## 14 ta' Marzu, 1949.

Imhallef:

L-Onor. Dr. W. Harding, B.Litt., LL.D. II-Pulizija reraus Salvu Pullicino

## Khieda — Konflitt ta' Provi — Appell — Traffiku — Kollizioni.

Meta x-xhicaa jkunu xehdu darbtejn fl-ewwel istanza, kull impressjoni li tista' tolvoltu tirrikara l-Qorti ta' l-Appell, jekk terga' tisma' hiju dawk ix-xhieda, tkun aktarx fallaci; ghalicx bi smigh ripetut wara li s-sentenza appellatu tkun ga ggudikat ir-respansabilità, ikun homm il-perikolu li x-xhieda jippruraw jikkolmaw il-lakuni, meta ma hewwx fatturi estranci biex jikkontrollawhom.

Id-diportament tax-xhieda waqt id-depozizzjoni taghhom huwo fattur importanti bien il-Qorti taghti l-kredibilità taghha favur il-versioni ta' parti wahdu jew t-ohra meta jkun hemm konflitt ta' pro-ri. Ghan meta hemm dan il-konflitt, il-kwistjoni tkun wahda ta' kredibilità, u ghalhekk l-apprezzament tal-gudikant li jkun soma' dawk in-xhieda "riva rocc", u jkun seta' josserra d-diportament

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taghkom, ghandu jkoliv čertu piž li l-Qorti ta' l-Appell, li ma tismax hiia stess dawk ix-sekieda, ghandha tirrispetta, jekk ma tkunx soddisfatta li f'dak l-apprezzament hemm xi haĝa jew ĉirkustanza importanti li ma ĝietx kunsidrata.

Ghaldagsteint, jekk is-sentenza appellata hija bažuto biss Ing sempliči apprezzament ta' kezdibilità, ghax il-peori jkunu konfliggenti, a l-Qorti ta' !-Appell ma jidhielhiex li ghanda terga' tisma' hija x-xhieda, l-apprezzament li ghamlet l-Ewwel Qorti ma ghandux jigi rarjat milt-Qorti ta' l-Appell, jekk din ma ssib xeju li jikkan-vinčiha illi l-apprežžament tal-Magistrat ma kienx korrett.

Id-deiver li Tkaž ta' kallejani ma jhallise il-karcazza tieghu fil-požizzjani li kienet meta savet il-habta sakemu tigi l-Pulizija, jaghti adizia li hawa kellu tart; ghaz kull driver li jahseb h' ma kellar tart fil-kalližjani ha komprensibilment pevakkupat ti ma jkune disturbat l-istat tal-fatti fil-waqt lal-kalližjani, biez jiĝi aĉĉertat mill-Pulizija kull tattur li jista' jiswielu u ježanerah mir-vesponschilità kviminali u tinanzlarja.

Limsemmi Pullicino ĝie miĝjub quddiem il-Qorti Kriminali tal-Maĝistrati ta' Malta biex jirrispondi ghall-imputazzioni illi minhabba nuqqas ta' ghaqal, traskuraĝini u inosservanza ta' repolamenti, waqt li kien qieghed isuq chara-banc no. 1788, habat ma' motor car no. 1474 u ghamlilha hsara;

B'sentenza taghha tal-14 ta' Jannar 1949 dik il-Qorti sabitu hati u kkundannatu ghall-ammenda ta' £3 u ghall-blas ta' nofs l-ispejież tal-perizja;

Pullicino appella;

Tratra: l-appell, din il-Qorti kkunsidrat;

Dan l-appell ghandu fattezzi partikulari, u hemm involut fili aspett legali ta' čerta importanza dwar il-kriterju li ghandha segwi din il-Qorti ta' l-Appell meta jingieb quddiemba pont ta' fatt li s-soluzzjoni tieghu, minhabba konflitt serju ta' provi, iddependiet unikament mill-apprezzament li ghamel il-Magistrat dwar il-kredibilità tax-xh' ma jkunx hemm, bicx jirregola din il-kredibilità, hl' pressjoni li jkun ifforma d-decident li sama' tempel-istess xhieda "viva voce":

Dina l-kawża originat minn kollizjoni li saret f'Burmar-rad bejn car misjuq minn certu Rosario Borg-u char-a-banc misjuq m'll-imputat. Borg kien ko-imputat ma' l-appellant fl-ewwel istanza, iżda gie liberat bis-sentenza fuq imsemmiia:

Lewwei ostakolu ghall-istruzzjoni aktar ampja u soddisfacenti tal-kaz kien illi, ghal xi rağuni jew ohra, il-Pulizija ma pproducietx is-solitu "sketch" tal-lokalità bid-dettalji rilevanti, bhal ma huma, jekk kien hemm, "brake-marks" jew xi sinjali ohra li jistghu jixhtu dawl fuq ic-eirkustanzi talkoliižioni;

Gara wkoll illi Borg u n-nics li kienu fil-car tieghu taw versjoni mod, mentri l-appellant u l-passiggieri tieghu li xehdu taw versjoni f'sens oppost, bla ma ngieb ebda xhud barrani, cjoù estraneu ghal dak li l-Imhallef Ingliz Mc. Cardie sejjah ''esprit de voiture'';

Issa l-Magistrat iddikjara fis-sentenza illi hu kien diğa sema x-xhieda kollha tal-kaz, u l-kawza kienct differita ghas-sentenza. Fl-intervall tad-differiment il-Magistrat konfronint bil-konflitt tal-provi, hass, u bir-ragun, li forsi, jekk ixxhieda jinstemghu fuq il-post mill-espert, tirrizulta xi cirku-stanza pozitiva li tista' tghin ghas-soluzzioni tal-problema; u minflok ma ta s-sentenza fil-gurnata tad-differiment, ikkosti-twixxa perizja bin-nomina ta' l-espert Felice. Il-Magistrat però, kif qal hu stess fis-sentenza, kien diga fforma l-opinjoni vieglin dwar liema versjoni kienet aktar kredibili;

L-espert acceda fuq il-post u sema' x-xhieda, u in seg-witu pprezenta r-relazzioni tieghu fol. 28. L-espert irrileva 1-istess konflitt..... u stgare li hu kien isib ruhu f'perplessità khira...... Però fl-ahhar tar-relazzioni ghamel tr'et riljevi, u minnhom jista' jidher li hu kien pjuttost inkli-nat jréčetta f-vers oni ta' Borg u l-passiggieri tieghu; ll-Magistra ...... irrakkomanda ruhu ghall-kredi-

bilità tieghu aktar mid-diportament ta' l-appellant meta xe-

her auddiem il-Magistrat, ukoll ashel il-perizia;

Omissis :

Issa, din il-Qorti ta' l-Appell tinsab konfrontata bl-istess konflitt ta' provi, rižolubili biss b'apprezzament ta' kredibi-lità, salv dek li sejjer jingbad 'il quddiem dwar čirkustanza rilevata mill-perizja;

Hemm però din id-differenza, li mentri l-Magistrat, n warajh l-espert, kellhom il-vantağğ li jisimghu x-xhieda "a tempo vergine" u "viva voce", l-Imhallef sedenti ma ghandux quddienu hlief ix-xhieda traskritti — dak li bi frazi indovinata l-Imhallef Ingliż Coleridge, fil-kawża R. v. Bertrand, 1867, 1. P.C. 520-535, sejjah "the dead body of the evidence without its spirit". Fi speech li kien ghamel Lord Halsbury fil-House of Commons, fl-okkažjoni tat-tieni lettura tal-Criminal Appeal Bill (ara rapport fit-"Times" ta' Londra, tas-6 ta' Awissu 1907) hu kien qal li x-xhieda "miktuba" "does not tell the judges how the witnesses looked, how they spoke, whether they hesitated, or how they stood the test of crossexamination":

Ma hux il-każ li l-Imballef sedenti jerga' jisma' l-provi, ghaliex wara li dawn instemghu darbtejn, darba mill-Mağis-ırat u darb'ofun mill-perit, kull impressjoni li talvolta tista' virrikava din il-Qorci aktarx ikun fallači; ghaliex bi smiegh ripetut — issa wara li s-sentenza ağğudikat ir-responsabilită — il-partij'et ikunu ndunaw b'dik li (issejjah "the pinch of the case", u jkun hemm il-perikolu li jippruvaw jikkolmaw il-lakuni, meta ma hemmx fatturi estranel biex jikkontrollawhom .

İssa, kieku dina l-Qorti kienet qieghda tiğğudika l-kawża fl-ewwel istanza, allura kienet jew tiddecidi kif iddecieda l-Magistrat, kieku hassitha persweza bil-versjoni ta' Borg u shabu, jew tiddečidi f'sens li tassolvi lill-appellant, kieku hassitha persważa bil-versjoni tieghu u tal-passiggieri tax-chara-banc, jew, fil-każ li ma hassitiehx, gustifikata li takkolji versjoni wahda pjuttost mill-ohra, kienet, fid-dubju serju rizultanti, tapplika l-principju li, galadarba l-Prosekuzzjoni, li b.ċ-ċitazzjoni kienet qieghda taddebita iill-appellant b'negligenza, nuqqas ta' ghtqar, u inosservanza ta' regolamenti, ma kienetx ippruvat il-każ, allura "in dubio pro reo";

Fl-appell, però, il-pozizzjoni hi diversa. Il-kwistjoni f'dan il-każ hi eminentement kwistjoni ta' fatt, dipendenti purament minu apprezzament tad-diportament ta' xhieda, eskluża kuli čirkustanza pozitiva, diretta jew inferenzjali, u dippjù diportament li l-Imbalief sedenti, ghad-differenza tal-

Magistrat, ma kellux il-vantagg li josserva;

Il-kriterju li l-Imhallef sedenti jidhirlu li ghandu jadopera fil-kaž preženti u ohrajn simili ta' xorta eččezzjonali bhal dan, hu dan li ĝej. Il-Qorti ta' l-Appell, anki fuq kwistjoni ta' fatt, tista' u ghandha tvarja d-dečižjoni tal-Maĝistrat', jekk jidhrilha li m'il-materjal probatorju quddiemha dik id-dečižjoni kienet žbaljata. Imma meta mill-materjal probatorju quddiemha l-Qorti ta' l-Appeil ma tistax tghid li d-dečižjoni appellata (bažata unikament fuq apprezzament) k'enet žbaljata, allura hi gbandha taghti piž kbir ghall-"finding of fact" li jkun wasal ghalih il-Maĝistrat, u ma ghandhiex, fin-nuqqas ta' ĉirkustanzi kuntrarji, tvarja jew twaqqa' dak il-"finding";

Jghid il-Powell "On Evidence" page 700:— "The judge of first instance has heard the witnesses and had an opportunity which the appellate tribunal does not possess, of testing their credit by their demeanour in the witness box, Hence great weight should always be attached to the finding of fact at which he has arrived". The Master of the Rolls, Cozens-Hardy, qal, in re "Wagstaff" 98, L.J. p. 151:— "The Court below has had the inestimable advantage of judging from the demeanour of the witnesses whether they are or are not speaking the truth, and I think further that the Court of Appeal ought not, in a case of this kind, to depart from, or vary, the findings of fact of the learned judge in the Court below, unless the Court of Appeal is clearly satisfied that there has been something important overlooked.....";

It-Taylor, "On Evidence", Vol. II, pag. 1350, osserva:-

"Although the appeal turns on a question of fact, the Court of Appeal reconsiders the material before the judge, with such other materials as it may have decided to admit, and then makes up its own mind on the merits, not disregarding the judgment appealed from, but carefully weighing it and considering it, and not shrinking from over-ruling it if on full consideration the Court comes to the conclusion that the judgment is wrong. The Court, however, will start with the presumption that the decision of the judge below on the facts was right, and in a doubtful case the judgment of the Court below on the fact is entitled to great weight";

Fil-kawża Montgomerie & Co. Ltd. v. Wallace James, deciža mill-House of Lords fit-18 ta' Dicembru 1903, Lord Halsbury qal: "This is simply a question of fact, and, doubt-less, where a question of fact has been decided by a tribunal which has seen and heard the witnesses, the greatest weight ought to be attached to the finding of such a tribunal. It has had the opportunity of observing the demennour of the witnesses and judging of their veracity and accuracy in a way that no appellate tribunal can have". Kompla ighid li biss meta "no question crises as to the truthfulness, and where the question is as to the proper inferences to be drawn from truthful evidence, then the original tribunal is in no better position

to decide than the judge of an appellate court'; Il-konklužjoni logika hi kwindi din. L-appellant gie quddiem din il-Qorti biex juri illi s-sentenza moghtija kontra tieghu mill Qorti Inferjuri ma hijiex sewwa; l-Ewwel Qorti ma kellhiex quddiemha stat ta' provi sod u stabbilit li minnu jistghu jingiebu inferenzi li jistghu jigu valjati minn din il-Qorti ugwalment bhal ma setghu jigu valjati mill-Qorti ta' Isfel, imma bbażat rubba, fin-nuqqas ta' cirkestanzi obia u fil-konflitt ta' żewę versjonijiet, fuq apprezzament ta' kredibilità "sic et simpliciter"; din il-Qorti tat-tieni istanza ma tistax il-lum tisma' serotinament, bi profitt, ix-xhieda "viva voce", ghax il-fatt li xehdu ga darbtejn jisvalorizza konsiderevolment irrizultat eventwali ta' kull apprezzament, u ghalhekk din il-Qorti ma kellhiex, kwantu ghax-xhieda, l-opportunità, kif kellu l-Mağistrat u !-espert gudizzjarju — kif esprimiet ruhha I-Qorti ta' l-Appell presjeduta minn Sir Arturo Mercieca filkawża "Pace utrinque", 4 ta' Mejju 1925 — "di direttamente scrutinare il contegno, i movimenti, le inflessioni della voce, di avvert're in o, ni parola, in ogni circostanza che concorre a dare alla testimonianza il peso che si merita, a fargli decidere se essa è la narrazione serena e precisa dei fatti visti ed accertati da un testimone fededegno, o è la creazione di chi, o per partigianeria, o per demenza mentale, non possa dare garanzia di serietà e di verdicità"; u fl-ahharnett din il-Qorti ma ssib xejn li jikkonvinciha illi l-apprezzament tal-Magistrat ma kienx korrett Ghalhekk ma hemma ragunijiet biex dak l-apprezzament jiĝi verjat;

Anzi, jekk xi haga, hemm cirkustanza wahda, rilevata mill-perit, li aktarx tghin favur dak l-apprezzament. L-appel-lant irrifjuta, avvolja mitlub mid-driver l-iehor Borg, li jhalli l-vetturi fil-pozizzjoni li kienet sakemm tigi l-Pulizija. L-appellant spjega li ghamel bekk ghaliex boža' li jitlef il-kirja li kellu u li ma jkollux xhieda jekk in-nies jitilqu. Ir-rağuni li ta ma tantx hi konvincenti, ghaliex kull driver li jahseb li ma kellux tort fil-kolližjoni hu komprensibilment preokkupat li ma jkunx disturbat l-istat tal-fatti fil-waqt tal-kolližjoni, biex jista' jigi aččertat mill-Pul'zija kull fattur li jista' jiswiclu u jeżonerah minn responsabilità kriminali u finanzjarja. Jghid a propozitu Andrew Dewar Gibb :- "The position of each car involved in the collision, as it was after the impact, is significant, in that it may show whether the rule of the road was being obeyed, 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 evidence of the speed of the other vehicle. It may sometimes be profitable to go into detail here in showing the position of each car. How far had the other car gone from the point it struck his? How far was his car from the point where the collision occurred? Which way was each car facing? the distance of each car from the kerb?":

Ghalhekk il-fatt li l-appellant thieghed aktarx jaghti sussidju lill-apprezzament tal-Magistrat. Komunkwe, ma hemm xejn kontra dak l-apprezzament;

Din il-Qorti ghaldaqstant tiddecidi billi tichad l-appell u tikkonferma s-sentenza appellata. Zmien ghall-hlas xahar mil-lum.