14 ta' Frar, 1962. Imhallef:—

Onor. Dr. W. Harding, C.B.E., K.M., B.Litt., LL.D.

Il-Pulizija

persus

Soiru Zammit

Traffiku — "Overtaking".

Il-manuvra tal-"overtaking" hi čertament delikata, u tali li tixhet fuq id-driver tal-vejikolu li jkun qieghed jissorpassa
obligi aktar gravi; dan, però, ma jfisserx li s-sorpass hu
projbit, imma biss li ghandu jsir bil-prudenza mehtiega.
B'mod illi, jekk fiċ-ċirkustanzi tal-każ, rigwardati fid-dawl
tal-principji li jirregolaw is-sorpass, ma jidher ebda fattur

ta' nuqqas ta' prudenza da parti tad-driver li jissorpassa, dak id-driver ma ghandux jinzamm hati tal-incident li jigri semplicement ghax ghamel il-manuvra tal-"overtaking".

Il-Qorti:— Rat l-imputazzjoni miğjuba mill-Pulizija quddiem il-Qorti Kriminali tal-Mağistrati ta' Malta kontra Spiru Zammit, talli l-Mosta, Valletta Road, fis-27 ta' Awissu 1961, f'xi l-11.20 a.m., saq car numru 29312 (1) b'manjiera perikoluza, (2) u b'ğiri aktar milli jmissu, (3) barra minn dan, b'nuqqas ta' hsieb, bi traskurağni u b'nuqqas ta' tharis tar-regolamenti, habat mal-car numru 19590 u kkağunalu hsara ghad-dannu ta' Pupul Spiteri; bit-talba tal-Prosekuzzjoni li jiği skwalifikat mill-ličenzi kollha tieghu tassewqan ghal mhux anqas minn tliet xhur;

Rat is-sentenza ta' dik il-Qorti tat-22 ta' Novembru 1961, li biha sabet lil Spiru Zammit mhux hati ta' sewqan perikoluż, iżda hati ta' sewqan b'manjiera traskurata, mhux hati fuq it-tieni mputazzjoni, u ddikjarat il-procediment eżawrit fuq l-ohrajn, u kkundannat lill-istess Spiru Zammit ghal £5 multa u ghas-sospensjoni tal-licenzi tassewqan ghal żmien tmient ijiem fuq is-sewqan b'manjiera traskurata, u lliberatu mill-imputazzjoni ta' sewqan perikoluż u mit-tieni mputazzjoni;

Rat ir-rikors tal-imputat Spiru Zammit, li bih talab li s-sentenza fuq imsemmija tigi revokata, u li hu jigi liberat;

Trattat l-appell;

Ikkunsidrat:

L-imputat ģie misjub hati talli ghamel b'negliģenza l-manuvra tal-"overtaking". billi ma hax prekawzjoni li jara li seta' jaghmilha bla riskju;

Il-perit adoperat minn din il-Qorti tal-Appell, Dr. Cassar, wara eżami akkurat taċ-ċirkustanzi tal-fattispeċje, u wara l-enunċjazzjoni ta' regoli ndiskussi ta' sewqan prudenti, wasal ghall-konklużjoni, attraverso raġunamenti strinġenti u perspikaċi, li l-imputat mhuwiex addebitabbli bl-ebda negliġenza, in kwantu li, qabel ma ghamel il-manuvra tas-sorpass, hu osserva dawk il-kawteli kollha li jehtieġ

ikunu osservati. Din il-Qorti thoss li taqbel ma' din il-konkluzjoni;

Ma hemmx dubju li l-manuvra tas-sorpass hi delikata, u tali li tixhet fuq id-driver tal-vejikolu li jkun qieghed jissorpassa obligi aktar gravi. Dan, però, ma jfisserx li s-sorpass hu projbit, imma biss li ghandu jsir bil-prudenza mehtiega. Ir-regolamenti stradali lokali jsemmu l-"overtaking" fir-Reg. 63. Fil-"Highway Code", li ghalkemm mhuwiex ligi hawn Malta, hu però rakkolta ta' dixxiplini prudenzjali li, meta ma jigux imharsa, igibu negligenza jghid dan:— "(1) Never overtake unless you are sure that you can do so without danger to yourself and others. (2) Use special care at dusk, and in fog or mist, when it is more difficult to judge speed and distance. (3) Do not overtake (a) at or near a corner, or bend, road junction, or pedestrian crossing, (b) when approaching the brow of a hill or a hump-back bridge, (c) where the road narrows, or when to do so would force other vehicles to reverse or to reduce speed. (4) Overtake on the right...... (5) Never pull out sharply from the near-side. (6) Never cut in, i.e. do not pull in sharply in front of a moving vehicle which has just been overtaken.....";

L-awtur Charlesworth, fit-test "The Law of Negligence", p. 78, f'materja ta' "overtaking", jenuncja r-regoli ga citati tal-"Highway Code" b'annotazzjonijiet ta' sentenzi tal-Qrati Inglizi, li fihom gew rispettivament applikati. Il-principju dominanti hu, s'intendi, dak minn dan l-awtur hekk formulat:— "The driver or rider of an overtaking vehicle, before attempting to overtake, should see that it is safe to do so.....";

L-istess il-Gibb, 'Trial of Motor Car Accident bases': "He should wait for a suitable opportunity before attempting the passage, and he should not attempt to pass unless he can do so with reasonable safety.....". U jkompli jirribadixxi:— "If he finds that the surroundings are such that he cannot pass with safety, it is incumbent upon him either to stop his car or drop back to the position which he formerly occupied....." (paras. 77 u 78);

L-awtur Davies, fit-test "Law of Road Traffic", jirri-

leva nota p. 107, illi "20,000 people a year are killed or injured as a result of overtaking in contravention of the following important rules", ċjoè dawk tal-"Highway Code";

Ikkunsidrat;

L-appellant kien id-driver tal-vejikolu sorpassant. u ghalhekk fil-manuvra li ghamel kien onerat b'dawn l-obligi gravjuri. Eppure ċ-ċirkustanzi tal-manuvra li hu ghamel fil-okkažjoni nkriminata, rigwardati fil-kontroluċe ta' dawn il-prinċipji, ma juru ebda fattur ta' nuqqas ta' prudenza mill-parti tieghu kif f'mod pjartikolareġġjat iddimostra l-perit relatur, anki fix-xhieda li ta l-lum; u kien fattur iehor, mhux attribwibbli lill-appellant, li ġieb il-kolliżjoni; dwar liema fattur din il-Qorti mhix imsejha tippronunzja ruhha;

Ghal dawn il-motivi, prevja adozzjoni tal-perizja, tid-decidi billi tilqa' l-appell, tirrevoka s-sentenza appellata fil-parti taghha kundannatorja ghar-rigward ta' dan l-imputat, li jigi dikjarat mhux hati "in toto", u ghalhekk liberat.