15 ta Mejju, 1953. Imballfin:

Is-S.T.O. Dr. L.A. Camilleri, LL.D., President; L. Onor, Dr. A.J. Montanaro Gauci, L.L.D.;

L-Onor, Dr. T. Gouder, LL.D.

Emmanuele Micallef versus Vincent Scerri

Lokazzjoni — Board tal-Kera — "Alternative Accomodation" — Art. 10 (b) tal-Kap. 109 u Ordinanza XXI ta' 1-1942.

ld-disposizzioni ta' l-art. 10 (b) tal-Kap, 109, kit giet emendata bl-Ordinanza XXI ta' 1-1942, ghandha tiği nterpretata, biex tiği eritota kull apparenti kontradizzioni, fis-sens illi (a) meta ghall-inkwilin ikun hemm "available alternative accompidation" li radionevolment, thun tehodd ghalih u ghall-familia tieghu, mehudin in konsiderazzioni I-mezzi tieghu, hif vkoll 1-"extent, character and proximity to place of work (if any)", to' dak 1-"accommodation", il-Board tal-Kero ghandu jaghti permess lil-lokatur li jiehu pussess tal-fond minghoje ma jindahal jekk b'dagshekk l-inkwilin ikuna sejjer ikollu zi "hardship"; u (h) li l-fatt li ghall-inkwilin ma ikuna hemm "alternative accomodation" mhua ta' ostakalu ahall-kerrei li iiehu lura l-pussess tal-fond tieghu; izda f'dan il-kaz il-Board, gabel ma jaghti d-decizioni tieghu, ghandu jois il-"hardship" rispettiv tal-partifiet u fipprova jevita l-akbar "hardship"; u biex jaghmel hekk, il-Board ghundu jois ic-cirkustanzi kollha talkaz, kompriża dik ta' "any alternative accomodation available for the landlord or the tenant"; iida dik l-"alternative accomodation" ghall-inkwilin ma thung ta' dik ig-gorta kontemplata fug, ghaliez, jekk thun hekk, il-Board ma ghanduz jaghmel hag'ohra blief li jaghti lil-lokatur il-permess ghar-ripreza tal-pussess talfond, minghair ma jidhol f'argumenti ohra.

Il-Qorti, — Rat ir-rikors ta' Emmanuele Micallef quddiem il-Board li jirregola l-Kera, fejn talab biex jerga' jiehu taht idejh id-dar numru 154, Misida Road, Birkirkara, mikrija lill-inlimat Vincent Scerri, ghax ghandu bzonnha ghalih, waqt li offra bhala "alternative accomodation" fond f'Saint Anthony Street, Birkirkara;

Omissis:

Rat id-decizjoni moghtija minn dak il-Board fid-9 ta'

Frar 1953, li bilia giet michuda t-talba, bl-ispejjež; wara li

kkunsidra:

Illi huwa fatt li l-intimat, li kien joqghod tas-Sliema, mar Birkirkara biex ikollu gnien, u, biex jirraggungi l-iskop tieghu, barra li hallas rigali, ghamel spiža konsiderevoli biex irranga d-dar, il-gnien, u s-sigar ta' din id-dar ta' Birkirkara :

Illi ma hemmx dubju li d-dar offerta lilu, bhala kobor, h ja kbira bižžejjed biex takkomoda lill-intimat; imma fiddeterminazzioni tal-"hardship" rispettiv ghandhom sittiehdu in konsiderazzioni diversi cirkustanzi ohra barra l-konsistenza materjali tal-fond; per ezempju, l-iskop li ghaliha kien ha d-dar il-kerrej, u anki xi spejjez li huwa kien ghamel biex jirrendi dik id-dar - li meta hadha ma kellux perikolu li tigi lilu mehuda — izjed komoda biex tirrispondi ghall-iskop li ghaliha kien hadha:

Illi I-ligi, bhala kriterji ghad-determinazzjoni tal-"hardship", tpoggi taht il-konsiderazzjoni tal-Board kwalunkwe "alternative accomodation" li tista' tkun "available" tant ghas-sid kemm ghall-kerrei; u f'dan il-każ il-fond offert bha-la "alternative accomodation" huwa "available" tant ghas-sid kemm ghall-kerre. Il-lum, ir-rikorrent jallega li joqghod ma' hutu minghajr ma jhallas kera, u li ma ghandux hlief żewe kmamar livell tal-bejt ghad-dispozizzjoni tieghu. Filpost ta' Vincent Costa, 41 v 42 Saint Anthony Street Birkirkara, ir-rikorrent ikollu kumditajiet biżżejjed ghall-familja tieghu; u l-fait naturali li jrid imur jogghod fil-proprjeta tieghu, li xtara recentement, mhux bizzejjed biex jinnewtralizza ossija jeghleb l-interess ta' l-intimat biex jibqa' jokkupa l-fond, li huwa ha bi skop predeterminat u li jirrispondi ghalleżigenzi speciali tieghu;

Illi, mehudin in konsiderazzioni ċ-ċirkustanzi kollha talkaż, jidher li, ladarba l-"alternative accomodation" hija "available" anki ghar-rikorrent, il-"hardship" ta' dan kien ikun izghar kieku kellha tigi michuda t-talba milli ikun ghall-

intimat jekk tiği milqugha;

Rat ir-rikors ta' l-imsemmi Emmanuele Micallef qud-

diem din l-Qorti, fejn talab li s-sentenza fuq imsemmija tiĝi revokata, billi tiĝi milqugha t-talba tieghu, bl-ispejjeż taż-żewg istanzi kontra l-intimat Vincent Scerri ;

Omissis:

Omissis;
Ikkunsidrat fuq l-ečcezzjoni ta' l-inappellabilità;
Illi s-sentenza li minnha hemm appell tinsab bażata fuq
l-interpre azzjoni ta' l-art. 10 (b) tal-Ligi tal-Kera (Kap.
109). F'dan il-każ il-Board ma enuncjax semplicement l-imsemmija dispozizzjoni tal-ligi, iżda, kif jippretendi l-appellant,
interpreta skorrettament l-istess dispozizzjoni tal-ligi, u anki
skorrettament applikaha ghall-fatti kif riżultati. Ma jistax
ikun hemm dubju li l-kwistjoni fuq l-interpretazzjoni ta' dispozizzjoni tal-ligi tikkostitwixxi punt ta' dritt u tirrendi ssentenza appellabili skond l-art. 25 tal-ligi fuq imsemmija.
Ghalhekk l-imsemmija ečcezzjoni ta' l-inappellabilità mhix
ammissibili, u ghandha tigi respinta, bl-ispejjeż kontra l-appellat Vincent Scerri;
Ikkunsidrat fil-meritu:

Ikkunsidrat fil-meritu:

Ikkunsidrat fil-meritu;
Illi qabel l-emenda apportata lill-imsemmija dispozizzjoni tal-ligi (art. 10 (b)) bl-Ordinanza XXI ta' l-1942, il-kerrej
kellu dritt jiehu lura l-pussess tal-fond (barra minn hanut)
jekk ikun iridu ghall-okkupazzjoni tieghu, jew ta' axxendenti
jew dixxendenti tieghu, tant konsangwinei kemm affini, jewta' huh jew ohtu. Bl-emenda fuq imsemmija dak id-dritt
tal-lokatur gie temperat, u bl-ewwel parti ta' l-emenda giet
mizjuda l-kondizzjoni li ghall-ezere zziu ta' dak id-dritt da
parti tal-lokatur il-Board irid ikun soddisfatt 'that alternative accomodation is available, which is reasonably suitable to the means of the tenant and his family, as regards extent, character, and proximity to place of work (if any)"; u dan minghair prigudizziu ta' dak li jinsab provvdut fl-istess paragrafu:

F'dan il-paragrafu jinghad li "the existence of alternative accommodation shall not be a condition for the grant by the Board of permission to recover possession of premises under this paragraph of this article where the Board is satisfied, having regard to all the circumstances of the case, including any alternative accommodation available for the landlord or for the tenant, that greater hardship would be caused

by refusing permission for the recovery of possession than by granting it." Id-dispozizzjoni ta' dan l-ahhar paragrafu minn banda tistabbilixxi li l-ezistenza a l-"alternative acminn banda tistabbilixxi li l-ezistenza a l-"alternative accomodation" imsemmija fil-paragrafu ta' qabel mhix kondizzjoni ghar-ripreza tal-pussess tal-fond da parti tal-lokatur, u minn naha l-ohra tkompli tghid li f'dan il-kaz il-Board ghandu jiehn in konsiderazzjoni c-cirkustanzi kollha tal-kaz, "including any alternative accomodation available for the landlord or for the tenant", meta jigi biex jistabbilixxi liema huwa l-akbar "hardship". Mill-ewwel daqqa ta' ghajn jidher li jista' jkun hemm kontradizzioni fl-istess dispozizzjoni tal-ligi, billi, waqt li qieghda tikkontempla l-kaz ta' nuqqas ta' "alternative accomodation", immediatament wara seemmi li "any alternative accomodation" ghandha tigi mehuda in konsiderazzjoni ghall-valutazzjoni tal-"hardship" rispettiv. Izda, billi hija regola ta' interpretazzjoni li ebda ligi ma ghandha titqies kontraditorja fiba nnifisha, meta jkun hemm dubju fuq hekk, huwa kompitu tal-gudikant li jindaga u jinterpreta s-sens skond l-intenzioni tal-legislatur u b'quddlem ghajnejh ir-ragunijiet li gieghlu lil-legislatur jiddetta l-ligi. Il-gudikant ghalhekk ghandu jirrikorri ghall-"mens legis", biex aghti dik l-interpretazzjoni li fikkorrispondi ghall-ispirita informatur tal-ligi;

Ikkunsidrat:

Ikkunsidrat;
Illi meta l-imsemmija emenda (Ordinanza no. XXI ta' l-1942) 'iet diskussa fil-Kunsill tal-Gevrn, l-Attorney General, ghall-kritika li kienet saret minn wiehed mill-membri elettivi (Dr. Borg Olivier), irrisponda hekk:— 'The Bill before the House is certainly not intended to accord preferential treatment to the tenant over the landlord, nor is it intended to debar the landlord from making use of his own property for his own purposes, to a greater extent than is allowed by the Rent Regulation Ordinance as it stands today. It simply purports to enable the Board concerned to exact from the applicants before it wider information as to the ultimate object of their applications and as to the consequences of those applications. This is done in an attempt to attain a greater degree of equity as between landlord and tenant, and to provide a greater opportunity of impartiality as seen from

the two different and opposed standpoints, rather than to accentuate any semblance of preferential treatment that may arise from the law as it stands today, and as has been suggested by the Hon, the mover of the amendment now before the Committee. Although the first part of clause 2 requires that, when the landlord applies to retake possession of his property, he would indicate what other suitable accomodation there may be available for the tenant, the proviso to the same clause very definitely does not debar the landlord from availing himself of his powers in cases where he is not in a position to indicate alternative accomodation for the tenant; and in such case it is expressly left to the Board to

Ikkunsidrat:

Illi biex tiģi evitata l-apparenti kontradizzioni fuq rilevata fl-istess dispozizzioni tal-liģi, u konformement ghall-intenzioni tal-leģislatur, kif fuq espressa, id-dispozizzioni ta' l-art. 10 (b) tal-Liģi tal-Kera (Kap. 109) ghandha tiģi interpretata fis-sens hawn taht indikat:—

(a) Li mera ghall-inkwilin ikun hemm "available alternative accomodation" li ragionevolment thun tghodd ghalih u chall-familia tiechu, mehudin in konsiderazzjoni I-mezzi tieghu, kif ukoll l-"extent, character, and proximity to place of work (if any)", ta' dak I-"accomodation", il-Board ghandu jaghti permess lill-lokatur li jiehu prssess tal-fond minglusje ma jindahal jekk b'daqshekk l-inkwilin ikunx sejjer

ikollu xi. 'hardship';
(b) Li l-fatt li ghall-inkwilin ma ikunx hemm "alternative accomodation!", mhux ta' ostakolu ghall-kerrej li jiehu lura l-pussess tal-fond tieghu, iżda f'dan il-każ il-Board, qabel ma jaghii d-decizioni tieghu, ghandu iqis il-"hardship" respettiv tal-partijiet u jipprova jevita l-akbar "hardship". Biex jaghmel hekk, il-Board ghandu jqis ic-cirkustanzi kol-llu tal-kaz, kompriza dik ta' any alternative accomodation available for the landlord or for the tenant"; izda din l"'alternarive accomodation' ghall-inkwilin ma tkunx ta' dik ixxorta kontemplata fl-ewwel paragrafu, jigifieri "reasonably suitable to the means of the tenant and his family as regardsextent, character and proximity to place of work (if any)". ghaliex, jekk tkun hekk, il-Board ma ghandux jaghmel haga ohra blief li jaghti lil-lokatur il-permess ghar-ripreza tal-pussess tal-fond, minghair ma iidhol f'argumenti ohra:

Ikkunsidrat:

Illi I-interpretazzioni fuq imsemmija giet diga applikata minn din il-Qorti fis-sentenza taghha tat-22 ta' Dicembru 1948, in re 'Laferla vs. Vassallo' (Kollez, Vol. XXXIII, Parte 1, pag. 382), fejn jinghad li "jekk is-sid hu fi stat li joffri "reasonably suitable accomodation", allura t-talba talproprjetarju biex jiehu lura d-dar tieghu ma tistax tigi opposta b'eźnu favorevoli:

Ikkunsidrat:

Illi argument ieħor li isaħħah l-interpretazzioni moghtija, n li ghandu jservi ta' gwida lill-gudikant fl-apprez-zament tal-"hardship" rispettiv tal-kontendenti, ghandu jit-tiched mill-paragrafu 2 tan-Notifikazzjoni tal-Gvern numru 327 tat-13 ta' Lulju 1945. Din in-Notifikazzjoni, mahruga his-sahha ta' l-"Emergency Powers (Defence) Acts, 1939 and 1940", fiz-zmien l-aktar kritiku tal-križi edilizja f'Malta, bl-imsemmi paragrafu kienet tiddisponi hekk:- "For the purposes of article 10 (b) of the Reletting of Urban Property Regulation Ordinance 1931, as amended by Ordinance no. XXI of 1942, it shall always be conclusively deemed that er ater hardship would be caused by granting the application of the lessor to recover possession of the premises than by

disallowing such application, when the lessor is reasonably suitably accompdated and suitable alternative accompdation is not readily available to the tenant". B'din id-dispozizzioni giet kreata prežunzjoni favur l-inkwiim, li dan ma keliux skond il-ligi; ghaliex kieku ma kienx ikun hemm bżonu li l-imsemmija dispozizzjoni tigi maghmula. U billi bin-Noti-fikazzjoni tal-Gvern numru 741 ta: l-1948, tas-26 ta: Novembru 1948, giet imbasera n-Notifikazzjoni ta' qabel, numru 327 ta' l-1945, dik il-prežunzjoni favorevoli ghall-inkwilin ma bagghetx issehh u l-kondizzjoni tieghu rritornat kif kienet qabel, jigifieri f'pozizzjoni ta' ugwaljanza ma' dik tal-lokatur ghad-definizzjoni b'ekwita tal-''hardship'' rispettiv taghhom, kif indikat fl-msemmi diskors tal-legislatur, u bl-ebda "preferential treatment to the tenant over the landlord";

Tkkunsidrat:

Illi in bazi ghal dak li ntqal fuq, billi d-dar offerta millappellant hija evidentement "suitable" ghall-intimat Scerri, mehudin in konsiderazzjoni l-mezzi tieghu, kif ukoll l-"extent, character and proximity to place of work" ta' l-istess dar, il-Board ma setax jichad it-talba tar-rikorrent, u ma kienx kompitu tieghu li jghaddi biex jeżamina l-'hardship' rispettiv tal-kontendenti biex jara ghandux jilqa' jew le dik it-talba; u dana indipendentement mill-kwistjoni jekk ic-cirkustanzi elenkati bhala kostitwenti "hardship" fis-sentenza appellata humiex ammissibili iew le:

Ghar-rağunijiet fuq miğjuba; Tilqa' l-appell, billi tirrevoka s-sentenza appellata u tilga' t-talba kontenuta fir-rikors ta' l-appellant Emmanuele Micallef; u taghti lill-intimat Vincent Scerri zmien xahar biex jižgombra mill-fond fl-istess rikors imsemmi. Bl-ispej-jež faž-žewģ istanzi kontra l-imsemmi intimat Vincent Scerri.