## 8 ta' Jannar, 1955

## Imhallef:

Chev. Onor. Dr. W. Harding, B.Litt., LL.D.

Onor. Mabel Strickland pr. et ne. versus Perit Dominio Mintoff ne. Libell — Citazzjoni — Korrezzjoni — Verità tal-Fatti — "Plea of Justification" — "Fair Comment" — "Statement of Facts" — Buona Fede — Gurnal — Libertà tal-Istampa.

- Digriet tal-Qorti tal-Magistrati li jkun ammetta kkorresnjeni tadcicazzioni fl-ewwel istanza, anki f'materja ta' indurja bl-istanpa, ma hux censurabbli, billi jigi allegat li dik il-kerresofani bienet timporta estensjoni ta' kimputaszioni b'tieda ta' kliem ohra li kwerelant ikun jallega li finduriawh. Provvediment simili ku konformi mal-gurisprudensa stabbilita in materja.
- Kliem li jammonta ghal appressament tal-kantenut ta' artikolu publikat f'hurnal huwa "comment"; kliem li fih l-imputaesjoni hifa asserita bhala fatt hifa "states ent of fact", u mhus "comment".
- Id-difite tal-"fair comment" tippoliula, bhala rehwitit essensjali taghha, li l-fatt kommentat ibun veru. Jehb il-fatt li fugu hu batat il-komment ma jetistin, il-komment ma fistan ibun "fair"; h'med

li dik id-difiza ma tirkexxix jekk il-kwerelat ma jirnexxilux jipprova l-verità tal-fatti minnu kommentati.

Anki jekk il-kwerelat ikun haseb in bwona fede li l-fatti minnu kommentati kienu veri, id-difiža tal-"fair comment" taqa' l-istess.
Kif langas ma hija rilevanti, f'materja ta' libell, l-intenzjoni tal-kwerelat, jekk il-kliem minnu publikat hu libelluž, ghax jingurja lill-kwerelant.

Meta ingurja tolqot korp kollettiv kompost minn diversi persuni, jekk in-numrū ta' nies ta' dawn il-persuni jkun limitat, allura kull wahda tista' tfittex, ghax kull wahda tkun identifikabbli. F'każ ta' ingurja diretta lill-gurnal, ghalhekk, tolqot ukoll lill-proprjatarju u lill-editur ta' dak il-gurnal personalment.

Huwa veru li gurnalista ghandu jkollu čerta latitudini li jikkritika u jikkommenta fuq materji ta' interess publiku, imma ma ghandux libertà akbar, f'moterja ta' libell, minn dik li ghandu čittadin privat. U anki jekk il-gudikant jiehu in konsiderazzjoni l-latitudini permessa lill-artikoli politici, jibqa' dejjem li l-libertà ta' l-istampa ghandha tkun ristretta fil-limiti tal-verità u tal-kritika gusta.

Il-Qorti; — Rat iċ-ċitazzjoni quddiem il-Qorti Kriminali tal-Magistrati ta' Malta kontra l-Perit Dominic Mintoff bhala editur tar-rivista "The Knight", mahruga fuq il-kwerela ta' l-Onorevoli Mabel Strickland personalment u bhala Managing Director u "principal share-holder" ta' "The Allied Newspapers Limited", li hija proprjetarja tal-gurnal "Times of Malta", u ta' Thomas W. Hedley personalment u bhala editur ta' l-imsemmi gurnal "Times of Malta", talli l-kwerelat, il-Belt u bnadijiet ohra, ingurja lill-kwerelanti personalment u fl-imsemmija kapaċità taghhom, bil-publikazzjoni, fin-numru ta' Gunju ta' "The Knight" (li kopja tieghu giet annessa mal-kwerela biex tifforma parti integrali minnha), ta' artikolu editur ta' l-imsemmiia rivista, ikkwalifika lit-"Times of Malta" (li hu indika bhala "ta' Miss Strickland") bhala "infamous" (ara l-ahhar vers tattielet paragrafu tal-pagina 2 tar-rivista annessa);

Rat is-sentenza ta' dik il-Qorti tat-22 ta' Settembru, 1954, li biha sabet lill-kwerelat hati skond ic-citazzjoni u kkundannatu ghall-piena ta' £5 multa u ghall-ispejjer tal-

kawża "in solidum"; u ordnat li f'numru ta' wara tar-rivista "The Knight", u mhux iżjed tard mit-tieni numru wara s-sentenza, tigi publikata s-sentenza jew sunt komprensiv taghha;

Rat ir-rikors fol. 204 tal-process, li bih il-kwerelar appella mid-decizioni fuq imsemmija, u talab ir-revoka tagh-

ha u li hu jigi assolt;

Trattat l-appell;

Ikkunsidrat;

Id-difiża ssollevat l-incident preliminari tal-korrezzjoni tać-citazzjoni, mitluba fl-ewwel istanza mill-kwerelanti u akkordata mill-Magistrat bid-digriet li jinsab fol. 33 ta' l-inkartament; u sostniet li, peress li din il-korrezzjoni kienet timporta estensjoni ta' l-imputazzjoni b'żieda ta' kliem oh-a li l-kwerelanti kienu jallegaw li jingurjawhom, ghalhekk korrezzjoni simili ma kienetx ammissibbli;

L-eccezzjoni tad-difiża, però, ma ghandhiex fondament, u l-provvediment tal-Magistrat hu konformi ghall-principju stabbilit mill-gurisprudenza in materja, kif recentement esposta fis-sentenza moghtija minn din il-Qorti, kol-gjament komposta, in "Regina vs. Mikiel Cutajar", fit-13 ta' Dicembru, 1954. Il-pregudizzjali hi, konsegwentement,

michuda;

Ikkunsidrat:

Il-bran tal-publikazzjoni inkriminata hu dan: "As the readers will have already guessed, the twists and half-truths in the Valletta Correspondent's reading of the local background betray the probable origin of the source of information. I am not given to betting. If I were, I would not hesitate to back my suspicion that the Valletta Correspondent is an employee of Miss Strickland's infamous Times of Malta:

Dan il-bran qieghed jirriferixxi ghal artikolu li kien deher fir-rivista "New Commonwealth" dwar dik li ormaj lokalment tissemma bhala "the Home Office Offer", intitolat dan l-artikolu "Dr. Borg Olivier states his case", u miktub minn persuna desinjata bhal "Our Valletta Correspon-

dent" (fol. 124);

Il-kliem fil-publikazzjoni inkriminata li l-kwerelanti

joggezzjonaw ghalihom huma dawk "twists and half-truths" u "infamous", mehudin, s'intendi, fil-kontest tal-

bran li jidhru fih;

Id-difiza, apparti eccezzioni ohra, li ghal ragunijiet ovvii hu konvenjenti li tigi trattata aktar tard, eccepiet ilverità tal-fatti ("plea of justification"), u li l-komment hu gust ("fair comment"). Ma hemmx kontestazzjoni li l-kwerelat appellant hu l-awtur tal-bran denunzjat bhala libelluż:

Qabel ma l-Qorti tidhol f'dawn l-eccezzjonijiet, jehtieg li jiği stabbilit mill-Qorti x'inhija li "sting" tal-bran inkri-minat, u li jiği wkoll stabbilit liema parti tieghu hi "state-

ment of fact" u liema "comment":

In konnessjoni ma' din l-indağini, ghandu jinghad li ddifiza, fil-kors tad-dibattitu quddiem din il-Qorti, osservat li ebda ingurja ma jista' jkun hemm fil-kliem "twists and halftruths", ghaliex dawn il-kliem qeghdin jirriferixxu mhux ghat-"Times of Malta", imma ghall-artikolu li deher fil"New Commonwealth" fuq imsemmi;

Din l-osservazzjoni ma hijiex xejn affattu konvincenti, ghallex, fil-kontest li jinsabu fih, dawk il-kliem fil-konfront tat-Times of Malta huma aktar qawwija milli kieku kien qieghed joggezzjoni ghalihom l-awtur ta' l-artikolu tan-"New Commonwealth", jew l-editur ta' dik ir-rivista. Infatti, kleku wiehed jirriferihom biss ghall-artikolu f'dik irrivista, l-imputazzjoni ingurjuża tkun biss fis-sens li, f'dak l-artikolu partikulari, hemm "twists and half-truths" "sic et simpliciter", mentri fil-kontest tal-bran inkriminat iffissru ferm aktar. Infatti, f'dak il-kontest iffissru li fit-"Times of Malta" il-publikazzjoni ta' "twists and half-truths" hi haga tant solita, li l-qarrejja ta' l-artikolu tan-"New Commonwealth" malajr ikunu indunaw ("as the readers will have already guessed") li s-sorgenti ta' l-informazzjoni, li swiet bhala bazi ta' dak l-artikolu ("betray the probable origin of the source of information"), kienet, u fuq hekk wiehed jista' jaghmel imhatra b'sikurezza ("I would not hesitate to back my suspicion"), il-gazzetta. Miss Strickland's infamous Times of Malta";
Ghalhekk, "in succinto", li "sting" taċ-"charge" hi

din: fl-artikolu tan-"New Commonwealth" hemm "twists and half-truths", u s-sorgenti taghhom hi l-"infamous"

Times of Malta:

Issa, ghandu jigi stabbilit liema hu "statement of fact" u liema hu "comment"; dan sabiex wiehed jista' jara ghal liema tapplika l-"plea of justification" u ghal liema l-"plea of fair comment";

Il-kliem "twists and half truths" huma bla dubju "comment", ghax huma apprezzament, maghmul mill-kwe-

galat, tal-kontenut ta' l-artikolu:

Il-kliem li jirrigwardaw l-origini tas-"source of information" huma "allegation of fact", cjoè qieghed jigi dikjarat mill-artikolista bhala fatt li fuqu wiehed jista jilghab imhatra, li s-sorgenti ta' l-informazzjoni huwa t-Times of Malta. Infatti, dan hu l-fatt li jĝib bhala konsegwenza li l-kliem "twists and half-truths" ma jibqghux riferibbli biss shall-artikolu tan-"New Commonwealth", imma jolqtu, u, kif gie spjegat, b'forza akbar, it-"Times of Malta" stess;
Fl-ahharnett, il-kelma "infamous" hi "comment", ghax

hi apprezzament, li ghamel il-kwerelat, dwar il-karattru tal-

gurnal "Times of Malta":

Ikkunsidrat:

Dwar il-kliem "twists and half-truths";

ld-difiza ta' "fair comment" tippostula, bhala rekwizit essenzjali taghha, li l-fatt kommentat ikun veru. Ighidu lawturi Hickson and Carter-Ruck, "The Law of Libel and Slander", 1953 edition: "If the facts upon which the comment is founded do not exist, the comment cannot be fair" (p. 121). Dan il-principju huwa ormaj "jus receptum" f'din

il-materia:

Issa, fil-fehma tal-Qorti, il-kwerelat ma lahaqx il-prova tal-fatt li fuqu hu bazat il-komment. Kif gie spjegat. li "sting" tac-"charge" hija li t-"twists and half-truths", ghal-kemm dehru fl-artikoli tan-"New Commonwealth", huma dovuti ghall-fatt li s-sorgenti ta' l-informazzjoni taghhom hu t-"Times of Malta". Kwindi, intant il-kwerelat jista' jeleva d-difiza ta' "fair comment" ghar-rigward tat-"twists and half-truths", inkwantu hu jipprova qabel xejn, li s-sorgenti ta' l-informazzioni taghhom hija t-Times of Malta.

Imma l-kwerelat din il-prova ma ghamilhiex. Irrizulta, verament, li l-persuna desinjata bhal "Our Valletta Correspondent" fin-New Commonwealth" hija Joseph Vassallo, impjegat tat-Times of Malta. Imma altru li wiehed jghid li l-awtur ta' dak l-artikolu hu impjegat tat-Times of Malta, u altru li wiehed jghid li l-materjal ghal dak l-artikolu, bhala sorgenti ta' informazzjoni, gej mit-Times of Malta. Ilfatt rilevanti ghall-kontest tal-bran inkriminat hu l-allegazzjoni li s-"source of information" kien it-Times of Malta, mhux li l-awtur ta' l-artikolu fin-"New Commonwealth" hu impjegat tat-Times of Malta;

Minn dan jigi li l-kwerelat ma ppruvax il-fatt li fuqu hu bażat il-komment. Hu ovvju li jekk, bhala fatt, ma jirrizultax li s-"source of information" ta' l-artikolu li deher fin-"New Commonwealth" hu t-"Times of Malta", il-kwerelat ma jistax jghid li l-"comment" kien "fair". Infatti, ma jistax ikun ammissibbli li wieĥed jikkunsidra bĥala kritika gusta vis-a-vis il-kwerelanti il-kliem "twists and halftruths" applikați ghall-artikolu li deher f'gazzetta oĥra, jekk, qabel xejn, ma jigix pruvat dak li l-kwerelat allega filbran înkriminat, li s-"source of information" kien it-"Times of Malta". Minghajr dik il-prova, il-kliem "twists and halftruths", in kwantu jolqtu l-kwerelanti fis-sens fuq spjegat, ma jistghux ikunu, fl-ebda każ, komment gust;

Anki jekk il-kwerelat haseb in "buona fede" li s"source of information" kien it-"Times of Malta", l-istess
il-"plea of fair comment" taqa'; ghax, kif gie ritenut, u kif
inhu logiku, "the defence of fair comment does not extend
to cover mis-statements of facts, however 'bona fide' " (ara
App. Krim. "Pulizija vs. Scorey", 10 ta' Jannar, 1949, Kol-

lez. Vol. XXXIII-IV-800);

Ghalhekk, kwantu ghall-kliem "twists and half-truths", dawn, ga ladarba l-"plea of fair comment" ma tirnexxix, jibcghu addebitu ingurjuż fil-kontest fuq spjegat. Ghaliex hu certament ingurjuż li wiehed jghid li r-"readers" facilment jindunaw li s-"source of information" ta' "twists and half-truths" li dehru f'artikolu f'gazzetta ohra hija t-"Times of Malta", peress li b'daqshekk wiehed ikun qieghed jaghmel lill-gazzetta "Times of Malta" l-imputazzjoni li soltu

ikun hemm "twists and half-truths" fil-publikazzjoni taghĥа:

ha;

Jibqa', issa, il-kelma "infamous";

Issa, anki apparti s-sinifikat eżatt li ghandha din il-kelma fid-dizzjunarju, hu cert li dak il-bniedem ipotetiku li, f'din il-materja, jissejjah "a reasonable man", b'dik il-kelma jifhem, almenu, "disgraceful" jew "discreditable". Din hi dik li tissejjah "a reasonable and natural interpretation", u mhux affattu " a strange and unlikely one";

Il-kwerelat, fix-xhieda tieghu, a propozitu ta' din il-kelma, qal:— "Issa, fuq il-parti ta'l-"infamous", dan kien apprezzament tieghi personali tal-gazzetta, u dan l-apprezzament ibbażajtu fuq il-fatt ta' l-imgieba taghha lejn il-Labour Party, u fuq il-fatt li kontinwament tghid kontra taghna u żżomm ma' sezzjoni wahda, u fuq dan il-fatt kienet tilfet żewg kawżi maghna minhabba t-teżi li sostniet";

Kieku l-kelma "infamous" kellha tiftihem biss b'dan il-mod, allura kien aktarx ikun il-każ ta' semplici espressjoni vivaci f'artikolu politiku; "for which", kif qal l-Imhallef Fitzgerald (ara Folkard, "Law of Libel and Slander", p. 618), "a great latitude must be given"; imma hu principju indubitat, f'materja ta' libell, li "libel does not depend on the intention of the defamer, but on the fact of the defamation" (Hickson and Carter-Ruck, p. 46 loc. cit.). Il-kawżi fejn gie ritenut dan, fil-Qrati Ngliżi, huma numerużi (ara, per eżempju, Cassidy v. Daily Mirror Newspapers Ltd., Court of Appeal 1929; u Newstead v. London Express Newspapers Ltd., Court of Appeal 1940); li fihom gie stabblit li "intention was a wholly irrelevant consideration establishing liability". U c-Chief Justice Lord Alverstone, fil-kawża "Jones vs. Wulton & Co. (Leading Cases in the Criminal Law, Wilshere 5th. edition, p. 177) qal:—
"What is passing in the mind of the writer is wholly immaterial, or what was his intention, if he has in fact published a libel upon the plaintiff". Issa, apparti l-intenzjoni tal-kwerelat, hu cert li l-kelma "infamous", anki fis-sens biss ta' "disgraceful", hi ingurjuża, u ma hijiex "fair comment" fis-sens pretiż mill-kwerelat;

Ikkunsidrat:

Id-ditensur tal-kwerelat sostna wkoll, fil-kors ta' l-argumenti tieghu quddiem din il-Qorti, li l-kliem dwar it-Times of Malta ma jistghux jolqtu lill-kwerelanti personalment, proprjetarja wahda, u editur l-iehor, rispettivament, tat-Times of Malta, u li ghalhekk l-azzjoni taghhom istitwita f'isimhom personalment ma hijiex ammissibbli;

Dina l-eccezzjoni tista' tinqasam f'żewg aspetti:

(1) Li ga ladarba l-kliem huma diretti lill-gurnal, ma humiex identifikabbli ghall-finijiet tal-libell;

(2) Li kelma ingurjuża dwar gurnal ma tolqotx lill-proprjetarju jew editur ta' dak il-gurnal personalment;

Dwar l-ewwel aspett, l-Imhallef sedenti kellu ga okkazjoni jippronunzja ruhu fis-sens li, meta ingurja tolqot korp kollettiv kompost minn diversi persuni, jekk in-numru ta' dawn il-persuni jkun limitat, allura kull wahda tis-ta' tfittex, ghax kull wahda tkun identifikabbli. Dan ilprincipju, ta' "group or class libels", gie recentement af-fermat fil-kawża Knuppfer v. London Express Newspapers Ltd., 1944, f'dawn it-termini: "Where defamatory words are written of a class of persons, it is not open to a member of that class to say they were written of him, unless the class is so small or so ascertainable that what is said of the class is necessarily said of every member of it......"
U preciżament, f'dan il-każ ta' gurnal, il-persuni kompriżi
fil-"class" jew "group" huma limitatissimi, u kwindi facilment accertabbli;

Dwar it-tieni aspett ta' din l-eccezzioni, ir-regola awrea f'din il-materja hi indubbjament dik enuncjata minn Lord Herschell fil-kawża Australian Newspaper Co. Ltd. vs. Bennett (1894) A.C. at p. 288, b'dawn il-kliem: "No doubt, offensive language applied to a newspaper may cast a reflection, and be understood as casting a reflection. upon persons connected with the newspaper. But it clearly cannot be maintained that every imputation upon a newspaper is a personal imputation upon everybody connected with the newspaper. Whether it is an imputation which would attach to any individual, and, if so, to whom, must depend

in each case upon the language and upon the circumstances":

Issa, l-imputazzjoni li tifforma li "sting of the charge" f'dan il-każ — dik ta' falsifikazzjoni tal-publikazzjonijiet kontenuti fil-gurnal ("twists and half-truths") fis-sens fuq spjegat, u ta' "infamous", hi tali li bilfors tirrifletti fuq il-proprjetarju u l-editur; ghax certament persuna li tkun proprjetarja ta' gurnal, u l-editur tieghu, li jippermettu "twists" u "half-truths" jidhru fih sistematikament, b'mod li qarrejja ta' artikolu f'gurnal iehor li jkun na "twists" u "half-truths" jindunaw malajr li s-sorgenti ta' l-informazzjoni tkun gejja mill-ewwel gurnal, u persuni li jippossjedu jew jippublikaw gurnal "infamous" (kwindi "disgraceful"), ma jistghux ikollhom karattru morali jew integrità ta' cittadini tajba;

Kwantu ghat-"twists" u "half-truths", ĝie deciż fil-kawża Bennett v. Australian Newspaper (1891) 12 N.S.W. L.R.
141, A.C. 284 (1894), illi "to write and publish of a newspaper that it is the 'Daily Ananias' is libellous of the proprietors of the newspaper"; u kulhadd jaf li "Ananias"
baqa' terminu ekwivalenti ghall-giddieb minn mindu membru tal-Kommunità Kristjana ĝie kastigat b'mewt subita-

nea minn San Pietru minhabba li gibed;

Gie ukoll deciż li, jekk wiehed jghid li gazzetta hija "a disgrace to journalism", dan "is undoubtedly an attack on those who are responsible for the conduct of the paper" (Kingswell v. Robinson (1913) W.L.D. (S. Africa) p. 142. U l-kelma "infamous" hi ferm aktar qawwija minn "disgraceful":

Ikkunsidrat:

Id-difensur tal-kwerelat, fil-kors ta' l-argumenti, osserva wkoll li d-dritt ta' kritika ma ghandux jigi trasandat mill-Orati;

L-Imhallef sedenti, f'kawżi ta' libell, qaghad dejjem attent ferm li jigi pjenament rispettat il-principju hekk espress fit-testi in materja:— "Every one of Her Majesty's subjects has the right to comment fairly and honestly on

matters of public interest". Però, anki jekk wiehed ihares lejn kawżi simili b'liberalità ta' veduti, jibqa' dejjem veru

dan li gej:-

1. Gurnalista ma ghandux libertà akbar, f'materja ta' libell, minn dik li ghandu c'cittadin ordinarju. Jghidu l-awturi Hickson and Carter-Buck, loc. cit. p. 119:— "In delivering judgment in a case in 1914, the Judicial Committee of the Privy Council made the position abundantly clear: Their Lordships regret to find that there appeared on the one side in this case a time-worn fallacy that some kind of privilege attaches to the profession of the Press as distinguished from the members of the public. The freedom of the journalist is an ordinary part of the freedom of the subject, and to whatever length the subject in general may go, so also may the journalist; but apart from statute law his privilege is no other and no higher. The responsibilities which attach to his power in the dissemination of printed matter may, and in the case of a conscientious journalist, do, make him more careful; but the range of his research, his criticism or his comments, is as wide, and no wider than that of any other subject. No privilege attaches to his position":

2. Anki jekk il-gudikant jiehu in konsiderazzjoni I-latitudini permessa lill-artikoli politici, jibqa' dejjem li I-libertà ta' l-istampa ghandha tkun ristretta, kif qal Chief Justice Cockburn (ara Fisher and Strahan, The Law of the Press, p. 190), "within the bounds of truth and the limits of just

criticism";

3. Il-kwistjoni tal-libertà assoluta tal-istampa giet kunsidrata f'publikazzjoni tal-"UNESCO", intitolata "Legislation for Press, Film and Radio", ta' Fernand Terren and Lucien Solal 1951; u pag. 270 jinghad hekk: "Freedom of the press exists in most countries, but in all of these the journalist who abuses it, and goes beyond certain limits, commits an offence punishable under civil or criminal law. Would it be possible to grant unlimited freedom to newspapers? Such a thesis has been put forward, at times, and a characteristic passage of Anatole France sets out the argument....... 'this general view,

however, is impracticable'...... no Government has ever given unconditional freedom to the Press";

Ghalhekk din il-Qorti tiddecidi;

Billi tichad l-appell tal-kwerelat u tikkonferma s-sentenza appellata, kompriż l-ordni tal-publikazzjoni, bl-ispejjeż kontra l-kwerelat. Onorarju tad-difensuri 12s. kull seduta.