5 ta' Settembru, 1953,

Imhallef: LL.D. In-Onor. Dr. W. Hardng, B.Litt., LL.D.

Il-Pulizija versus Anthony Gales Traffiku — Kolližjoni — "Main Road" u "Side Road".

- Il-fatt li driver ikun isuq, minflok fuq iz-zellug tat-triq, kif iridu rregolamenti, fuq il-"crown of the road", ma huz decitiv ghas-soluzzioni ta' kwistjoni dwar liema driver huwa l-htija ta' kollitjoni li tigri.
- Id-driver li jkun diekel minn "side road" ghal ĝo "main road" ghandu ĉerti doveri x'josserva, fosthom dak li jĉedi ghat-traffiku fuq il-"main road", li jesplora tajjeb il-"main road" gabel ma johnoj

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fiha, u dak li jmezri "dead slow", u sahansitra jwaggaf, bier u idkehm-jaccerta ruhu li jista jakrog blu ksara.

Il-"inhin road user" ghundu wkoll jagghad attent fil-"cross roads":
imma l-grad ta' diligenza li tinkombi lilu huwa ferm angas.

Imma jekk il-provi juru li l-kawta prossima tal-kollizjoni kienet unibament-in-negligenza tas-"side roud user", li bl-eghmil tieghu rrefuda l-kollizjoni inevitabili, il-"main road user" ma ghandu ébda tort fil-kollizjoni, avvolja hu kien ged isug il-karrozza fug 'il-"erown" tat-trig, minflok fug ix-xellug taghha kif jippreskriru r-regolamenti.

Fue 1-imputazzjoni illi fit-28 ta' Fran 1953, ghal xi ssitta nieqes kwart ta' filghaxija, saq motor car numru 1395
minn Ghajn Tuffieha Road, limiti ta' 1-Imgarr, mhux fuq inuaha tax-xellug tat-triq, naqas li jiehu 1-prekawzjonijet mehtiega waqt li kien riesaq lejn kantuniera, u barra minn dan,
minhabba nuqqas ta' ghaqal, traskuragni u inosservanza tarregolamenti, habat ma' motor car numru 11833, u ghamlilha
hsara ghad-dannu ta' Francis Lepre, u ghamel hsara fil motor car li kien qed isuq ghad-dannu ta' Francis Petroni, 1imputat, b'sentenza tal-Qorti. Kriminali tal-Magistrati ta'
Malta ta' 1-20 ta' April 1953, gie misjab hati u kundannat
ghall-piena tal-multa ta' £5;

Trattat l-appell ta' l-imputat minn din is-sentenza, din

il-Qorti, wara li eżaminat il-provi; irriflettict;

Mill-kumpless tal-provi, partikolarment mix-xhieda tal"park attendant" John Grima, terz dizinteressat; jidher illi
l-imputat ma kienx qed izomm max-xellug nett tat-triq ("on
the extreme left hand side of the road"), kif irid ir-regolament nru. 63 tat-Traffic Regulations, imma kien qed isuq
zhan-nofs tat-triq: Ghalhekk, teknikament, apparti konsiderazzjenijiet ohra, hu kiser ir-regolament citat; u l-ewwel
imputazzjoni hi pruvata;

Mill-provi deher ukoll li l-imputat kien qed isuq bi speed tat xi 20 mil fis siegha. Tant anki juri t-tul tal-brake-marks, 26 pied (sra Table tal-Ferrods Limited, 1940, publikata fil-ktleb: "Motor Claim Cases" ta' Bingham, p. 13); s'intendi, meta wiehed iqis li kien hemm xi zrar, peress li t-triq kienet ghadha kemm giet imsewwija, u ghalhekk ir-roti jiskid-

djaw u jtawlu t-tkarkira. Issa, il-limiti ta' li speed f'lokalità simili, u ghat-tip tal-karrozza, hu ta' 40 mil fis-siegha; iżda skond ir-regolament nru. 59 ibidem, id-driver li jersaq lejn salib it-toroq ghandu jsuq "at slow rate of speed". Verament it-tieni imputazzioni ma hix migjuba taht ir-regolament numru 59, imma taht ir-regolament numru 64, li jghid illi "the driver of any motor vehicle, whether on a major or a minor road, shall at all times exercise due care, and sliall take all necessary precautions at any road junction". Issa, fil-kumpless taè-èirkustanzi tal-każ ma jidherx li l-imputat ivvijola "dan" ir-regolament, ghax il-provi juru li hu daqq il-horn meta resaq lejn l-"intersection", u li speed tieghu kien nofs dak li hu permess mir-regolamenti, Ghalhekk din it-tieni imputazzjoni ma tidherx li hi sostanzjata;

Kwantu ghall-imputazzjoni l-ohra (it-tielet wahda), ta' hsara involontarja taht l-art, 342 Kap, 12, din tirrizolvi ruhha fl-indagini jekk l-imputat kellux htija fil-kollizjoni li saret. It-fatt li hu kien, minflok fuq ix-xellug nett tat-trieq, kif iridu r-regolamenti, fuq il-"crown of the road", mhux fatt deciziv ghal dan il-pont; mhux biss ghax "on a clear highway it has been frequently held that a car need not keep to the left side of the road" (Ara Gibb, Trial of Motor Car Accident Casca, sec. 32), imma anki ghaliex hu principju fondamentali illi "violation of the rule of the road is not conclusive evidence of negligence. Such a violation will not bar a party's recovery, unless it was the proximate cause of the injuries" (ibidem,

sec. 34);

Issa mill-provi deher illi d-driver l-iehor, Braithwiate, kien tiela mit-trieq ta' Military Bay, trieq sekondarja. li qeghedha angolu rett mal-"main road" ta' Ghajn Tuffieha, mnejn kien ghaddej l-imputat. Deher ukoll li Braithwaite, li kien qed isuq bi speed qawwi, minflok ma rrallenta u kwazi zamm qabel ma hareg ghall-"main road", baqa' hiereg bhal li kieku xejn u dahal fil-karrozza ta' l-imputat. Ix xhud John Grima, il-"park attendant", xhud, kif ga nghad, spregudikat, u dippju' ta' esperjenza fis-sewqan, qal li l-car ta' Braithwaite telghet timxi kemm tiflah. L-istess Braithwaite ammetta li hu ma esplorax it-trieq principali qabel ma hareg fiha. Ma

tantx huma kredibili dawk li kienu rekbin mieghu, li, evidentement influwenzati b'dak li l-Imhellef Mc Cardie sejah "esprit de voiture", qalu aktar milli qal l-istess driver Braitiwaite fix-xhieda tieghu:

Hawn jidhol, ghalhekk, il-pont importanti tad-drittijiet tal-'ma'n road user'', u tas-''side road user'', li fifforma argument ta' spiss fil-gurisprudenza u d-dottrina;

Fid-dottrina ngliza (ara The law of Collisions on Land - Andrew Dewar Gibb, 1932 Edition, page 101; ara wkoll "The Law relating to Motor Cars" ta' Mahaffy and Dodson. 1929 edition, p. 77; u Charlesworth, The Law of Negligence, 1947 edition, pp. 84-85) huma citati decizionijiet tal-Qrati Skoččiži (Court of Session) li huma "loci classici" in materri. cjoè 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-riassunt ta' dawn id-decizjonijiet jista' jsir fil-principii li sejrin jigu enuncjati testwalment :---

1. "A driver approaching a main road from a side road must have his vehicle under such control as to be prepared for any traffic encountered there (Mc 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, supra);

2. "It is the duty of side road traffic to give way to traffic 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 ighid:— "But whilst there is this duty on vehicles coming from the side road, it is also the duty of vehicles on the main road approaching a side road to do so with caution";
- "The duty of a driver whose course is calculated to disturb the ordinary stream of traffic on a road is of a higher order. The more risky and difficult the manoeuvre is, the greater the duty incumbent on the driver. In the sense,

therefore, that turning out of a side road into a main road is more difficult than continuing a main road, the side road's driver is higher" (M'Nair v. Glasgow Corporation, and Hutchinson v. Leslie, supra);

5. "The actual precautions called for in any particular

5. "The actual precautions called for in any particular situation are a practical question, and depend on the facts of the particular situation (M'Nair v. Glasgow Corporation.

supra);

Fermati dawn ıl-principji dottrinali u gurisprudenzjali, Skoćciži u Ingliži, huwa importanti li jigi ežaminat is-sis-

tema tal-Ligi Maltija;

Dan hu precizament dak li gie espost superjorment. Infatti fir-Regolamenti tat-Traffiku nostrali jinghad hekk:—Reg. 64 — "Major road is one where all traffic 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, that the driver on any motor vehicle, whether on a major or minor road, shall at all times exercise due care, and shall take all necessary precautions at any road junction". Reg. 68 — "The driver of a motor vehicle proceeding from a minor into a major road is to give way to traffic on the major road";

Lanque ghandu jintnesa illi fil-"Highway Code" hemm din ir-regolu:— "Proceed with special care when coming from a minor road into a major road, and give way to traffic on the major road. Unless you have a clear view of the major road in both directions, stop just before entering the

carriage way of the major road";

Ghandu hinghad ukoll illi, ghalkemm il-"Highway Code" ma hux liği, imma biss, kif kien esprima ruhu l-Ministru Hore Belisha fil-"Foreward", "A Standard of Conduct for the Road", eppure d-dispozizzjonijiet tieghu huma accettati fid-dottrina u fil-Qrati: u hawn Malta gew dejjem segwiti, molto pjù li l-awtoritajiet kienu hadu anki hsieb ii jaghmlu traduzzjonijiet tieghu bil-Malti ghad-drivers mhux familjari ma' l-ilsian Ingliz. Del resto, kif qal l-istess Ministru fuq imsemmi, id-dispozizzjonijiet tieghu huma l-frotta' l-esperjenza, l-ahjar u l-aktar vasta;

Ghalhekk, fis-sistema Malti, is-"side road user" ghan-du l-obligu li jeedi ghat-traffiku fuq il-"main road", ghandu l-obligu li jesplora tajjeb il-"main road" qabel ma johfog fiha, ghandu l-obligu li jimxi "dead slow" u sahansitra jwaqqaf biex u sakemm jaccerta ruhu li jista' johrog bla haara. U l-"main road user" ukoll ghandu joqqhod attent fil-"cross roads"; imma l-grad ta' diligenza li tinkombi lilu hu ferm unqas, ghax hu ma jkunx qieghed jiddisturba l-kors tat-traf-fiku, imma jkun miexi fuq triq dritta; Issa, f'den il-kaz, Braithwaite hareg minn triq, li hija

indubbjament "side road", "ghal gewwa triq li hi indubbjament "main road", bla ma ha ebda prekawzjoni ta' xejn u b'mod perikoluz. Infatti, il-preponderanza attendibili tal-provi, u l-istess karattru tal-kollizjoni, juru li hu hareg bla ma daqq il-horn, bi speed qawwi, u bla ma esplora bl-ebda mod il-"main road";

Hu me re bl-ebda mod jekk setax jidhol fil-"main road" bla hsara, ma saqx "dead slow" kif imissu jaghmel biex jesplora l-"main road", imma qabad u dahai fiha bi speed qawwi u kkaguna l-kollizjoni. Il-kliem ta' Lord Dunedin fil-kawża fuq citata MacAndrew v. Tillard, 1909, S.C. 78, huma singolarment adatuati ghall-fattispedje prezenti. 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 necessary 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 it-triq principal hi dejqa (f'dak il-post hi xi hmistax-il pied), u ghalhekk il-"main road user" ma ghandux "chance" li evita bill' jisswervja, spparti s-"sudden emergency" li jinsab fiha:

Il-fatt li l-appellant kien fuq il-"crown" tat-triq minflok fuq x-xellug, ma ghamel ebda differenza; ghax pied
jew inejn I bemin, l-istes, il-habta kienet issir. Is-sewqan
ta l-appellant b'20 mil fis-siegha fejn il-limiti permess huwa
ta 40 ma jistax jissej alt žejjed, u l-appellant daqq il-horn.
Kollox juri illi l-kawża prossima tal-kollizjoni kienet unikament dik li Braithwaite hareg bla ma ta każ ta ebda kaw-

ment dik li Braithwaite hareg bla ma ta każ ta ebda kawitela, kontra l ligi, u kontra l-bonsens ins-sewgan. B'dak l-att tighu rrenda l-kollizjoni inevitabili; ghax kif bi kliem cari, jekk mhux l-gali, qal ix-xhud Grima, "f'dak il-post, jekk wiehed ma jeedix lill-iehor, jahbtu zgur";

Jista jiżdied illi l-provi juru wkoli (ara, fost ohrajn, xhieda, tas-Surgent tal-Pulizia Micallef), illi Braithwaite implicitament ammetta t-tort tieghu, phax in principju actietta li jhallas l-ispejjeż tal-karrozza ta l-appellant, ghad li ma jaqbelx fuq il-"quantum". Certument jista jkun hemm każijiet fejn diskors simili ma tantx jiswa, bral, per eżempju, meta wiehed ikun qed jibża minn xi vjolenza da partitad driver l-ichor, jew ikun taht xi impressjoni hażina. Imma ma jidherx li dan kien il-każ; ghax kien facili ghal Brathwaite jirrealizza li l-habta swet ghax huwa hareg fil"main road" f'daqqa wahda; "main road" f'daqqa wahda;

·Ghalhekk l-appellant ma kellu ebda tort fil-kollizjon;

u t-tielet mputazzjoni ma hi iex sostnuta;

Ghal dawn il-motivi iddecidi:

· Billi tilqa' l-appell, fis-sens li tirriforma s-sentenza appellata billi tikkonfermaha filli sabet l-appellant hati ta t-ewwel imputazzioni, li ma saqx fuq ix-kellug tat-triq, ti tikikundannah ghal dik il-kontravvenzioni l-ammenda ta fiames xelini; izda thassar i sentenza appellata fil-bejia, billi tiddi-kjara lill-imputat mhux hati tat-tieni u tat-tielet imputaz: zjoni, v tordna li jigi minnhom liberat.