## 20 ta' Dicembru, 1946. Imhallfin:

Is-S.T.O. Sir George Borg, Kt., M.B.E., LL.D., Pres. L-Onor. Prof. Dr. E. Ganado, LL.D.

L-Onor, Dr. L.A. Camilleri, LL.D.

Joseph Vella Gera, M.B.E., no. versus Dr. Frederick Maempel, M.D.

Lohanjoni — Board tal-Kora — Hunergency Compensation Board — "Compensation (Emergency) Regulations, 1943" — Notificancioni tal-Gvern zru. 84 ta' 1-1946.

In-Notifikazzjoni tal-Gvern nru, 85 ta' l-1946 girbet emendi fil-"Compensation (Emergency) Regulations" ta' l-1943. B'dawn l-emendi però l-logislatur ma riedz juldisturba l-"claims" li gà kienu prodenti quildiem l-"Emergency Compensation Bound" meta hardet dik in-Notifikazzjoni; u winy angue riest jiddisturba l-poźizzjoni kif etabbilita minn defižjoni ga mogktija minn dak il-Board.

Challagetant il-Beard tal-Kera ma hon kompotenti, ghaz ma ghanduz gurisdizzjoni, biaz jiehu konjizzjoni ta' talba ghal fissazzjoni tal-kera zierag ta' fond rekwitiszjonat, meta l-kera ta' dak ilfund kien ga gie stabbilit mill-Bmergeney Compensation Bourd gabel ma harget dik in-Notifikazzjoni, jew meta kien ga kemm pendenti guddiem dak il-Board domanda ghall-kumpens.

Il-Qorti — Fuq ir-rikors ta' Joseph Vella Gera nomine. fejn ippremetta illi l-Emergency Compensation Board b'decizioni tieghu tad-9 ta' Ottubru 1945 iffissa s-somma ta' £240 bhala kumpens annwali tal-pussess tal-fond nru. 24, Merchants Street, Valletta; u peress illi dak il-kumpens huwa akbar mill-kera xieraq; talab li jigi fissat il-'fair rent' tal-fond fuq imsemmi skond ir-Regolament 4 tan-Notifikazzjoni tal-Gvern nru. 84 tat-22 ta' Frar 1946;

Omissis:

Rat is-sentenza moghtija mill-Board tal-Kera fit-12 ta' Awissu 1946, fejn iffissa l-kera ghal £170 fis-sena, peress illi meta l-post kien mikri vičin il-£200 kien bhala fond kummer-cjali, mentri issa huwa dar ta' l-abitazzjoni;

Rat ir-rikors ta' l-intimat Dr. Maempel fejn talab illi dik is-sentenza tigi revokata, billi jigi deciz illi n-Notifikazzjoni tal-Gvern nru. 84 ta' l-1946 mhijiex applikabili, ghax il-fond kien qabel ir-rekwizizzjoni post kummercjali u ghadu sal-lum uzat bhala fond kummercjali, u ghalhekk ir-rikorrent ma jistax ježerčita d-drittijiet li ģejjin minn dik in-Notifikazzjoni, u ghalhekk il-"fair rent" ghandu jkun stabbil t fuq £240 kif ģie fissat mill-Emergency Compensation Board; bl-ispej-jež, inkluži dawk ta' l-ewwel istanza;

Omissis:

Tikkunsidra:

Tikkunsidra;
Illi bin-Notifikazzjoni tal-Gvern fuq imseminija sarn
žewģ emendi lill-ligi principali, "Compensation (Emergency)
Regulations, 1943". Permezz tar-Regulation 2 hemm emenda ghall-proviso (1) tal-para. 1 tar-Regulation 3 tal-ligi principali, li allura ghandlia tinqara hekk:— "Provided that (i)
in computing for the purpose of clause (a) of this paragraph
the rent which might reasonably be expected to be payable
in respect of any land, and in computing for the purpose of
clause (c) of this paragraph any amount which might reasonably have been expected to be payable in addition to rent by an incoming tenant, no account shall be taken of any appreciation of values due to the emergency, and — fejn tibda l-emenda — "notwithstanding the foregoing provisions of this clause, where land is used by a competent authority or by any person accommodated therein by a competent authority. as a dwelling house within the meaning of the Rent Regula-tion (Dwelling Houses) Ordinance 1944, the rent computed under clause (c) of this paragraph shall not, in respect of any period following the 22nd, day of February 1946, in which land is so used, exceed the "fair rent" as defined in section 2 of the afore mentioned Ordinance; and such rent shall be assessed by the Rent Regulation Board established under the Reletting of Urban Property (Regulation) Ordinance (Chapter 109), which for that purpose shall have exclusive jurisdiction". Clause (c) fuq imsemmija mbaghad tghid "a sum equal to the rent which might reasonably be expected to be payable by a tenant in occupation of the land during the period for which the possession of the land is retained in the exercise of emergency powers, under a lease granted immediately before the beginning of that period';

Immedjatament wara din I-emenda, introdotta bl-art. 2 ta' dawk-ir-Regolamenti nru. 84 ta' l-1946 fuq riportata ''verbatim'', hemm ir-regulation 3 li jghid:— "Without prejudice to anything contained in regulation 4 of the Regulations (li huwa l-artikolu ta' wara li jinkorpora emenda ohra), the amendment made by regulation 2 of these regulations (dak fuq riportat) to the principal regulations, shall not operate to affect any claim which on the date hereof is pending before the Emergency Compensation Board." Dan juri illi l-legislatur, mentri ntroduca l-emenda fuq riportata ta' regulation 2, ma riedx jiddisturba kwalunkwe "claim" li f'dik il-gurnata "is pending before the Emergency Compensation Board''; u allura f'dan il-każ dan l-ahhar imsemmi Board seta' jibqa' sejjer 'il quddiemu u jiehu konjizzjoni ta' dik it-talba li kien ikollu quddiemu. "Multo magis" jekk il-Board kien digà dde-cieda dik it-talba per mezz ta' deciżjoni li kien digà ta meta hargu dawk ir-regolamenti;

Tikkunsidra;

## Tikkunsidra:

Hil dan l-artikolu 3 jghid "without prejudice to anything contained in regulation 4 of these regulations"; u ghalhekk dan ir-regulation 4 jibqa impregudikat non ostanti dak h hemm fir-regulation 3 Ir-regulation 4 jghid:— "In respect of land used as a dwelling house (a) possession of which has been taken under emergency powers before the date hereof. (2) in respect of which compensation has been before the date hereof assessed by the Emergency Compensation Board, and (c) possession of which is retained at the time of the here under mentioned application, a competent authority or the particular mentioned application, a competent authority or the particular mentioned application as competent authority or the particular mentioned application and the particular mentioned application as competent and the particular mentioned application as competent and the particular mentioned application and the particular mentioned application as a competent and the particular mentioned application and the particular mentioned application and the particular mentioned application as a competent and the particular mentioned application and the particular mentioned application and the particu under mentioned application, a competent authority or the person from whom possession was taken, may at any time apply to the Rent Regulation Board established under the Reletting of Urban Property (Regulation) Ordinance (Chapter 109) for the assessment of the fair rent as defined in section 2 of the Rent Restriction (Dwelling Houses) Ordinance, 1944, and such fair rent shall be the compensation payable under regulation 3 (1) (a) of the principal regulations (fuq riportat) in

respect of that possession as from the date of service of the application on the person from whom possession was taken or, as the case may be, on the competent authority";

Dan ir-regulation 4. kif inhu car, jikkontempla l-kaz meta dar, "dwelling house", čjob dar ta l-abitazzjoni kif inhi definita fil-liği, tkun giet rekwizizzjonata qabel it-22 ta Fran 1946, meta harget dik in-Notifikazzjoni, u I-Emergency Compensation Board kien diga adıt u ta d-decizjoni tieghu u ffissa i-compensation, u i-awtorità ghadha zzomm dik id-dar talit rekw żizzjoni; allura, non ostanti li kien hemin dik id-dečižjoni ta' l-Emergency Compensation Board, tant is-sid kemm l-Awtorità įkollhon, dritt li įmorru quddiem ir-Rent Regulation Board ghal fissazzjoni tal-"fair rent". Ghalliekk fir-Regulation 3 inghad illi dak li hemm f'dak ir-regulation huwa minghajr pregudizzju ta' regulation 4, illi cjoè l-emenda tal-ligi fir-regulation 2 "shall not operate to affect any claim which on the date hereof is pending before the Emergency Compensation Board"; "multo magis" jekk dak il-Board kien diga ippronunzja ruhu. Dik id-decizjoni tieghu ghandha ssehh, u ma tistax l-awtorità u langas is-sid imorru quddiem ir-Rent Regulation Board, ghaliex dik id-decizjoni tal-Board l-ieĥor ghandha tiĝi rispettata, bil-kondizzjoni illi i-każ ma jaqax taĥt ir-regulation 4, ghaliex allura "expressis verbis" ir-Rent Regulation Board ghandu jiffissa l-"fair rent" non ostanti li kien hemmi decizjoni tal-Board l-ieĥor;

Tikkunsidra;

Illi ladarba l-požizzjon, tal-ligi hija din, huwa nečessarju li jkun ežaminat liema regolament huwa applikabili ghal dan il-kaž, jekk ir-regulation 4, u altura r-Rent Regulation Board kellu gurisdizzjoni biex ihassar d-dečižjoni l-ohra ta' l-Emergency Compensation Board, jew ir-Regulation 2, u jekk dan l-ahhar huwa applikabili altura jigi applikabili r-Regulation 3, l jghid ilii r-Regulation 2 shall not operate fuq "claims" introdotti fil-mument tal-promulgazzjoni ta' dawk ir-Regolamenti quddiem l-Emergency Compensation Board, u "multo magis" jekk kien hemm dečižjoni ta' dak il-Board;

Irrizulta mill-provi illi r-rekw zizzjoni kienet saret mill-

pussess tal-kažin "La Valette", u ma hemmu kuntrast illi din ir-rekwižizzjoni saret qabel il-publikazzjoni ta' dawk ir-Regolament. Tant huwa hekk illi d-dečižjoni ta' l-Emergency Compensation Board iğib id-data tad-9 ta' Ottubru 1945, u ghalhekk erba' xhur u nofa qabel il-publikazzjoni ta' dawk ir-Regolamenti. Huwa indubitat illi dik id-dar kienet qabel, sal-1939, užata prinčipalment bhala fond kummerćjali, u kienet ilha hekk užata ghal hafna snin. Meta ģiet fil-pussess tal-Kažin "La Valette", dana ma užahiex bhala "dwelling house' skond id-definizzjoni tal-liği. Allura huwa evidenti ill. r-Regulation 4 huwa inapplikabili, ghaliex dik iddar ma kienetx "dwelling house". L-appellat fin-nota tieghu saotometta illi skond l-art, ½ ta' dawk l-emendi hija "dwefling house" jekk wara r-requisition hekk tiği wista. Iżda huwa stess fir-rikors t aghu tat-2½ ta' April 1946, quddiem il-Board ma ppretendiex li huwa applikabili dak ir-Regolament 4, ghaliex peress li kien hemm diğa d-dečižjoni ta' l-Emergency Compensation Board, biex iqieghed da part dik id-dečižjoni u jmur quddiem ir-Rent Regulation Board kellu bilfors jinvoka l-artikolu 4 li minnu ğie invokat. La darba ğie assodat illi fil-mument tar-requisition il-post ma kienx "dwelling house", dak ir-Regulation 4 huwa inapplikabili, peress li hemm diğa d-dečižjoni ta' l-Emergency Compensation Board: Issa f'din l-istanza l-appellat iččita fin-nota tieghu r-regulation 2 fuq imsemmi, biex ighid illi l-užu tad-dar, jekk hijiex "dwelling house" jew le, ghandu jair in relazzjon mal-"competent authority" jew mal-persuna li ğiet imdahhla fid-dar mill-awtorità; ižda ghal dak ir-regulation 2 hemm ostakolu fir-Regulation 3 jekk l-Emergency Compensation Board ikun diğa ppronunzja ruhu, kif d'fatti f'dan il-kaž ippronunzja ruhu; "Tikkapaidya."

rubu :

## Tikkensidra:

Illi d-differenza bejn iż-żewg regulations hija tant mar-kata, fejn ir-"requisition" tkun ta "dwelling house" jew le, illi l-legislatur fir-Regulation 4 qal "expressis verbis" illi r-Rent Regulation Board jista jigi adit, non ostanti li l-"com-pensation" "has been, before the date hereof, assessed by

the Emergency Regulation Board; u ghalhekk dik id-decizioni ta' dan l-ahhar Board ghandha tkun f'dawk il-każ jiet ineffikaci, mentri fil-każ tar-regulation 2, ghall-kuntrarju, ried isalva dawk id-decizionijiet, sija ghaliex ma qal xejn illi dawk id-decizionijiet jitq eghdu da parti, sija ghaliex fir-Regulation 3 "expressis verbis" qal illi r-regulation 2 ma jistax ikollha forza f'dawk il-każijiet fejn l-Emergency Compensation fil-każ ta' "dwelling house" il-legislatur ried li dawk kollha Board kien diga adit. U d-differenza h ja ragjonevoli, ghaliex jkunu retti mill-Ordinanza ta' l-1944, la darba kienu "dwelling houses";

Ghal dawn ir-ragunijiet;

T lqa' l-appell ta' l-intimat u tiddikjara u tiddečidi illi l-Board tal-Kera ma kellux gurisdizzjoni biex jiehu konjizzjoni ta' din il-kawża, u ghalhekk tirrevoka s-sentenza li minnha hemm appell; l-ispejjeż taż-żewg istanzi, minhabba n-novith tal-każ, kunu minghajr taxxa; id-dritt tar-registru kontra r-rikorrent appellat ghaż-żewg istanzi.