6 ta' Novembru, 1954

Imhallef :

Chev. Onor. Dr. W. Harding, B.Litt., LL.D.

Il-Pulizija sersus Orade Meilak

## Hanut — Hajjata — "Ejusdem Generis Rule" — Art. 165 tal-Kap. 13

Mura li thit ghan-nies fid-dor ta' l-abifazzjoni tagha ma ghandhiez bionn permess tal-Pulizija biez težerčita dik l-attività taghha f'dik id-dar. Ghaliez dar ta' l-abitazzjoni ma tistaz tigi kwalifikata bhala hanut fis-sens tad-dispožizzjoni tal-liĝi li tyhid li hadd ma jisto' jžomm haaut yhell-ežerčizzju ta' arti jew sengha minghajr ličenza tal-Pulizija.

U dan b'applikuzzjoni ta' 1-"ejusdem generis rule".

II-Qorti; — Rat ič-čituzzjoni tal-Pulizija quddiem il-Qorti Kriminali tal-Maĝistrati ta' Malta kontra l-imputata, talli l-Gžiru ghamilitha ta' hajjata fil-post nru. 40/1, Misida Rond, minghajr permess tal-Pulizija;

Rat is-sentenza ta' dik il-Qorti tat-2 ta' Settembru, 1954, Fi bika ddecediet billi sabet lill-imputata mbux hatja, u lliberatha minn kull imputazzjoni u piena;

Rat ir-rikors li bih l-Attornev General appella mid-decizjoni fuq imsemmija, u talah ir-revoka taghha u l-konvinzjoni u kundanna ta' l-imputata; Trattar Lappell;

Ikkunsidrat;

Il-pont involut f'dan l-appell hu prettament legali, ghaliex il-kontendenti jaqblu, bhala fatti, li 1-imputata thit linnies fid-dar tagbha;

H-Prosekuzzjoni, kuntrarjament gbal dak li rritjena l-Magistrat, issostni li, peress li, skond l-art. 165 Kap. 13 Ediz. Riv., hadd ma jista' jżonim "hanut" ghall-eżerčizzju ta' arti jew sengha bla ličenza tal-Pulizija, u peress li, skond l-art. 2 ibidem, il-kelma "hanut" ifisser "kull hanut, posta, mahžen, hanut tax-xonb, hanut ta' l-ikel u x-xonb, hanut ta' likel, tverna, jew post iebor fejn tinbiegh merkanzija jew tinhadem arti jew sengha,", ghalhekk l-imputata kisret il-liĝi, ghax dar ta' l-abitazzjoni hi kompriža fil-kliem ĝeneriku taddefinizzjoni, čjoč fil-kliem "jew post ieĥor";

II-Imballef sedenti ma jaqbek mat-teži ta' l-Attorney. General; ghaliex il-kliem 'or other place'', kontenuti fiddefinizzioni, ghandhom jigu rigwardati fid-dawl ta' l-''ejusdem generis rule'';

Infatti, ma hemmx dubju li l-kliem "or other place" huma kliem generali, li qeghdin isegwu wara kliem spečifiči flart. 2 fuq imsemmi, u hu pačifiku illi "where general words follow particular ones, the rule is to construe them as applicable ...... ejusdem generis" (per Teuderden C. J. Sandiman vs. Breach, 7 B & C. 99):

N'inhi din 1-''ejusdem generis rule''? Jghid ic-Chief Justice Demman fil-kawża Kitchen vs. Shaw, 7, L.J., M.C. 16: 6 A. & E. 729): "This rule has been acted upon in all times, but nowhere more clearly stated than by Lord Tenterden in Sandiman v. Breach: and it is, therefore, sometimes called Lord (Tenterden's rule, which "qua" the word "other" may perhaps be more fully stated thus — "Where a statute ..... emmerates several classes of persons or things, and immediately following, and classed with such enumeration, the clause embraces 'other' persons or things, the word 'other' will generally be read as 'other such like', so that the persons or things comprised may be read as 'ejusdem generis' with', and not of a quality superior to, or different from, those specifically enumerated'';

Il-prinčipju li jinforma din ir-regola gie spjegat mić-Chief Justice Kenyen, in R. v. Wallis (5 T.R. 379), li qat illi "if the legislature had meant the general words to be applied without restriction, it would have used only one comprehensive word". U verament din hi raguni konvincentissima; ghaliex ghalfejn wiehed isemmi affarijiet spečjali, jekk imbaghad sejjer ižid ketma generali ta' portata illimitata, mentri sena' juža din il-ketma generali hiss mill-ewwel u jikkomprendi kollex?

Hu interessanti li wiehed jinnota li Lord Tenterden eskluda čerta kategorija ta' nies in baži ghar-regola ta' "ejusdem generis", avvolja barra l-kelma "other" kien hemm ilkelma "whatsoever"; "moito magis" meta ma jkunx hemm din il-kelma addizzjonali, li qiesha testendi s-sens tal-kelma "other". Infatti, Lord Tenterden kien qieghed jinterpreta dik id-dispažizzjoni tas-"Sundar Observance Act" li tghid ilk "no tradesman, artificer, workman, labourer, or other person whatsoever, shall exercise his ordinary calling etc.", u eskluda mill-operazzjoni taghba x-xoghol ta' avukat, ta' solicitur, ta' gabillott, u ta' "stage coachman"; ghax ikkunsidrahom bhala mhux ta' l-istess genera ta' dawk imsemmijia spečifikatament, avvolja kien hemm il-kelma estensiva "whatsoever";

H-Maxwell, "On Statutes" (1953 edition, pag. 337), jirrita fin-nota (u) diversi decizionijiet li appuntu stabbilew itprincipju minuu hekk rikapitelat: "But the general word which follows particular and specific words of the same nature as itself, takes its meaning from them, and is presumed to be restricted to the same genus as those words". U jkomplijghid "...... it is to be read as comprehending 'only' things of the same kind as those designated by them ......";

Biex tapplika sewwa din ir-regola, jehtieg li jkun hemm specifikatament imsemmijin mhux speci wahda, iżda diversi speci, biex (Mkostitwixxu "generu" ("genus") li fih ghandha tidhol anki l-kelma generali "other" (ara f'dan is-sens sentenza tal-Privy Council s'kowża recenti "United Town Electr.c Co. Litd., v. Att. Gen. for Newfoundland (1939), All England Law, Rep. 1, 423):

U prečižament dan hu l-kaž ta' l-art. 2 fuq imsemmi fejn jissemmew "shop, stall, store, public house, inn, eating house, tavern ....." — numru altru li suffičjenti ta' speći biex jikkostitwisku l-ģeneru li tahtu ghandhom jidblu l-kliem sussegwenti ģenerali "or other place";

Hekk, per eżempju, ukoll, fl-Ingilterra ĝie deĉiż illi lkliem "any wherry, lighter, or other craft", kienu jimpurtaw l-applikazzjoni tar-regola fuq imsemmija ghall-kliem ta' lahhar "or other craft", avvolja "craft" hi kelma ĝenerali ferm, bhala komprensiva ta' biĉĉiet tal-baĥar; iżda ĝie ritenut li dik il-kelma "craft" kelha biss tikkomprendi biĉĉa talbaĥar "of the same kind as wherries and lighters", u mhux, per eżempju, "steam tugs", avvolja dawn huma "craft" ukoll (ara sent. ĉit. in nota, Maxwell loc. ĉit., p. 340, nota "Q");

Issa, fil-każ preżenti hu čar li dar ta' k-abitazzjoni ma hijiex tali li taqa' tabt k-istess "genus" format mill-kliem "shop, staff, store, public house, inn, cating house, tavern....."; anzi tiddista minnhom, fil-generu tagbha, "toto caelo";

Ghal dawn il-ruotivi;

Tiddečidi billi tirrespingi l-appell ta' l-Attorney General, u tikkonferma s-sentenza appellata.