## 5 ta' Settemhrt, 1953.

Imhallef: •<br>It-Onor. Dr. W. Hardng, B.Litt., LL.D.

11-Pulixija versur Anthony Galea
Tratilku - Eollitjond - "Maln Road" u "side Rond".
Ih-patt hiveriver ikun isug, minflok fuq iz-xellug tat-trig, $k i f$ iridu rregolamenti, fuq il" "crovn of the road", ma hus deditiv plapem luzzioni to ${ }^{\text {P }}$ keistjoni duar lipma driver huwa l-htija to' kollizioni lit tig̀ri.
ld-driver li jkun diethel minn "side rood" ghal jo "main rood" ghandu certi doveri $x$ 'josserve, fosthom dok li jéedi ghatetraffiku fuq iL"main road", li jesplora tajjeb il-"main road" qabel me fohro.j

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: fikn, u dak li jmeari "dead aluw", " salinnaitra jrwaqqat, biex a

 imugp Loprad ta' diliyenza li tinkombi lilu huwa ferm angat.
Imma jekk ilprovi juru li l-kawia prossima tal-kollizjoni hienet uni-- trament, in-negligenza tam"ride rous, user", li blegkmil tieg*", rrephda L-kollizjoni inevitabili, it-"main road user" ma ghandu eibda tort fil-kallizjuni, avvolja hu kien ged isug il-karrozea fuq "il-"krown" tat-triq, minjlok tuq ier-sellug taghiha kif jippreskrir" $r$-reoolamenti.
Fug̣ l-imputazzjoni illi fit-28 itu' Frar 1953, ghal xi ssitta nieqes kwart ta' filghaxija, saq motor car numru 1395 minn' Ghajn Tuffeta Road, limiti ta' l-Imgarr, mbux fuq inwalia tax-xellug tat-triq, naqas li : ietu l-prekawzjonijet met. tjeǵba-weqt li kien riesaq lejn kanitniera, u barra minn dan, minhabba nuqqas ta' ihaqal, traskuragni a inosse vanza tarregolamenti, habat ma' motor car numru 11833, u ghamlilha hsara ghad-dannu ta' Francis Lepre, u ghamel hsara fil motor car li k:en qed isuq ghad-dannu ta' Francis Petroni, 1imputat, b'sentenza tal-Qorti. Kiminali tal-Magistrati ta' Malta ta' l-20 ta' April 1953, gie misjrb hati u kundannat athall-piena tal-multa ta' $£ 5$;

Trattat l-appell ta' l-imputat minn din is-sentenza, din il-Qorti, wara li ezaminat il-provi; irrifletitit;

Mill-Zumpless tisl-provi, partikolarment mix-xhieda tal"park attendant" John Grima, terz dizintteressat; jidher illi 1-imputat ma kienx qed iżosm max-xellug nett tat-triq ('on the extrome" left hand side of the road'), kif irid ir-regolement nru. 63 tat-Traffic Regulations, imma kien qed isuq Whan-nofs tat-triq: Ghalhekk, teknikament, apparti konsiderassfonijiet olra, hu eiser ir-regolament citat; u l-ewwel impútazzjoni hi pruvata:

Mill-provi deher ukoll li l-imputat kien qed isuq bi speed taf -xit:20 mil fis siegha. Tant anki juri t-tul tal-brake-marks, 26 pied (erra Table tal-Ferrods Limited, 1940, publikats fil.ktteb: '"Motor Claim Cases"' ta' Bingham, p. 13) ; s'intendi, meta wiehed iqis li kien hemm xi żrar, peress li t-tílq sienet ghadha kemm giet imsewwija, u ghalhekk ir-roti jiskid-
djaw u jtawlu t-taxakizs. Isoa, il-limiti ta' li speed f'lokalita simili, u glat-tip tal-karrozza, hu ta' 40 mil fis-siegha; izda gkond ir-rogolament nri. 59 ibidem, id-driver li jersaq lejn salib it-toroq ghandu jsuq "at slow rate of speed". Verament it-tieni imputaerjoni me hix migjuba taht ir regolament numru 59 , imms taht ir-regolament numru 64, li jehid illi "the driver of any motor vehicle, whether on a major or a minor road, shall at all times excrise dice care, and sliall take all necessary precautions at any roud junciion'". Issa, fil-kumpless tac̀-cirkustanzi tal-kaz̀ ma iidherx li l-impurat ivvijoli 'dan'" ir-regolament, ghax il-provi juru li hu dayd il-horm meta resag lejn l-"intersection", y li speed tiegtu kien unfs dak li hu permess mir-regolamenti. Gtalbekk din it-ieni ims. prtazzioni ma tidherx li hi sostanzjata;

Kwantu ghall-imputazzjoni l-ohra (it-tielet wahda), ta' nsara involontarja taht l-art. 342 Kap .12 , din tirriżolvi ruhba fl-indagini jekr l-imputat kellux htija fil-kolližjoni li zaret. !!fatt li hut kien, minflok fuq jx-xellug nett tat-trieq, kif iridu r-regolamenti, fuq il-"crown of the road", mhax fatt feci天iv ghal dan il-pont; mhux biss ghax "on a c!ear highwar it hirbeen frequently held that a car need not keep to the left sidrof the road" (Ara Gibb, Trial of Motor Car Accident Ciss:sec. 32), imms anki ghaliex hu prinċipju fondamentali illi "violation of the rule of the road is not conclusive evidence of negligence. Such a violation will not bar a partys recovary, unless it was the proximate cause of the injuries" (ibidem, ser. 34) ;

Issa mill-provi deher illi d-driver l-iehor, Braithwiate, kien tiela mit-trieq ta' Military Bay, trieq sekondarja, Ii qeghedhe angolu rett mal-'main road" ta' Ghajn Tuffieta, mnejn kien ghaddej l-imputst. Deher ukoll li Braithwaite, li kien qed isuq bi speed qawwi, minflok ma rrallenta u kważi zamm qabel ma hareg ghall-'main road"', baqa' hiereg bhal li kieku xejn u dahal fil-karrozza ta' 1 -imputat. Ix xhud John Grince, il-"park attendant", xhud, kif ga nghad, spreğudikst, u dippju' ta' esparjenza fis-sewqan, qal li l-car ta' Braithwaite telghet timxi kemm tiflah. L-istesa Braithwaite ammetta li hu me esplorsx it-trieq principali qabel ms hareg fiha. Ma
tantx hema kredibili dawk li kienu rekbin miogta, li, ovidentement influweuzati b'dak li l-Im末zllef Mc Cardie sej;ah 'esprit de voiture", qalu aktar milli gal l-istess driver Braitiwaite fix-xhieda tieghu;

Hawn jicthol, ghalhekt, il-pont itipottanti tad-drittijiet tal-" man road user", u ta:."side roąd user", hi fifforma argumint ia' spiss it-gurisprudenza o d-dotrina;

Fid-dottrina ngliza (ara The law of Collisions on Land - Andrew Dewar Gibb, 1932 Edition, page 101; ara wkoll "The Law reating to Motor Cars' ta' Mahaffy and Dodso:: 1929 edition, p. 77 ; u Charlesworth, The Law of Negligence, 1947 edition, pp. 84-85) huma citati decizjonijiet tal-Qreti Skociziz (Court of Session) li huma "loci chassici" in "materpr. cjoe Mac Andrew v. Tillard, 1909, S.C. 78; Robertson v. Wilson, 1912, S. C. 1276; Mc Allister v. Glasgow Corporation, 1917, S. C. 430 ; M'Wair v. Glasgow Corporation, 1923, S. C. 397 ; Hutchinson v. Leslie, 1927, S. C. 95. Ir-risssunt ta' dawn id-dećizjonijiet jista' jsir fil-principíi li sejrin ;ị̣̆u enuncjati testwalment :-

1. "A dr'ver approaching a main road from a side road must have his vehicle under such control as to be prepared for any traffi, encountered there (Mr Andrew v. Tillard, supra). When coming from a side road into a main road, the driver of a vehicle should select such a moment as will allow him to enter the main road with safety' (Charlesworth, supre);
2. "It is the duty of side road traffic to give way to traffe proceeding along the main road" (Robertson v. Wilson, supra) ;
3. 'Caution from the main road user is also called for' at these junctions" (ibidem). Ara wkoll Charlesworth, supra, li jghid:- "But whilst there is this duty on vehicles corfing from the side road, it is also the duty of vehicles on the main road approtching a side road to do so with caution'
4. "The duty of it driver whose courge is calculated to, distarb the ordinary stream of traffic on a road is of a higher order. The more risky and dificult the mianoevivre is, the greater the duty incumbent on the driver. In the sonse,
iherefore, that turning out of a side road into a main road is more dificult chan continuing a main road, the side roud's driver is higher' (M'Nair v. Glasgow Corporation, and Hutchịnson v. Leslie, supra) ;
5. "l'he attual precautions called for in uny particular situation are a practical question, and depend on the facts of the pariedular station (N'Nair v. Glasgow Corporation, :pra);

Fermati dawn il-principji dotrinaii u gurisprudenajali, skoụciz̀i u Inyliži, huwa importanti li jugi cżaminat is-sisteda tal-Ligi Maltij:a;

Dan hu precizament dak li gie espost superjorment. Infani for-Fiegolamenti iat-Tratfiku nostrali jinghad hekk:Keg. 64 - "Major road is one where all traftic going over It has the right of way, and traffic on all other roads converging into it shall give way to that on the road referred to above; provided, however, :hilt the driver on any motor rehicle, whethrr on a major or minor road, shall at all times exercise due care, and shall take all necessary precautions, at any road jun'tion'. Reg. 68 - "The driver of a motor velicle proceeding from a minor into a major road is to -ive way to traffic on thee niajor road";

Laugas gbandu jurnesa illः fil-"Higbway Code" bemm din ir-regola :- "Proceed with special care when coming from a minor road inio a maior road, and give way to traffic on the major road. Unless you have a clear view of the major road in both diections, stop just before entering the "arriage way of the major road";

Gtandu dingliad ukoll ithi, ghalkemm il."Highway Cude" ma bux ligi, imma bies, kif kien esprima rubu l-Ministru Hore Belisha fil-'Foreward", "A Standard of Conduct for the Road", eppure d-dispozizzjonijiet tiechu huma accet ati fid dottrine u fil-Qrati: u hawn Malta gew dejjem segwiti, molto pjì 11 l-uwtoritajlet kienu hadu anki hsieb it jagtmlu traduzzjonijitt tiegliu bil-Malii ghad-drivers mhux familjari ma' l-ilsin n Ingliz. Del resto, kif gal l-istess Ministri fug imsemm: il-diepozizzzonjlet tieghu trome l-frot: ta l-espesjenza, !-abjar u l-abtar vasta;

Gfalhelck, fis-sisterca Malti, is."side road user' ghan. du l-obligu li ;cedi ghat-treffiku fuq 1 l-"man roed", ghandu 1-obligu li jésplors tajieb il-"main road" qabel me jolifog fiha, ghandu l-obiigu li jimxi "dend siow'’ u sahansitra jweqqaf biex u sakemm jacederts rabu li jista' johrog bls hata. U 1-‘main road user' ukoll ghandu joqghod attent fil-'cross roads"; imma l-grad ta' diligenisa li tinkombi lilu ha ferm anqas, ghax hu ma jkuny qieghed jiddistarbe l-kors tat-traf. fiku, imma jkun miexi fuq triq dritte;
-Issa, f'dan il-kà̇, Braithwaite hareg minn triq, li hijs indubbjament "side road", "ghsl gewwa triq li hi indubbjament "main road", bla me ba ebda prekawejoni ta' xejn u b'mod perikoluz. Infatti, il-preponderanks attendibili talprovi, u l-istess karattru tal-kollitjoni, juru li hu harot bla $1 n a$ daqq il-horn, bi speed qawwi, u bla ma esplore bl-obde mod $\cdot$ ir'"main road";

Hu mare bl-ebda mod jekk setex jidhol fil-"main road'" bla bisara, ma saqx "dead slow" kif imissu jaghmel biex jesplora l-"main road', imma qabed ni dahai tha bi speed yawwi u kkaguns l-kollizjoni. Il-kliem ta' Lord Dunedin fil-kawża fuq eitata MacAndrew v. Tillerd, 1909, 8.C. 78, huma singolarment adatiati ghall-fattispedje precenti. Hu qal :- "The driver knew that he was going to cross at right angles to a very frequented and main thoroughfare; and if there is one rule more than another that it is necemary to lay down for the practical conduct of traffic, it is that it is the business of those who are on the cross road and going to cross the main road to look out when they enter the main road, and to give way to all traffic which is coming along the main road,.........." Il-fattezzi topografici ts' din il-lokalith partikolari kienu jimponu aktar u aktar grad libir ta'l bittenzjoni fuq Braithwaite. Kif jidher mill-iskize fol. 8 u mill-provi, is "side road" hu angolu rett mal."inain road", u kwindi l-ata tal-hrug fuq il-"main rosd" bilfore hawa att brusk suli jéigi prudenza kbika fig-sewqan. Dippjid; il-hitài huma: gholja tainaent hiaghmiu l-viżwali laterali dificili, u ghar-: hekt ihemm"thzonn li wiehed jiequf "dead"slow" qabel uns johrog, biex jara jekk jt-triq: 'hijiex liberas. Minbarra, hekk;
it-triq principal: hi dejqa (f'dak il-post hi xi hmistax-il pied), u ghalbekk il-"main road user" ma gtandux "chance" li evita bill" jisswe!via, ppparti *-"sudd. $n$ emergency" li jinsab fina;

Il-fatt li l-appellant kien fuq if " rown'" lat-triq, minHok fuq x-xellug, ma ghamel elocla differenza; ghax pied jew :nejn l bemin, listéss il-ficbta kienet issir. Is-sewhan ta l-appeTänt bezn mill forsiegha fejn il-liniti perross huw:
 Kollox juri illi l-kawza prossima tal-kolligioni kienet unikament dik If baithwaite tared hai ma ta kaz ta ebra kaw: tela, kontra lligi, u kontú l-bonsens His-sewqain. B'dak 1-att tixithu zrenda l-kollizjoni inevitabili; glax kif bi khem cari, jelk mhux legali, qal ix-xhud Grima, "f'dals'il-post. jukk wiehed ma jeedix lill-it hor, jatibtu żgir' ;'

J'sta' jiżded illi l-provi uru wkoll (ara, fost ohrajn, xhieda, tas-Surgent tal-Pulizia Micallef), illi Braithwaite implicitament ammetta t-tort tieght, thax in principju acuetta li , jhallas l-ispejjez tal-karrozza ta l-appellant, ghanl li ma jagbelx fuq il-"quanium". Certament jista' jkun hemm każijet fejn diskors simili ma tantx jiswa, blal, per ezèmpju, meta wiehed ikun qed jilża' minn xi vjolenza da "parti tad driver l-ithor, jtw ikun tahi xi impressjoni hażna." Imma ma jidherx li dan kien il-kag; phax kien facili ghal Rrathwaite jirrealizza li l-habta saet ghax huwa hares fill"main road" f'daqqu wata;

Ghalhekk l-appellant ma kelly eloch tort fil-kollizijon: u tifielet mputazzjoni ma hiliex costncta;

Ghal dawn il-motivi iddecidi:
Billi tilqa' l-appell, fis-sens li tiriforma soseptenza appellata bill: tikkonfermaha filli sabet l-appellant hati tit i. ewwel imputazzjon: li, ma saqx fuq ix-xellug tat-trin, to tif: Kundannah ghal dik il-kontravenzjoni lammende ta fitame xelini ; izda thassar i-sentenza appellata fl-bfija, bult tidatikjara lill-imputat mhux hati tat-tieni u fat-tielet imptraze: zjoni, r iordna li higi minnhom liberat.

