14 ta' Frar, 1958. Emhalifin:—

S-S.T.O. Prof. Dr. Al. J. Mamo, O.B.E., Q.C., B.A., LL.D., President;

Onor. Dr. A. J. Montanaro Gauci, C.B.E., K.M., LL.D.; Onor. Dr. W. Harding, K.M., B.Litt., LL.D.

Anthony Said

versus

Joseph Fountain

Taffiku — Danni — "Pedestrian" — Negligenza — Prova — "Res Ibsa Loquitur" — "Last Opportunity".

- Huwe veru li l-Ntija ghandha tigi pruvata; itda jinghataw kazi fejn U-fatti dannuži juru l-impronta tal-htija; d'mod li min ikun ipprova dawn U-fatti ghandu jiftiehem li pprova anki l-htija, u allura jkun dmir ta' min ikun kagun ta' dawk (l-fatti li fipprova li hu ma kellux htija filli gara. Din hija t-teorija tar-"Res Ipsa Loquitur".
- "materja ta' danni kağunati f'incident tat-traffiku, xejn ma jiswa, biex jezenta minn kull responsabilità lill-awtur tad-danni, il-fatt li l-attur li jfittex id-danni kien kontravventur meta ĝie nvestit minn karrozza, u li l-kontravvenutur ma jimmeritahx 'il-protezzjoni tal-liĝi; ghaliex hu principju ormaj pacif ku fill-liĝi li min ikun gleghed isug karrozza ghandu juża l-mezzi kollha biex fiĝu evitati l-konsegwenzi tan-nuggas ta' hadd iehor; u jekk ma južax dawn U-mezzi, huwa fkun legalment responsabbli avvolja hu jkun gleghed josserva rigorožament ir-regolamenti.
- L-enunzjazzjoni ģenerali tal-principju tar-"Res Ipsa Loquitur"
 ma toffrix diffikultā; ižda ma hux fačli li fiģu senjati l-veri
 limiti ta' din id-dottrina. U jekk fil-kaž partikulari ma
 jkunx hemm "prima facie" cirkustanzi sufficjenti biex
 wiehed jista' japplika din id-dottrina, ma jistghax finghad
 "sic et simpliciter" li t-talba tal-attur ghad-danni tirnexxi
 biss ghax il-konvenut ma ghamel ebda prova li tiskağunah;
 u allura l-p'z tal-prova fibqa' fuq l-attur, fis-sens illi hu
 ghandu fipprova li kien hemm htija da parti tal-konvenut.
- Mhix negligenza, "per se", li wihed fimxi fuq il-karregifata biex jaqsam it-trieq; imma min jaqsam ghandu fusa grad akbar

ta' prudenza minn min ikun fuq il-bankina. Imma anki iekk l-attur danneggjat kien inizjalment negligenti, il-konvenut danneggjant jibqa' responsabbli b's-sahha tat-teorija tal-"Last Opportunity", ta' spiss applikata mill-Qrati Taghna, jekk hu seta' jevita l-investiment tal-attur.

Il-Qorti; Rat iċ-ċitazzjoni quddiem il-Prim'Awla tal-Qorti Civili tal-Maestà Taghha r-Reģina, li biha l-attur, wara li jinghataw id-dikjarazzjonijiet u l-provvedimenti koliha mehtiega, u wara li ppremetta li fiż-17 ta' Novembru 1952, fit-8.30 p.m., il-konvenut, minhabba mperizja, negligenza, u inosservanza tar-regolamenti tas-sewqan, laqghat bil-karrozza lill-attur u kkagunalu lezjoni f'rasu u fi bnadi ohra tal-persuna; u li l-attur bhala konsegwenza ta' dan l-inċident sofra danni diversi; talab (1) li l-konvenut ikun dikjarat responsabbli tad-danni riportati mill-attur bhala konsegwenza tal-imsemmi inċident; (2) u li l-konvenut ikun kundannat ihallas lill-attur, in linea ta' danni, dak l-ammont li jiĝi likwidat minn din il-Qorti per mezz ta' perit. Bl-ispejjeż kontra l-konvenut;

Omissis:

Rat is-sentenza ta' dik il-Qorti tal-14 ta' Gunju 1957, li biha laqghet l-ewwel talba tal-attur, bl-ispejjež kontra l-konvenut; u ordnat li l-pročess jigi rinvijat lill-perit gudizzjarju biex, fuq l-iskorta ta' din id-dečižjoni, ikompli fl-inkariku tieghu in konnessjoni mat-tieni talba tal-attur, bl-istess fakoltajiet u doveri ga spečifikati fid-digriet originali; wara li kkunsidrat;

Illi l-perit gudizzjarju, fl-imsemmija relazzjoni tieghu, ikkonkluda illi l-konvenut ma ghandux jinżamm responsabbli tal-incident imsemmi fic-citazzjoni, u illi huwa langas ma kkollabora fih bl-ebda mod, jew illi seta' u nagas milli jevitah;

Illi l-attur, fin-nota tieghu fol. 58, ikkontesta l-konklużjoni peritali u sostna li hemm provi biżżejjed, minnu elenkati, biex jaccertaw ir-responsabilità tal-konvenut, kuntrarjament ghal dak li ssottometta l-perit gudizzjarju, li čjoè l-attur, li fuqu jirpoža l-oneri tal-prova, ma ģiebz provi bižžejjed univoči biez jirradika fil-konvenut ir-responsabilità ta' dak li ģara;

Illi huwa veru li l-htija ghandha tiģi pruvata, iżda jinghataw każi fejn il-fatti dannuži juru l-impronta tal-htija. B'mod li min ikun ipprova dawk il-fatti ghandu jiftiehem li pprova anki l-htija; u allura jkun dmir ta' min ikun kağun ta' dawk il-fatti li jipprova li huwa ma kellux htija filli ġara. A propožitu, kif jinnota maģistralment Giorgi:— "Vi sono taluni fatti dannosi che non si sa se sieno l'effetto d'umana malizia, negligenza o imperizia, o se siano effetto di fortuito..... Or bene, in questi casi la colpa deve essere provata direttamente. Vi sono, per contrario, altri fatti dannosi che portano l'importa della colpa, perchè le nove volte su dieci dipendono appunto dall'umana malizia o imperizia. E' quindi manifesto che in tali casi può bastare la prova del danno perchè la colpa ne emerga come naturale presunzione, e debba l'autore del danno assumere la prova del fortuito, se voglia liberarsi" (Obbligaz. Vol. V, 157). F'dan is-sens, ukoll, hija l-gurisprudenza taghna (Kollez. XXIV-I-893);

Illi mill-parti tieghu l-attur ģieb il-prova li hu ģie milqut mill-konvenut bil-karrozza tieghu fil-waqt li t-trieq kienet imdawwia, almenu minn bozza elettrika li kienet turi bizžejjed biex il-konvenut jara lill-attur. Dina l-prova ma ģietx bl-ebda mod kontestata jew indebbolita mill-konvevenut; u del resto, dan ma setghax ikun, (1) ghaliex ix-xhud Don Carmelo Portelli, kif sama l-hoss, ittawwal mill-gallarija fin-naha opposta, u bid-dawl ta' dik il-bozza ra persuna fl-art, li mbaghad sar jaf li kien l-attur, u (2) ghaliex, skond ma xehed l-istess konvenut, it-tifia tieghu harset minn wara u qaltlu li kien hemm raģel fl-art. Minn hawn jidher illi l-konvenut kien messu ra lill-attur, mentri hu jghid li lanqas rah. Id-daqqa fuq il-karrozza avvertita mill-konvenut kienet fil-ģenb tal-bonnet, bejn in-naha tieghu u l-pilastru tal-"windscreen", u aktar fil-vičin minn daqshekk ma setghax ikun. Di pjū, ma jirrižultax illi l-vižwa'i tat-trieq kienet impedita mit-traffiku jew haģa

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ohra; anzi, kif jghid hu stess, il-fanali kienu ga fuq il-"bright";

Illi ghaldaqstant ic-cirkustanzi fuq migʻjuba, fihom infushom, juru li l-konvenut kien fi htija, u dmir tieghu, ghalhekk, li jgʻib il-provi mehtiega biex jehles minn dik ilhtija u jipprova li kollox kien dovut ghal kawža estranea ghall-operat tieghu, jigʻifieri ghall-fatt ta' hadd iehor imprevedibbli u inevitabbli. Dawn il-provi, in vista tar-riljevi ga fuq maghmula, il-konvenut ma gʻiebhomx; u konsegwentement huwa ghandu jirrispondi tal-hsara li sofra l-attur;

Illi xejn ma jiswa li, kif accenna l-perit, kien l-attur li dahal fil-karrozza tal-konvenut, u li kwindi, bhala kontravventur, ma jimmeritahx il-protezzjoni tal-ligi; ghaliex hu principju ormaj pacifiku fill-ligi taghna, illi min ikun qieghed isuq karrozza ghandu juza dawk il-mezzi koliha biex jigu evitati l-konsegwenzi tan-nuqqas ta' hadd iehor; u jekk ma juzahomx, ikun legalment responsabbli; u dan anki jekk huwa jkun qieghed josserva rigorozament ir-regolamenti. Difatti, kif irriteniet tal-Qorti tal-Appell fil-kawia "Bernardo Zammit vs. Reverendo Don Edgardo Salomone", deciza fit-2 ta' Frar 1928, "il regolamento non ha per ispirto di permettere a chi pur si attenesse alle sue varie disposizioni di cagionare impunemente danni ad altri, non ostante che questi fossero in contravvenzione, quando tali danni si potessero da costui prevenire ed impedire" (Kollez. XXVII-I-988). Ara, fis-sens fuq imsemmi, Kollez. XXIX-IV-740; XXX-IV-616, 625. Kieku ma kienx hekk, l-ghama, it-trux jew difettuzi ohra, jistghu jigu mpunement offizi, jew anki maqtula, fil-każ li huma, bhal eżempju, ikunu qeghedin wehedhom jaqsmu t-trieq bit-traffiku, minghajr l-obligu f'min ikun isuq b'mod regolamentari li jevita d-disgrazzja — haġa din, bla dubju, kuntrarja ghall-principji guridici u umanitarji;

Illi ghalhekk mhix aččettabbli, biex težonera l-konvenut, l-ispjegazzjoni moghtija mill-perit ģudizzjarju, illi l-attur ģie abbaljat ghal ftit žmien mid-dawl tal-karrozza l-ohra, u li l-vista tieghu ģiet mhux biss appannata, imma kančellata ghal kollox. Jekk anki kienet vera dina l-ipotesi, jibqa' dejjem illi l-konvenut, almenu bid-dawl tat-trieq,

seta' jara lill-attur riesaq lejh u juža l-mezzi mehtiega biex jevitah. Ghalhekk jibqa' dejjem inspjegabbli kif il-konvenut ma rax lill-attur, ammenokkè ma jinghadx, skond kif žvolgew ruhhom iċ-ċirkustanzi, li huwa jew kien distratt, jew kien qieghed ihares band'ohra; iżda f'dan il-każ kien dejjem fi htija, u ghalhekk responsabbli talli gara;

Rat fol. 66 in-nota tal-appell tal-konvenut, u fol. 67 il-petizzjoni tieghu, li biha talab li s-sentenza fuq imsemmija tigi revokata u li l-istanza tigi respinta; bl-ispejjeż taż-żewġ istanzi:

Omissis:

Ikkunsidrat:

Il-fatti li minnhom origina dan il-process, brevement, kienu dawn. Fiż-17 ta' Novembru 1952, ghall-habta tattmienja u nofs ta' fil-ghaxija, l-attur kien hiereg mit-Trieq tal-Pitkali, il-Marsa, ghat-trieq principali, cjoè Cross Road, sabiex jaqsam in-naha l-ohra. Hu qasam bil-pass, u x'hin kien boghod certa distanza mill-bankina tan-naha tal-gnien, li ghaliha kien dirett, gie nvestit mill-karrozza misjuqa mill-konvenut, u korra. Il-konvenut kien qieghed isuq niezel lejn il-Marsa minn Blata l-Bajda. Ma jistax jinghad b'certezza kemm kien boghod l-attur mill-bankina li ghaliha kien dirett. Ix-xhud Don Carmelo Portelli jghid li l-attur kien stendut fl-art xi minn sebgha sa disgha passi l-boghod mit-tarf tal-bankina; il-konvenut jghid li x'hin nizel mill-karrozza sab lill-attur "f'nofs it-trieq ezatt"; imma ma tantx jista' wiehed jasal ghal konkluzjoni sikura dwar daqshekk; ghax milli jidher, l-attur gie traxxinat bicca trieq bil-karrozza. Infatti, mentri x-xhud fuq imsemmi ighid li bejn l-attur stendut fl-art u l-karrozza wieqfa tal-konvenut kien hemm tliet piedi, il-konvenut jghid li, wara d-daqqa li hass fuq il-karrozza, hu mexa xi 25 pied qabel ma waqaf; ghalhekk bilfors il-karrozza ttraxxinat lill-attur qabel ma dan waqa' stendut fl-art; ghax inkella d-distanza bejn il-karrozza wieqfa u l-attur kienet tkun ta' 25 pied. Però, din ic-cirkustanza ma tantx hi ta' riljev; ghax fatt hu li l-attur kien oltrepassa dik iz-zona tat-trieq

mnejn kienu ģejjin il-vetturi mill-Marsa ghall-Blata l-Bajda, u kien beda jimxi fuq iz-zona tat-trafiku li ģej lejn il-Marsa mill-Blata l-Bajda u kien jimxi fuq iz-zona tat-trafiku li ģej; u del resto, il-konvenut ma jinnegax li kienet tieghu l-karrozza li laqtghet lill-attur;

Fid-dibattitu, stante li l-perit relatur adoperat mill-Ewwel Qorti xehet il-piž tal-prova fuq l-attur, mentri l-Ewwel Qorti xehtitu fuq il-konvenut, fis-sens li, pruvat ilfatt tal-investiment, il-konvenut ghandu l-piž li jaghmel ilprova liberatorja, gie argumentat dan il-pont;

F'din ix-xorta ta' kawżi hemm l-hekk imsejha dottrina tar-"res ipsa loquitur". Jghid id-Davies, The Law of Road Traffic, p. 199:— "In an action for negligence, the burden of proof rests upon the plaintiff, and therefore, if he is to succeed in his claim, he must usually establish that what the defendant has done, or failed to do, would not have been done or omitted by a reasonable man exercising ordinary prudence. In this task, a plaintiff is sometimes assisted by the operation of the maxim "res ipsa loqutur". In other words, if an accident happens which would not ordinarily happen if proper care is used, then the mere occurrence of the accident is 'prima facie' evidence of negligence, provided the defendant, or his servants, have sole control of the thing by which the accident is caused. In such circumstances, the facts speak for themselves, if no explanation is given by defendant......";

L-istess il-Bibb-Collisions on Land, p. 16, taht l-intestatura "Res Ipsa Loquitur":— "Where a vehicle is shown to be under the management of the defendant or his servants, and an accident occurs such as in the ordinary course of things does not happen if those who have the management use proper care, the onus, exceptionally, rests on the defendant to disprove that the accident arose from want of care":

L-enuncjazzjoni ģenerika tal-principju ma toffrix diffikultà; ižda ma hux facili li jigu senjati l-veri limiti taddottrina tar-"res ipsa loquitur". Jghid it-Terrell, The Law of Running Down Cases, p. 6:— "It may be mentioned that there has been much conflict of judicial opinion as to the exact limits within which this principle may be applied";

Fil-Qorti tal-Iskozja, milli jidher, l-applikazzjoni kienet aktar estiża milli fil-Qrati Ingliżi. Difatti, skond il-Qrati tal-Iskozja, każijiet bhal dawn li gejjin gew kunsidrati bhala tali li ghalihom tapplika dik id-dottrina;

"A man walking in the street was overtaken and knocked down by a vehicle. It was held that in such a state of the facts, the driver was 'prima facie' negligent";

"A tramcar at night collided with a man who was driving two cows on the road. The pursuer could give no evidence as to how the accident happened; but it was held that the judge trying the case might properly infer that the accident was due to a faulty look-out by the tramcar" (ara pp. 17-18, Gibb, loc. cit.);

Fuq l-istregwa ta' dawn iż-żewg każijiet, il-każ preżenti kien jadatta ruhu ghal biex tigi nvokata favur l-attur
li-dottrina fuq imsemmija. Mhux hekk però fid-deciżjonijiet tal-Qrati Ingliżi. Infatti, f'deciżjoni citata fit-Terrell
(ihidem, p. 4), Chief Justice Erle qal:— "It is as much the
duty of foot passengers attempting to cross a street or
road to look out for passing vehicles as it is the duty of
drivers to see that they do not run over foot passengers.
Where it is a perfectly even balance upon the evidence
whether the injury complained of has resulted from the
want of proper care on the one side or the other, the party
who founds his claim upon the imputation of negligence
fails to establish his claim.....";

Milli jidher (ara pag. 19 Gibb, Loc. cit), jehtieg li ikun hemm xi xintilla ta' prova ta' negligenza mill-parti tal-konvenut, tali li "it calls for an explanation by the defendant". Hekk, per ezempju, kieku l-"pedestrian" jigi milqut mhux waqt li qieghed fuq il-karreggjata, imma waqt li qieghed "fuq il-bankina" (ara Davies, loc. cit., pag. 200).

fejn mhux suppost li jitilghu l-vetturi. Jghid a propozitu l-Wilkinson, Road Traffic Prosecutions, p. 53:— "There must be some evidence of careless driving, and the doctrine of "res ipsa loquitur" does not apply on its own to prove the case";

Kien ghalhekk li Lord Justice Fletcher-Moulton qal, f'decizjoni tieghu msemmija fit-Terrel, loc. cit., p. 17 (ghalkemm kritikata):— "Every vehicle has to adapt its own behaviour to the behaviour of other persons using the road, and over their actions those in charge of the vehicle have no control. Hence the fact that an accident has happened either to or through a particular vehicle is by itself no evidence that the fault, if any, which led to it was committed by those in charge of the vehicle";

Mhux dissimili tidher il-pozizzjoni fis-sistema legali taljan. Fl-opera tal-Jannitti Peromallo — "Commento alle Leggi sulla Tutela delle Strade e sulla Circolazione" — hemm dan il-komment:— "E' nulla per assoluta mancanza di motivazione la sentenza che, come nella specie in tema di lesioni colpose per investimento automobilistico, afferma la penale responsabilità dell'imputato in base al semplice rilievo che costui ebbe ad investire Tizio con la propria macchina determinandone la caduta e le conseguenti lesioni. In tal caso, invero, sarebbe occorso stabilire in che la condotta volontaria dell'imputato abbia trasgredito a norme regolamentari o a dettami di prudenza, o sia venuta meno a deverosa diligenza, o abbia peccato d'imperizia professionale costituendolo in colpa, e sarebbe altresì occorso d'mostrare che tale volontaria condotta sia stata la causa efficiente dell'effetto deplorato";

Ma jidherx li fil-każ preżenti hemm "prima facie" cirkustanzi sufficjenti biex wiehed jista' japolika d-dottrina fuq imsemmija u jghid "sic et simpliciter" li t-talba talattur tirnexxi biss ghax il-konvenut ma ghamel ebda prova li tiskagunah;

Ghalhekk, din il-Qorti ghandha tara jekk bil-provi li saru, komprizi dawk "ex parte adversa", l-attur irnexxielux

jissodisfa l-piż tal-prova li tinkombi lilu, li čjoè kien hemm negligenza da parti tal-konvenut;

Ghandu jiği rilevat, kwantu ghall-attur, li mhijiex negliğenza per sè li wiehed jimxi fuq il-karreğğjata biex jaqsam. Jghīd il-Gibb, "Trial of Motor Car Accident Cases", sec. 147:— "It is not negligence 'per sè' to walk on any part of the road". S'intendi, min jaqsam ghandu juža grad akbar ta' prudenza milli min ikun fuq il-bankina. Jghīd dan l-awtur (ibidem, sec. 146):— "Greater caution is required of one walking along a road than is required of one using a foot path, where motor vehicles are not expected";

L-attur xehed li hu ma rax il-karrozza tal-konvenut;

Il-konvenut xehed li nduna b'dak li gara biss meta hass id-daqqa mal-karrozza u t-tifla qaltlu li kien hemm ragel fl-art;

Issa, dato anki li kien hemm negligenza inizjali da parti tal-attur, li ma rax il-karrozza tal-konvenut, tibqa' dejjem il-kwistjoni hekk formulata mil-Gibb — "Trial of Motor Car Accident Cases" — sec. 154:— "In this case, as in all others where a suggestion of contributory negligence can be made, the question must be whether a vehicle, despite an initial imprudence on the plaintiff's part, could by exercising proper care have avoided the accident". U dan appuntu in bazi ghat-teorija tal-"Last Opportunity", ta' spiss applikata minn dawn il-Qrati;

Din il-Qorti, wara li qieset tajjeb iĉ-ĉirkustanzi talkaž, hi ta' fehma li l-konvenut seta' evita l-investiment talattur, anki jekk wiehed kellu jghid li dan seta' ra l-karrozza tal-attur. Infatti:—

- 1. Il-konvenut jghid li hu kien qieghed isuq bil-mod "żgur", hu qal, "mhux aktar minn 15 il-mil fis-siegha";
 - 2. Qabel l-investiment, u preżumibilment fil-waqt tal-

investiment, il-konvenut, "ex confessis", kellu d-dawl fu il-"bright";

- 3. Fejn sar l-incident hemm bozza mal-hajt tad-dar tax-xhud Don Carmelo Portelli; difatti dan ra mill-gallarija tieghu lill-attur stendut fl-art bid-dawl ta' dik il-bozza;
- 4. It-trieq fejn sar dan il-fatt hi wiesgha. Jghid il-Gibb, loc. čit., sec. 148:— "It may be said that the wider the roadway the greater is the likelihood that the defendant was negligent in striking the plaintiff walking thereon, because when the road is wide, the car has every opportunity to pass the pedestrian in safety, whereas if the road is narrow, it may in certain cases be reasonable for the pedestrian to step off the crown of the road to allow the car to pass";
- 5. L-attur ma niżelx inaspettatament mill-bankina, u ma giex "instanter" fir-rotta tal-karrozza b'mod li kkrea emergenza ghall-konvenut. Hu kien gej bil-pass jaqsam, u kien żgur oltrepassa n-nofs tat-trieq. Il-konvenut kellu l-opportunità jarah. Jghid l-attur fuq citat:— "If the plaintiff was struck immediately after he stepped off the kerb on the roadway, the position is the same as in the case of his attempting to cross a street; the Court may refuse to believe that he looked and failed to see the car. If, however, the plaintiff walked quite a distance before he was struck, it is less likely that the accident was unavoidable on the part of the motorist";
- 6. Ma kienx hemm "oncoming traffic", li seta' ngombra l-viżwali tal-konvenut; ghax hu stess isemmi karrozza wahda sejra lejn il-Belt dak il-hin, u din kienet ġa ghaddiet sewwa, ċjoè ghal kollox, meta sar l-inċident;

Fl-opinjoni tal-Qorti, dawn iċ-ċirkustanzi kollha flimkien jikkostitwixxu prova suffiċjenti ta' negliġenza fis-sewqan da parti tal-konvenut; ghaliex juru li hu ma kienx qieghed iżomm dik li tissejjah "a proper look-out". Kieku kien attent, kif kellu jkun, kien jista' jara, bid-dawl tat-trieq u tal-fanali tal-karrozza tieghu, lill-attur fit-trieq wiesgha, ģej jagsam bil-pass, ladarba kellu l-vizwali libera, u li speed tieghti kien tali li seta' facilment jevita l-investiment;

Ghal dawn il-motivi:

Tiddečidi;

Billi tirrespingi l-appell, u fis-sens premess tikkonferma s-sentenza appellata; bl-ispejjeż kontra l-konvenut;

Tordna r-rinviju tal-pročess lill-Qorti tal-ewwel istanza gňall-kontinwazzjoni.