioni di Corte di Appello di cui all'art. 1 sono destinati un Consigliere di Cassazione con le funzioni di Presidente di sezione di Corte di Appello e 5 consiglieri di Corte di Appello. -

ART. 3.

Ritenuta la necessità assoluta ed urgente per cause di guerra;
 ritenute la opportunità che si evolvano senza ulteriore ritardo i
 processi in grado di appello in materia penale, relativi alle circo-
 scrizioni territoriali dei Tribunali di Foggia e Lucera, compresi
 nelle zone controllate dalle truppe dei governi alleati;
 sulla proposta del nostro sottosegretario di stato alla grazia e giu-
 stizia di concerto con il sottosegretario di stato alle finanze;
 Sentito il Consiglio dei Ministri;

ABBIAMO DECRETATO E DECORRERANNO:

ART. 1.

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 detti Tribunali e non ancora trasmessi per il giudizio di secondo gra-
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 Consigliere di Cassazione con le funzioni di Presidente di sezione
 di Corte di Appello e 5 consiglieri di Corte di Appello. -

ART. 3.

All'ufficio del Pubblico Ministero è destinato un Sostituto Procura-
 tore Generale di Cassazione, con le funzioni di avvocato Generale e
 può esservi addetto un Sostituto Procuratore del Re. -

ART. 4.

Per il funzionamento dei servizi della sezione suddetta sono distac-
 cati presso di essa da altri uffici giudiziari cancellieri e segreta-
 ri giudiziari nel numero strettamente indispensabile, per il regolare
 andamento degli uffici. -

./.

- 2 -

ART. 5.

La sezione distaccata di corte di appello di Lucera cesserà di funzionare con il ricorreo della zona di Foggia al governo italiano. -

ART. 6.

Il presente decreto entra in vigore il giorno della sua pubblicazione nella Gazzetta Ufficiale del Regno - serie speciale - e sarà presentato alle Assemblee legislative per la conversione in legge. -

Il ministro per la giustizia, proponente, è autorizzato a presentare il relativo disegno di legge. -

Ordiniamo, a chiunque spetti, di osservare il presente decreto e di farlo osservare come legge dello Stato. -

VITTORIO EMANUELE

de SANTIS

JUNG

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TRANSLATION

MINISTRY OF PARDON AND JUSTICE

TO THE ALLIED CONTROL COMMISSION
LEGAL SUBCOMMISSION.

BRINDESI.

BAFI 23 Jan 44

In reference to the agreement reached at the meeting with the Sub-commission on 14 Jan 1944, I wish to inform you that H.M. the King has signed today the R.D. Law, previously approved by the Council of Ministers in their Session of the 25th of this month and relating to the temporary establishment of a detached Section of Court of Appeal in Lucera.

Another Act has provided for the functioning of the said Section by recalling to service functionaries who have been previously retired.

Attached for your information is draft of the above mentioned R.D. Law. A communication from the Legal Subcommission is expected as to the date on which the Section of the Court of Appeal will commence functioning.

The Undersecretary of State
(De Santis)

ES

MINISTRY OF DEFENSE AND JUSTICE

DRAFT R.D.L. RELATING TO THE TEMPORARY ESTABLISHMENT OF A DETACHED SECTION OF COURT OF APPEAL AT LUCERA.

Having seen the R.D. 30 Jan 1941 and the attached schedules;

Having seen Art 15 of the Law 19 Jan 1939 n. 129;

Having seen the R.D.L. 30 Oct 1943 n. 2/E;

Having seen the R.D.L. 10 Nov. 1943 n. 5/E;

Having considered the absolute and urgent necessity caused by the war;

Having considered it advisable that appeals in penal cases originating from such parts of the jurisdictional districts of the Tribunals of Foggia and Lucera which are under the control of the Allied troops, be heard without further delay;

Upon proposal of our Undersecretary of State for Grace and Justice and in agreement with the Undersecretary of State for Finance;

Having heard the Council of Ministers we have decreed and we hereby decree:

ARTICLE I

A detached section of the Court of Appeal with jurisdiction over the Tribunals of Foggia and Lucera is temporarily established at Lucera; it will deal with penal cases decided in the first instance by the said tribunals and not yet transmitted for appellate proceeding to the Court of Appeal of Bari.

ARTICLE 2

A Councillor of Cassation with functions of a President of Court of Appeal and 5 Councillors of Court of Appeal are assigned to the Section of Court of Appeal set up by Art. 1.

ARTICLE 3

An Assistant Procurator General of Cassation with functions of an advocate General is assigned to the office of the Public Prosecutor and an Assistant R. Procurator may also be attached to that office.

ARTICLE 4

A limited number of Registrars and judicial secretaries indispensable for regular functioning of the offices will be detached from other judicial offices and attached to the above mentioned Section.

such parts of the jurisdictional functions of the Court of Appeal of Lucera which are under the control of the Allied troops, be heard without further delay;

Upon proposal of our Undersecretary of State for Grace and Justice and in agreement with the Undersecretary of State for Finance;

Having heard the Council of Ministers we have decreed and we hereby decree:

ARTICLE 1

A detached section of the Court of Appeal with jurisdiction over the Tribunals of Foggia and Lucera is temporarily established at Lucera; it will deal with penal cases decided in the first instance by the said tribunals and not yet transmitted for appellate proceeding to the Court of Appeal of Bari.

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ARTICLE 4

A limited number of Registrars and judicial secretaries indispensable for regular functioning of the offices will be detached from other judicial offices and attached to the above mentioned Section.

ARTICLE 5

The detached section of the Court of Appeal of Lucera will cease functioning with the return of the Foggia zone to the Italian Government.

ARTICLE 6

This decree enters into effect on the day of its publication in the Gazzetta Ufficiale of the Kingdom - special series - and will be presented to the legislative assembly to be made into a law. The Minister of Justice is authorized to present the necessary draft of the law.

We order whoever is concerned to obey this decree and enforce it as law of the State.

De Sentis

VICTOR EMANUEL

Jung

Translator: SJS

(2)

REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee
APO 394

ES/gmf

22 February 1944

ACC/4001/4

SUBJECT: Court of Appeal Section, Lucera.

TO : RLO (thru RC) HQ Region 5.

1. Ref para 3 of your letter (no file number) dated 11 Feb 1944 I have informed the Minister that the opening date for the Court of Appeal shall be the 1st of April 1944.

2. Ref para 4 of same letter the Ministry obviously did not intend to limit the jurisdiction of the Court of Appeal to cases which have already been heard in first instance and your remarks as to the possibility of misconstruction in this respect seem justified.

However, as to the second point raised under (b) of the same para of your letter I have agreed with the Minister that in such cases where the appellate proceeding has been initiated at the Court of Appeal of Bari before the effective date of the Italian decree (9 Feb 1944), such proceeding should be completed in the Bari Court. This was done with a view to prevent a duplication of expenses of parties who have already initiated their appeal before the Bari Court. The Minister felt that this is the most equitable solution even though it might lead to a curtailment of the jurisdiction of the new Court of Appeal.

3. In view of the remarks under 2 above, I suggest that Art 1 read as follows:

"A detached section of Court of Appeal shall be established at Lucera with jurisdiction over appeals in criminal cases originating in the first instance in the Tribunals of Foggia and Lucera provided that if the record of any such cases has been transmitted before the 9th of February 1944 to the Court of Appeal of Bari for an appellate proceeding, such proceeding will be completed before that Court."

4. As I have informed you in my letter ACC/4017/L, the Italian decree has already been published in the Gazzetta Ufficiale No. 5 forwarded to you with same letter. Thus it has become impossible to suggest to the Minister that Art 1 be rephrased along the lines indicated under 3 above.

A. R. Thackrah
A. R. THACKRAH, Major

for Chief Legal Officer.

MINUTES OF MEETING

EXTRACTS CONCERNING COURTS OF APPEAL SECTION & COURTS OF ASSIZE OF
FOGGIA (LUCERA).

24 Nov. 43, para 4(b)(i).

The occupied Province of Foggia has no Corte d'Appello and the appeals from its courts would have to go to the Court in the unoccupied territory. The government is therefore thinking of establishing a section of a Court of Appeal at Foggia. The Allied view is requested.

26 Nov. 43, para 4. (Evening).

In regard to the 3 Communes of the Province of Bari at present included in the occupied territory and in regard to the establishment of the Court of Appeal at Foggia all steps will be taken by the Legal Subcommittee to obtain a favorable ruling from the Allied Military Government.

2 Dec. 43, para 10.

Minister reports to with of the Cabinet and the Marshal to set up the above mentioned section. Agreed to delay the matter until the extent of evacuation of Foggia is known.

23 Dec. 43, para 12.

The draft decree for the new Court of Assize at Foggia will be ready today and sent to us. It should be coupled with a decree setting up a court of Appeal Section at Foggia as discussed in previous meetings, the personnel of which would also serve at Assizes.

3 Jan. 44, para 4.

(a) The Undersecy fully agrees that the section be set up at Lucera instead of at Foggia.

(b) He states that the Ministry would provide necessary personnel but would appreciate if the judges and other personnel could commute from Bari. There is a "Littorina" going daily from Bari to Foggia and could be prolonged to Lucera on the days of the hearings.

(c) Agreed that we will recommend to Maj. Howe that only appeals filed after 30 Sept. 1943 will be dealt with at Lucera.

(d) Some minor changes in the Italian draft decree will be suggested by us to the Undersecy after a further discussion with Maj. Howe. (Appeals from Magistratura di Lavoro, DCCA instead of CCA, etc.).

10 Jan. 44, para 1.

The following have been suggested as personnel for temporary Section of Court of Appeal of Lucera:

Pres: Consigliere di Cassaz one Uff. Chieffo, Raffaele.

Av. Genl: Ruggiero, Ruggeri

Consigliere: Ciccarelli, Acadia

presso Foggia

D'Ererio - Cons. a Bari

Francavilla

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8 Jan. 44, para 4.

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Av. Genl: Ruggiero, Ruggeri

Consigliere: Cicerelli, Accidia

presso Foggia

D'Erario - Cons. a Bari

Francovilla, Fr. " "

Tomassi, Ginutino " "

19 Jan. 44, para 2.

Mr. Masi wishes that an assurance be given by us that the composition of the Court will be in strict conformance with the Italian law so as to avoid the errors which occurred at the Court of Assizes at Potenza. Col. Upjohn answers that our only interest is to exclude fascist assessors. Mr. Masi points out that under the present law and in view of the war conditions he could not select the required 5 anti-fascist assessors from the lists. Comm. Spinelli suggests that AMG issue an order replacing temporarily the assessors by learned judges. Col. Upjohn answers that the Allies will not take initiative in eliminating the lay element from the Courts and that if the Italian Government passes a law on this subject in free Italy we shall republish it in the occupied territory, including Foggia. The Undersecy estimates that it would take one month to prepare and pass such law. Col. Upjohn further suggests that

an AMG Order could vest the President of the Court of Assizes at Foggia with the power to add new names to the lists of assessors. Mr. Nasi retorts that "this would be contrary to Italian law"; on the other hand if the court should work on the basis of old lists, the assessors (if any can be found in the area) will be fascist. Col. Upjohn again points out that the easiest way out would be if the Italian Government would pass the law replacing the assessors by learned judges which law could be republished in occupied territory. The Undersecy thinks that the Government cannot afford to act hastily on this subject and would have to hear opinions of the Presidents of Courts of Appeal. The Bari president already presented his opinion agreeing with the proposed Reform Act, but pleading for delay due to the extraordinary times. The Minister adds that the Courts of Assizes at Bari, Trani and Lecce are working satisfactorily with old assessors. Col. Upjohn emphasizes that the same reasons which motivate the Italian Government to act with caution on the reform, make the Allies take a hands off stand; he also suggests that since the above mentioned Courts of Assize work reasonably well with old assessors, the Foggia-Lucera Court of Assizes should follow their lead.

Agreed: that the Foggia Court will be held with assessors selected from the old lists in strict compliance with Italian law. There are 15 cases to be dealt with. The 1st session will be held from 21 Feb. to 24 March, the 2nd from 19 April to 17 May, 1944. The transportation will be provided by the local authorities at Lucera.

25 Jan. 44, para 6.

The Undersec. complains that it will cost the Comune of Lucera 700,000 lire to refurnish the judicial offices. (Damage to the Tribunale & Corte di Assize di Lucera).

31 Jan. 44, para 12.

(Court of Appeal Section, Lucera). A copy of the draft decree establishing this court is handed to us with request for communication on which date we wish that the court commence functioning. Major Thackrah promises to look over the decree and procure the communication.

factorily with old assessors. Col. Upjohn emphasizes that the same reasons which motivate the Italian Government to act with caution on the reform, make the Allies take a hands off stand; he also suggests that since the above mentioned Courts of Assize work reasonably well with old assessors, the Foggia-Lucera Court of Assizes should follow their lead.

Agreed: that the Foggia Court will be held with assessors selected from the old lists in strict compliance with Italian law. There are 15 cases to be dealt with. The 1st session will be held from 21 Feb. to 24 March, the 2nd from 19 April to 17 May, 1944. The transportation will be provided by the local authorities at Lucera.

25 Jan. 44, para 6.

The Undersec. complains that it will cost the Commune of Lucera 700,000 lire to refurbish the judicial offices. (Damage to the Tribunale & Corte di Assize di Lucera).

21 Jan. 44, para 12.

(Court of Appeal Section, Lucera). A copy of the draft decree establishing this court is handed to us with request for communication on which date we wish that the court commence functioning. Major Thackrah promises to look over the decree and procure the communication.

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