## 18 ta' April, 1952. <br> Imћallin:

Is-S.T.O. Dr. L.A. Camilleri, LL.D., I/President. T-Onor. Dr. W. Harding, B.Litt., LL.J.
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Giaseppo Borg ne. ter'sus Algernon Crockford ne.
Karrozza - "Impressment" - Danni - Forza Mag̀ǵuri "Shid" - Kondizzjoni tat-Tyres - "Inevitable Accident"Gvern - Impjegat - "Culpa in Eligendo" Proklama nru. I ta' $1-1815$.
Meta harmsea tigi "impressei"', Iautorita li magha I-hamaza hip. "innpressed" ghendha Lobligu li matul dak l-"impressment" twAn dit ilhewrozea bhala. "Honws pater familias", uli. meta jispircia l"impressment", tikhonsenja lura l-harroza lil sisha fi stat
 tigh fil-cejholy want dak l-"impressmont', salsmm dit h-tisuru thum saret bi htija ta' lawtorita.
Inma jchl ithsarn than saret minhabla jorza magjuri, l-istess hsara ghand" jbatha sid ilkarrosza; b'dan però illi l-piz tal-prova li I-hsara saret minhabla forsa magjuri jaqa' fuq l-awfarito
Li "shid", bhala tali, ma jekludix reaponsabilitajiot: w atathokl: ghandu juai peaminat jelil l-istess "shid", fhell ha: in partik"lari, lienx dorut atoll-tija ta' xi hodd, hif wholl jokl sethar jigi critat jew lervett; ghor $l i$ 'sshid" jisfa' jliwn whall prowhat mill. mont lif wietied iwne billi d-driver ma jluns to l-preknurionitiet
 jirrikjedr. Li 'skid' huwa iblustanta nevtra, onax jista' jlw" T-elfett ta' negligentn precedenti, jew negligenta ta' 'third mas$t y^{\prime \prime}$, jew dovut ghal acident inevitabili.
ll-kondizzjoni tat-"tyres" timfureixa bisg fis-sens li moto dawn jibdew isiru dagsapin lixei, id-driver, fost kateli ohra li goanda jicha meta jhem isur fug art imxarba jew umida, ghandu jqis wkoll ir-rish"j alibar to' "skidfing" minhabba li t-t!res ilum"

11-12. Vol. XXXYI. p. I. sez. I.
 u ma jliumu ilkometto ablo impretenta fis-sergan, li "akidding" ikur acidentali, bit-tures lizesi b'lolloz. H-Grern, bhala autoritie li theghtha that "impressed" il-karrazan, mher repponenbili jeld nia jhothux" "enlpa in cligendo", jew jeht
 tieghu) Ji ma liense dak: li ghandu jubtmel if"banus puter fomidias'. Fbita att ta' persuan fis-servins mat tablion lidi-Gera johl.
 ilpersuna li ngivxiet le!tha l-awtorizeazzioni onillaterin bil-mil:-
 fri mama ta' flun lid min soma l-hsara /'harrozza li kienet "impresserl" ma jirrentios responsabili l-Grera ghal dik ilhsaro.
Pilkad pretenti, !if ritenut li l-Axara tif-truck li kien "impresedl"

 dent".
Il-Qortı, - Rat icesitazzjon: preżentata quddiem il-Prima Awla tal-Qorti Civil tal-Maesta Tagtha r-Jhegina, li b:ha :attir, wara h rpremetta li i-tuck "Wyllis" nru. 6056, ta' proprjeth tiegthu, ki: n "impressed' mill-imsemmi Dipartiment, u fil-5 ta' Marzu 1944, wara ': kienet gratlu hsara konsiderevoli, gie moghti lura lill-ntur I: bi fteh'm ma' l-isuess Dipartiment, irriparah in part; a li meta l-atiur ipprééenta I-kont'jiet tax-xoghol, il-Dipartiment ma riedx ihalleu s-somwa kolla, imma nfira somma inferjur, "u ghalhekk l-atur talab !li l-ammont tal-kompensazzjoni jigi regolat milk-Emergency Compensation Board, fejn il-konvenut eccep:xa li ma kenx responsabil', " ghalhekk l-attur, b'lii ppreferixxa li lkwistjoni tar-responsabilith tiọ́i deciza mill-Qorti ordinarja, irrnunzja ghall-att jiet qudden li-Board; u illi effettivament tal-hara huwa responsabili l-konvenut. bilti kellu l-uza u 1 kustodja tat-truck, u I-hsara saret wagt li l-konvenut kien qieghed jaghmel użn mit-truck 12 in konsegwenza ta' dak lużu, u ma kienetx nevitabli, u minhabba limprudenza a 1-imperizja tan-nies inkarikat mill-konvenut; talab. fi . l-konvonut jiki d kjarat responsabli tal-hsarat, u li jigi kundannat ihallas l-igtess hsarat, li jigu likwidati mill-Finergency Compensation Board. B!-ispejjés;

## ()missiós

Rat is-sentenza ial-P>"m'Aw'a tal-Qort: Civili tal-Maesta tar-Re tat-8 ta" Jamar 1951, li biha gie dikjarat li l-konvenuit mhumpex responsabili tad-lanni li sofriet it-truck jew il-van ta' l-attur, billi l-istes danni gew kagunati b'kaz fortuwitu, u f'dan is-sens irresp:ngeiet it-talba tn' l-attur. spejjez minghair taxxa; billi kkunsidrat;

Illi d-fatti li taw lok ghal dion l-kawza huma dawn : Fil-s (a' Marzu 1944, f'xi t-8. 30 a.m., Carmelo Aquilina, driver debitament licenzjat, hien impiegat f'din l-kwalita malMilk Marketing Undertaking, dirett mill-konvenit nomine, waqt li ken suq wan jew truck mpa. 6056 a hiereg mill-Mellieha, u gieghed biex janbad '-ewwel mizhla, li ghandha kurva hafifa, l-stess track bdet tiskiddja, gbaliex it-triq kienet imxàrrba bix-xita hafifa. li kjenet fiamlet ftit qabel, u wara li mx et ft't hekk skiddjata whal certn tul, spicicat biex telghet l-aritini, gholi xi ghaxar pulzieri - jew ahjar dan l-argini ceda - H hemm f'dil il-parti tat-treq fog 'x-xel.ug ta' m:n ikan niezel minn naha tal-Methiela, u nqalbet ghal isfel gewwa r-raba', u b'hekk, fost tharat ohra li graw, grat hsara flistess truck;
nli l-attur, bhala proprietarju ta' dak it-treck, j:tfa rresponsabilita ta' dik it-hsara fuq il-konvenut, if mid-Dipartiment minnu dirett kienet "mpressed" dik it-truck misjuqa minn Aquilina. billi jppretend: li l-konvenut kella l-azu u l-kustodja łat-truck, u 1 -tsara grat waqt li 1 -konvenut kien qeghed jaghmel dak $1-u z y_{n} u$ in konsegwenza ta' dak l-uzu, u l-incident ma kienx inev tabili, imma sar minhabba l-imperizja y l-impradenza fis-sewqan ta' Aquilina, persuna inksrikata bhala driver mill-konvenut. Dan jissottometti illi iincíident gara b'kawía fortuwita, u ghalhekk chid li ma huwiex responsabili ta' ebda $\ddagger$ isara lejn i-attior;

Ill: l-ewwel perizia inidizzjarja ezonerat minn kull responsabilita lill-konvenut, bill: rriteniet li l-konvenut irnexxielu jipprova li dak li gara ma kenn bt ja tieghu, imma kien pjuthost l-effett ta' forza maǵğuri.u rrezistibili li ghaliha ma ghandux jirrispondi. Il-perizja indizzjarja addizzjonali, ghallkunfrarju. waslet ghal? -konkluzjoni li l-konvenut huwa responsabili ghall-hsara li giet kagunata fit-turk ta' l-attur;

Ill: ma hemmx bzomn jinghad li ladarba r-truck kien "impressed" mal-konvenut, dan kien obligat li matul daf l"impressment" juża listess truck bhala "bonus pater familins", u li meta j'spic̀ca l-"impressment" jikkonsenja lill-attrar dak t-truck fi stat ordinarju tajjeb; b'mod li huwa jrun responsabili ta' kull hsara li tigri fit-trock waqt dak l-"impressnent' ${ }^{\prime}$, sakemm dik il-hsara thun saret bi hitija tieghu. [: f'dan i.-ka\% il-konvennt qearhed appuntu jallega li effettivament il-hsara lamentata mill-attur saret waqt 1 -"impressment': u nommalment huwa responsabili ghaliha; fi'-kaz in ispeije huwa ma ghanduy dina r-responsabilita, ghaliex dak li ga"a ken dovet ghal forza maqugni, a "casus sentit dominus.';

Illi, kif tajjeb gie sotiomess mill-perizja addizzjonali, howa l-konvenut $1:$ ghandu jipprova 1-eżistenza tal-forza magé guri minno allegata. Huwa, li ghandu jirrestitw xxi till-attur it-truck ordinarjament fl-istess stat ta meta hadu minn ghandu, qieghed issia jrestitwihulu b'thsara, u quegted jallega li ma gtandux jaghmel tajeb gital dik il-hsara ghaliex ma gratx bi htija tiegto. Huphalhelk kompita tal-konvenut li jpprova dak l: qiegtied jallega - "onus probandi neumbit e: qui dicit". L-atur ma ghandux jipprova hilief li huwa ma tax lil-konvent it-truck bil-teara li kien fiha meta taha 1 konvenut, uthathekk huwa dan li. bex jehles mir-responsabilita ghal dik il-fisara, irid dipprova li l-stess hsara ma gratx bi htija tiegћu, imma grat, kif jippretendi, b'forza maggégri b'mod li ghandu jsofriha l-istess attur;

Dan il-principju jimmil ta b'forza akbar f'dan il-kad, meta l-konvenut qeghed jal'eqa li l-incident li ta lok ghal dik ilhsara kien. kif sejjer j"nghad, "skid"; ghaliex "skids are likely to oceur at any time in a wet road........... The Courts " $n$ such cases tended to throw on the driver the onus of explaining the accident, and in the absence of such explanation, or in the case of an unsatisfactory explanation. the tendency is to holl him responsible' (Terrel, The Law of Rumningdown Cases, page 7) ;

Illi l-konvenut jallega 'illi l-kawzáa ta' l-inćident kienef $\mathrm{d} k \mathrm{k} \mathrm{ta}^{\prime}$ 'skid". Dna mhịiex wehedha raguni ghaliex il-konvenut ofhandu jig̈: eżonerat minn kull htija - "a defence of
skidding.............. is usually a ground of argument, rather than a defence of much reliability' (Bingham, Motor Chims
 of sutisiactory explanat on, the tendency is to hold him (id(lriver) responsibe' ('lerrel, loe. eit.). Gれalkemm fil-kaz Wing vs. L.G.O.C." ( $1909-2 \mathrm{~K} . \mathrm{B}$. 65̌2 Vaughan Williams a Fleteher Monlton J.J.) irritenew illi "un accident resulting from the tendency of motor omuibuses, however well constacted and des gned, to shid its no widence of negligence" ('lerrei, loc. èit, p. 12), b'dan kollu Fletcher Moulton J. osserva ili "exceptional cuses may occur in which the peculiar nature of the accident may throw light upon the question on whom the responsibility lies..............". ('Terrel, $p$. 13) ; a bekk jdher illi li "skid" btala tali ma jeskludix res. ponsabiltajiet, imma hemm bzonn li jigi ezammat jekk l-istess 'shid"' f'kuil kact in partikuar' kienx dowat ghall-btija til' si hadd. kif uboll jekh setax jigi evitat jew almenu korrett:

F'dan fr-rigward oservat tajeb l-ewnel perizja li lor:ginata' li "skids" huma diversi, u bhal ma jistgha jkunu accidentali, jesteriu wholl kumu provokati mill-mod kif wiehed isur, blii d-driver ma jkunx tha l-prekawzjon:jiet necessarji li eceinktstanzi eccezajonal: Li jkun jinsab fihom ikunu jinikjedu. Hekk dk il-perizja enumerat il-hawzi sogigettivi, dawk jigferi kugunat: num min $\mathrm{k} \mathrm{m}_{\mathrm{n}} \mathrm{isuq}$, kif uholl il-kawzi oggettivi. jew dawk li jiddejendu mill-kondizcionijiet specjali tattig;

Illi lewwel pel'zja eżonerat mion ku'i htija lid-driver tat-1rack fug imsemmi fug il-kons derazajonijiet hemm indilsat jigifier whaliex mi dehr lhiex li kienu jirrikomu f'dat d-driver id-kaw zi soggettivi li ghalihom huwa seta' jkun trlut whal dik l: "shid". li suret, skond L-istess perizjs, minFabba kawzi orgettivi biss; thaliex ssottomettiet li kellha prov: lithtuk kien isuq tuq is-side teghu, if speed kien moderat hafna, a miexi bil-makna "geaped down". Il-perizji aldizzjonali waslet ghall-konkluźjoni kuntrarja ghar-kaguıi (1) $k$ ma jdherx li r-truck kien miex: b'l-mod, ghax f'dan it-kaz. li "rkid" seta" jigi kotrett u t-truch ma kienx jaghez


Luga 1: tikkostitwinxi elemeut kolpuž. Il-konkluzjoni tal-periti perizjort linsab imfissra filt klicm mix-xhieda taghhom stess mogitija fis-16 ta Novembru 19ã1, meta qalu "ahna t-ttieta wasalna ghall-konklużjoni..............."' GFalhekk irraguni priné pali li wass'et it-tien: perizja ghall-konklużjom tugthan lija li, billi t-truck waqa' frraba' m'nn fuq it-triq, probabilment - "atna tisibna" - li t-truck kien miex: bi speed quwwi ;
llli billi t-truck qabez cint tia' ghaxar pulzeri gholi, ma jfisserx bilfors, u f'nuqqas ta' èrkustanz: otra, li min kieu istqu kien fi fitija. "A skids sufficient explanation to negative the surgestion of want of care in the use of a car mounting the pavement" ( Bingham, lor. ét., p. 120) . Fi!ka亡 " Hinton 's. Gilchriot' I-motor tal-konvenut skiddja "very badly" si 34 jarda minn fejn sar l-inédent, tela' l-bankina, o wara li dam dar hafua wagaf biss ghaliex gie miżmum mim bieb ta hanat, feju kien hemm tifel ta' l-attur If baqa' mejjet. Wara li l-konvenut gie misjub hati millJury, i-County Court irr tenict 'that the evidence negatived all suggestion of negligence on the part of defendant, and d'smissed the claim' (Terrel, loc, eit., p. 10), billi gie os servat "that there was abundant evidence that the road was in a greasy condition, likely to be conducive to a skid. There was no evidence of excessive speed, and the driver had not a chance to do anythring'. Fit-każ in ezami j rrizulta millprovi I t-truck ken mexi bilmod, wisq anqas minu dak ii jippermettu r-regooment ghal dak il-post, u moderat tiafna ghace-cirkustanzi ta' l-istat tat-triq, u miexi bil-makna 'geared down" - cirkustanzi dawn revat : kollha mill-ewwel perizju. Il-per ti addzzjonali ma qughdux fuq il-provi, imma fagtudu biss fuq deduzzjonijiet, bill meta raw st-truck waqa' fir-rabá - whax ićcint cella, u mhox ghax it-truck qabez jë-cïnt - huma hasbu 1: t.truck kien mexi bi speed eceess'v ghace-cinkistanzi li kien tinsal fihom. Issa f'każi simili, bex tingal htija fid-driver, "there mest be reasonable evidence of ney'igence" (Terrel, loc. cit., p. 14); u provi ta' negligenza fid-driver Aquilina ma rriżultawx; mhux biss; anz: milleprovi mizulta li huwa ma seta' jaghmel xeju bex ma jtallix l-incident jidri. Hu. veru if t-tyres tat-truck jidher li
kienu itt lixxi, imma ficecirkustanze tal-kaz........... tha fidhers li dina e-cirknstanza kenet il-kawza diretta, jew a.méo nu kournibuturja ghal dak li gara............... Ghathetk j dher ukol li ghandhom jigu adattat: l-konkluzjonijet ta l-ewwel perizju, bazata fug ifprovi, b: prevenza ghal dawk tal-perizia addizzjonali, bazat fay suppozizzjonijet u latti li ma
 jtallas "hampens" btiaha "ex giatia payment" lll-utcor ma tfisserx li huwa assuna xi responsablita. Ahuenu ua ngjebet mill-athur ebolar prowa beex tilkorrobora din 1 -allegazzoni teghu;
lat in-nota ta* l-appell ta' -attur tal-15 a" Jamar 195as;
Rat il-peizajoni tiegtu ij bla appella mid-alecizjoni fuy fmsemmija u talab ir-revoka taghad of hakoijiment tat-haibec tieghan; bl-ispejjé;

Omissis;
Ikktonsideat;
11-konvemot nomme rwoldri A-Gern, jista jkun responsubil: biss jekk mil.-part tieghu kien hemm "culpa in eligendo', jew nkella jelk, fil-kors taz-zimien hif fotruck "n kwistjoni kiı"" "impressed" mal-Gvern, huwa ghamel uża tat-tuck ank: permeaz ta' impjegati ieghnt if ma kienx dak li ghamdu jaghmel it-"bonus pater familias";

Il-fatt li l-koment, cabé. dawn ilproceduri, offa somma lill-attior ma jfisser sejn; ghales skond it-lien artikola


 kemm-il datba mathus pruvat it dak $\begin{aligned} & \text {-att kien gej mall- }\end{aligned}$ Giperu innifna, a la dik il-persuna kellha amtorizzazzoni bimiktub mill Givern quat dak t-att. E dan ma giex provat appart l-konsiderazjoni hi thas smill huwn dak li jissejath "ex fat a paybacti". bla mprikizajonibiet legali ta responsabilitil;
"Cuipa in eligendo" ma kinn hemm, ghax jirrizulta b J-dricer tat-talk kien persuma debitament hienzjata:
 dem: rat-track b inod li l-uzu tephe maj baga skond id-diligemea upuduca ordhama tal-"homus pater tamblan";

In komessjoni ma' dan il-pont, flemgumenti tal-partijiet issemmew żewig crkustunzi ii ghar-r:gwurd tagthom jehtieg li jkun kjarit l-aspett guridiku, ćjoé ci-cirkustanzi ta' lí "sk d" u. Hotra tal-kondizzjon: tat-tyres;

Kwantu ghal li "skid", dia per sé hija érirkustinaza newura, ghaliex tista' thun leffett tu' negligenza precedenti, jew negligenza ta' "third party", jew dovata ghal aceident inevitabili;

L-aspett gurilliku hu korrettament espress minu Charlesworth fil-ktieb "The Law of Negligence", 1947 edit., page so, fejn rghid hekk:- "The skid itself is a neutral circumstance, helping neither party, It is no defence to the driver to prove that h's vehicle skidded, and equally it is no eviden:e of negligent driving on his part. The fact of a skid may suggest that the driver was driving too fast or applied his brakes too suddenly having regard to the road conditions prevailige at the time, so as to be evidence of negligence on his part; bur the skid may be consistent with the exercise by the driver of all due caution, and may be due either to the negligence of a third party or to inevitable accident";

Kwantu ghall-kondizzjoni tat-tyres, din tfisser biss li, meta- dawn jibdew is ru dagsxejn lixxi, allura d-driver; fost il-kawteli li jichu meta jkun qed isuq fuq art imxarrba jew umidla, gtandu jqs nkoll ir-riskju akbar ta' "skidding' meta t-tyres ikunu l'dik il-kondizzjont; imma jeEh id-driver ikun tha i-kawteli kollha, u ma jkunx ikkommetta elda imprudenza fis-bewgan, li "sbid" tista' tkun ukoll aćcidentali, bit. tyes lima b'kollox ;

Ikkunsidrat.;
Huwa yert i: 1 -proya ta' l-"inevitable accident" tmiss La min jallega dan il-mezz defensjonali; imma huwa wkoll eru li meta ma tostabx, méceirkastanzi emersi, ebda fitija iad-driver. a ma jbunx hemm id-Itija ta' hadd iefor ("third party"), allua jigi tabilfors l: dak li giara kien "inevitable acc dent";

Dan hu appuntu l-kiz. Id-driver tat-truck, hif juru 1 provi, kien qed isuq bil-mod, fug gear baxx, b'mod li kien hemm "engine brake"; ma jirčzultax li kolpożament gieghed ruta f'poźizajoni li bellu jilwi f'salt jew japplika l-

Drakes I'silt $\rightarrow$ manurri li kienu jipprovohaw li "skid" b: hajib tiegha; ghamel kojux li kien umanament possibili biex I "shid" matigrix. L-unda manavia li forsi sefghet levita i "skid" (ili Ejue jikser bil-mod ilmod rhal nols it-trí $)$ mar kienetx possbili, ghaliex proprju dak l-muntmt, middisezajoni opposta, kitnet tiela karrozza uhra. Bli "skiddyg" t-tnuck resqet iejn l-arön; tat-biq, $u$ dan i-argin! ceda, u t-truck inqalbet ghal slel;

L-attur ma jistas jeetur ebolu argunent fil-baz in ispecije, mill-hondizzjon: tat-yres. Le-ewwehnett, kif ga ughad, ilkundizajon: taghhom kienet tez gi prudenza, " din il-prudeuza friet adoperata. It-ticni, meta t-truck telaq mid-Depor,
 kien Darzu, meta s-xita mormahnent ma hx prevedibil. Ittirlet, anki kieku kiener xita, jew kienet prevedibili, buwa wsurd li widetl jppecend; li fi granet tux-sita l-vejikoli ma ethundhomx jicintiolan mana ehanchom jugetiodu gewna -1-unikir hagia, li fhandhom jigu misjuqa bil-pradenza. Dan kien abtar rewn H-19+4 (i-epoka in kwistion), meta wiehed ma tantx setis jkuti puatkului ghat-tyes, if kiena ferm sharsi. Ir-raba, ehall-manutemzoni mat-car kien respousabili -attur, shond it-"terms" ta" 1 "'impressment" ;

It-Qoti ghalhelit iss.h if l-kaغ gara minhabla "inevitable awident" ;

Ghal dawn h-morivi, u ghal dawk ta h-Jwhel qorti:
Tiddecidi
B'lli tirreping: t-appeli 4 tikhontema s-sontenza appellata, fi'-meritu a filkap ta' l-ispejjéz;
 pellant.

