$$
\begin{gathered}
14 \text { ta' Marzu, } 1949 . \\
\text { Imhallef: } \\
\text { L_Onor. Dr. W. Harding, B.Litt., LL.D. } \\
\text { II-Puivin rernus Saliv Pullicino } \\
\text { Xhieds - Konfitu ta' Provi - Appen - } \\
\text { Trafiru - Kolltjon!. }
\end{gathered}
$$

Metrt e-chioda jhum" rehdw dabbtejn flemewel istanza, kull impressjoni li tixta' tolmita tirulara l-Qorti ta' l-A ppell, jehl terda' tisma'
 tut wom li waphtente appellatuthun ga diudikat ir-reapananhilifa, ihun homm iloprrikol" li reshiefla jippruraw jilk-nlmave il-hokwi, metn ma hemins fatturi enfranci biex jil:konfrollawhom.
Id-dipurtoment trapuhirda waqt id-depmèizrjoni taghom huma fottur
 sjoni fa' puiti muhtu jere t-ofra meta jku" hemm konflitt fa' prow
 hredibilitri, " oftahefit i-npprezzament tal-gulikant li jkın sama' davk ix-shicta "rime roce", " jk"n sefa' josacra d-diportament

105-106, Fol. XXXIII, p. IV.


 impertanti !i man dirler lumaidnato.











 whilita hriainali thamzjarja.
L.imsemmi Pollicino gie migjth quddem it-Qorti Kriminali al-Magiverati ia Malta bies jirispondi ghall-imputaxajoni illi minthatha mugfas ta stagal, trankuragini u inascomanza ia resolimunti, waqt ii kien qieghed isuq char-a-bane lo, 1788, thabat má motor car no. 1474 u ghamlilha thana:

Hesmienza taghth tal-14 ta' Jimner 1949 dik il-Qomi shbitn hati u kkmudannatu ghall-ammenda ta' $£ 3 \mathrm{n}$ ghall-hlas fa' monfs l-ispej'eд̀ tal-perizja;

Pullicino appela;
'ratal l-appell, d:n i-Qorti kkmondrat;
Din l-appell afande fattezzi partikulari, a hemm involut filt aspett legrali a' certa importanza dwar il-krite:ju li artiundha -serwi dim ilQorai ta' I-Appell meta jingieb quddiemba pont ta' fau his-sozzjoni tieghu. minhabba konflit erju ta provi. iddependiet moikament mill-apprezzament li ghamel il-Magistrat dwar il-kredibilita tax-xh " ma jkuns hemm, biax jinequla din il-kredibilian, bi pressjoni li jkun ifforma d-deciclent li aama' tempelintes.s shieda "riva woce";

Dina l-kawża originat minn koiliżoni li saret f'Burmarrad bejn cur misjuq mimn certu Rosntio lBorg a char-a-banc misje:q m'll-imputat. Hore kien ko-imputa. ma' l-appellant fi-ewwel istanza, iżda gie libera: bis-eentenza fuq imbemmija;
 facenti ta!-ku\% kien illi, ghal xi raguni jew otira, il-Pulizija mis ppoodneieix is-solitn "sketch" tal-loknlith bid-dettalji rilevanti, bhat mai huma, jekk kien hemm, "brake-marks" jew xi sinjali ohra li jiststio jixhtu dawl fuq icecirkustanzi tal. kolizzjoni :

Gama woll ill Borg a n-nias li kienc fil-ar tiegho taw versjoni mod, mentri l-upuellant u l-passiggieri tieghu li xehdu taw versjoni f'sens opposi, bla ma nğieb ebde xhud bartani, c̀joc estraneu ghul dak li 1-Imballef Ingizż Mc. Cardie sejjat "esprit de voitne"';

Borg u x-xhieda tieghu qalu li hums kienu mexjin bi speet regolari.............. L-kppellant u x-xhieda teeghu qalu li huma kienu mexjin bi speed régolari.................. a li lea: ta' Borg kien ghaddej bi speed qawwi u ma kienx fug is-"side" tieetha............... u, kif jidher car, dawn iz-żewg versonijet huma dijametralment opposti; ghaliex mentri lvergjoni ta` Borg u shabu d̀ giblb li t-tort kien ta' l-appel. lant................. ghall-kuntrarju, il-versjoni ta' l-appellant u :Thbu gigib illi i-to't kien ta' Borg.

Trisa l-Magistrat iddikjara fis-sentenza illi hu kien diğa sema' x-xhieda kollha tal-kıż, ul-kswìe kiunct diffe:ite ghassentenza. Fl-intervall tad-differiment il-Magistrat konfronint bil-konflite tal-provi, hass, u bir-ragun, li forsi, jekk ixxhieda jinstemgћu fug il-posí mill-espert, tirriżulta xi ćrkustanza pożtiva li tista' tghin ghes-soluzzjoni tal-problems; $\mathbf{n}$ minflok ma ta s-centenza fil-grnata tad-differiment, ikkostitwixxa perizja bin-nomina ta' l-espert Felice. I-Magistrat perd, 'kif $q^{a l}$ he stess fis-sentenza, kien diga forma 1 -opinjoni :ipghtn dwar liema versjoni kienet aktar kredibili;

Leespirt aceeda fuq il-post u sema' $x$-xhieda, $u$ in segwitu ppreżenta 1 -relazajoni tieghu fol. 28. It-espert irrileva fixters louflitt............... u stqar: li hu kien isib rutu f'per-
plessiti khira.............. Perd fi-ahtar tir-relazejoni ghamel net riljevi, u minnhom jista' jidher li hu kien pjuttort inklinat jrcettal -vers oni ta" Bory a 1 -paseiggieri tjeght;

IT. Magint:ay............. irrakkomsnda tuhu ghalderedil.ititi iectiou akitr mid-diportament ia' l-ıppellant meta xe. her quddiem i)-Magistret, wholl qabel il-perigin;

Omisusis;
Isw, din id-Qurti ta` l-Appell timab konfrontata bl-istess kontili la provi, tiolubihi bios b'apprezament ta' kredibiliti, sa's dik li sejje" jingtiad 'il quddiem dwar cirknstanza rilevatat mill-pariojis:

Hemm pers din id-differeuza. \i mentri l-Magistrat. a werajl" i-ispert, ketlhom il-rantaǵg li jisimgtu x-xhieds "a tempor rerqine" " "riva roce". |-Imhallef gedenti mag ghandux dphliem thief ix-xhieda makeriti - dak li bi fragi indovata I-lmhalief Inglig Coleridue, fil-kiwża R. v. Bertrand, 1807, 1. T.('. 220-535, wejjat "the clead body of the evidence without its spirit". Fi speech il kien thamel Lord Halsbury fil-House of Commons, fl-okkazjoni tat-tieni lettura tal-Criminal Appeal Bill (ara rapport fit-"Times" ta' Londra, tas-6
 not iell :he judges how the wimesves looked, how they spoke, whether thiy hesituted, or how they stood the test of crossextumation';

Ma luex il kat is 1-Imhallef sedenti jerga' jisma' 1-provi, whaliex wara li dawn inctemghu darbtejn, darba mill-Magisuat a darb'oter mill-perit, kull impreasjoni li talvolta tista' yirrikava din ibouri akarx ik'n fallaci; yhaliex bi smiegh :ipetur - issa wara li s-sentenza ağğudikat ir-responsabilith - il-partijet ikumu ndunaw b'dik li (issejjah "the pisch of the case". ujkun bemm il-perikolu ii jippruwa jikkolmaw ilbikuni motia ma hemme faturi estrane: biex jikkontrollawhom:
 ת-ewwel ialanza. allua kiu net jew tiddecidi kif iddedieda !Madinami, kiekt hassitha persto ma bil-versjoni ta, Borg u shabu, jew tidntridi f'sens li tasami lith-appellant, kieku bas-

u-bunc: jew, fil-kuż li mu hassitielnx. gustifikata li takkolji versjoni wahda pjutosi mill-ohra, kienet, fid-dubju earju riziltanti, iapplika l-principju li, ǵaladarba 1-Proseknazjoni, bi b.c.citazz oni kienet qieghda taddebita ill-appellant b'negiigenza, nuqqas iu` gthqui, u iuosdervanza tu' regolamenti, ma kieneix ipprivat il-kaz, wllur " in dubio pro reo";

Fl-appell. però, il-pożizzjoni hi diversa. Il-kwistjonı f'dan il-każ hi eminentennent kwistjoni ta' faitt, dipendenti parameni minn apprezcament tad-diporiament ta' xhieda, esklużzi kull c̈irkustanza pożitiva, direttu jew inferenzjali, 口 dippjì diportament li l-Imhalief sedenti, ehad-differenza talMagistat, mak kellux il-vantagé li josserva;

Il-kriterju li l-Imhadlel sedenti jidhirln li ghandu jadoperu fil-kaz preżenti u otırajn simili ta' xorta eciezzjonali bhal den, hu dan li gej. Il-Qorti ta' l-Appell, anki fuq kwistjoni la' falt, ista' u ghandha tvarja d-deciżjoni tal-Magistrat', jekk jedhritha li mill-mate:jal probatorju queldiemha dik id-deciżjoni kiene zhaljata. Imba meta mill-materjal probatorja guddiemba l-Qorsi a* l-Appeil ma tistax tghid li daecizjoni appellatia buzata unikament fucg apprezzament) k', net कhajala, :Hara hi ghantha taytiti piz̀ kbir ghall-"finding of fact' li jhwn wasal ghallh il-Magistrat, u ma ghandhiex, fin-nucquas ta' cirkustanzi kuntrarji, tvarja jew twaqqa' dak il. "finding" ;

Tghid il-l'owell "On Evidence" puge 70x : - "The judge of first instance has heard the witnesses and had an opportunity which the appellate tribunal does not possess, of testing the ir credit by their dentenour in the witness box. Hence great weight should always be attached to the finding of fact it which he has arvived'. The Master of the Rolls, ComensHurdy. yal, in re "Wagstaff" $98, \mathrm{~L}_{\text {I.J. }}$ p. 151 :- "'The Court below has had the imestimable udvantage of fudging from the demeanoar of the witnesses whether they are or are not speaking the truth. and 1 think further that the Court of Appeal ought not. ii a case oi this kind. to depart fom, or vary, the findings of faci of the learned judge in the Court below, walew the Conrt of Appenal is clearly satisfied that there has been something important overlooked.

Tt-Tay!or, 'Ou Evidence' , Vol. II, pag. 1350, osserva :-
"Alathanh the apmeal turns on a question of fact, the Court of Ippeal recomsiders the material before the judge, with such other materials as it mav have deeided to admit, and then makres up tin own mind on the merits, not disregurding the judement appeated frosa, but carefully weighing it and considering it, and not shrinking from over-rnling it if on full eonsideration the Court connes to the conclosion that the judgment is wronst 'I'lhe Court however, will start with the presumption that the descision of the gudge below on the fects was right, and in at doubstal case the gudgment of the court below on the fact is entitled to ereat weight' ;

Filkanz: Montgomerie it Co. Lald. v. Walhace James. deriza mill-House of Lards fit-18 ta' Diembra 1903, I ord Halsbary fall: "!his is simply a question of fact, and, doubtless. where a guestion of fact has been decided by a tribumal Which has seen : mal heard the witnesses, the greatest weight omght to be altached to the tinding of such a tribunal. It Tins had the rpportunty of observing the demennour of the witnesses and fodgingry or atrir veracity and accuracy in a way that III apmillate tribunal can have'. Kompla jothid bi biss meta "no question arises as oo the truthfulness, and where the phestion is as to the proper inferences to be drawn from truthfill adence, then the ariginal tribunal is in no better powition to decide than the jodge of an appellate court':

Il-konkluzjoni lowika hi kwindi din. I-appellant gie quddiem din il-Qorti hinx juri illi s-senten\%a moghtija kontra tieshom mill Qorti Inferjuri ma hijiex sewwa: I-Ewwel Qorti mat kellhiex quddiemha sta: ta' provi sod a stabbilit li minu jistetn jingieluo inferenza li jistgho jigu valjati minn din il-Qort ugwalment bhal ma vetgho jigu valjati mill-Qomi ta" Isfel. immik !abatal ruthla, fill-miqque ti" cirkr canzi shía u fil-konflitt ta" غewg̀ versomijia, fuy apprezament ta' kredibilita "sic: "t simpliciler": din il-Qorti tat-tieni islanga ina tistax il-hom tiemia' serotimament, hi profitt, ix-xlieda "viva voee", ghax il-fatt li xehdu gat dathtejn jisvalorizza konsiderevolment irrizultat wrentwail ta' kull ipprezzament, a ghalhekk din il Qorti ma kellhiex. kwantu ghax-xhieda, l-opportunita, kif kel-
 I-Qort ta' J-Appell prexjeduta uimm Sir Arturo Mercjeca fil-
kuwża "Pace utroupue", \& ta' Mejju 1020 -. "di diretamente serutinare il contegno, i movinenti, le inflessioni della voce, di avertire in ormi purola. in oprii circostanza che concorre a dure alla testimonianzai il preso che si meritu, a fargli decidere
 tati da un testimone Iededegno, o it la creazione di chi, o per partigianerlit, "per demenza mentale, non posa dare garamzia di nerieta e di ver dicita"; u li-ahharnett din il-Qorti 1 ma ssib) xejn li jikkonvinciha illi l-apprezzame at tal-Magistrat ma kienx horrett (itialhekk ma hemmax ragunijiet biex dak 1 -apprezzament jigi varjut;

Anzi, jetk xi haga, hemm cirkusianza wahda, rievata mill-perit. li aktarx tghin favur duk l-apprezanent. [s-appellant irrifjuta, avvolja leitlab mid-driver l-iefor lkorg, li jhalli

 kellu a li ma jkollux shieda jekk in-mies jitilctu, Ir-raguni $h_{1}$ la tha tants hi komvinctuti, standex kull driver li jatisels li ma kellax tort fil-kollizjos: hu komprensibilment preokkupat ii mit jkumx disturbat l-istat lal-fatti fil-wagt tal-kollizjoni, biex jista’ jigi acererte mill-J’ul'zija kull fattur li jista' jiswielu u jeżonterah mimn resporxabitita kriminali u funanzjarja. Jghid ap popozitu. Andrew Dewar Gitb :- "I'he position of each carinvolved in the collision, as it was after the impact, is significant, in that it may show whether the rule of the road was being obeved. how far the car went after the impact, the force of the collision. The distance $a$ car is pushed by another vehicle may be some aridence of the speed of the other vehicle. It may somutilues be profitable to go into detail here in sliowing the position of tarl car. How far hat the other car gone from We point it struck his? How tar was his cat from the primt where the zolls ion occured? Which wity was each car faciog? the distanee of ench car from the kerb? ${ }^{\prime \prime \prime}$ :
(iftulliekk il-fatt l: l-appellant thieghed aktarx jaghti sussidju lill-apprezzament tal-Magistrat. Komunkwe, ma hemm xejn kontra dak l-apprezzament;

Din il-Qerti ghaldagstant tiddecidi billi tichad 1-appell u tikkonferma s-rentenza appellata. Zmien gliall-blas xuhar mil-Ium.

