25 ta' Ottubru, 1952. Imhallef:—

L-Onor. Dr. W. Harding, B.Litt., LL.D. Il-Pulizija versus Carmelo Spiteri

Assîkurazzjoni — Karrozza — Polza tas-Sigurtà — "Extension Clause" — Prova.

Jekk it-titolar tal-polza tas-sigurtà ta' karrozza tal-mutur ma jkunx jippossjedi aktar il-karrozza, ghax ikun ittrasferiha lil hadd iehor, allura dik il-polza, avvolja jkun fiha l-"extension clause" fis-sens li l-polza tkopri lil min ikun isug il-karrozza bl-ordni jew bil-permess tat-titolar tal-polza, taqa', kemm il-darba ma jijix pruvat li kicn hemm "assiynment" jew čessjoni tal-polza favur l-akkwirent tal-karrozza bl-approvazzjoni espressa tal-kumponnija tas-sigurtà.

Il-prova li kien hemm dak l-"assignment" jew čessjoni, bl-approvazzjoni tal-kumpannija tas-sigurtà, ghandha ssir mill-imputat.

Il-Qorti — Wara ii rat is-sentenza tal-Qorti Kriminali tal-Maĝistrati ta' Malta tat-22 ta' Lulju 1952, li biha l-imsemmi Spiteri ĝie misjub hati talli saq motor car kontra l-'one way traffic'', talli ghamel uzu mill-istess motor car bla ma kienet liĉenzjata, u telli ghamel uzu mill-istess car minghajr il-polza tas-sigurtà jew il-garanzija dwar riskji ta' terzi

persuni, u gie kundannat 5s. ammenda ghall-ewwel imputazzjoni, multa ta' £5 ghat-tieni, u multa ohra ta' £5 ghat-tielet imputazzjoni, u giet ordnata s-sospensjoni tal-ličenzi tieghu kollha tas-sewgan ghal žmien sena;

Wara li rat ir-rikors ta' l-imputat, li bih appella lil din il-Qorti u talab ir-revoka tas-sentenza fuq imsemmija ghal dak li jirrigwarda t-tieni u t-tielet imputazzjoni u s-sospen-

sjoni tal-licenza;

Wara li semghet il-provi;

Wara li semghet it-trattuzzjoni;

Ikkansidrat;

Jirrizulta mill-provi, kompriza x-xhieda ta' l-istess imputat, illi l-licenza tal-karrozza ma kienetx imballsa. Difficilment jiftihem kif sar appell dwar dan it-tieni kap;

Kwantu ghat-tielet kap tad-dečižjoni, dwar l-allegat nuqqas ta' polza tas-sigurtà, hawn jidhol punt ta' čerta importanza, li ma jidherx li gie qatt qabel quddiem il-Qorti Taghna; Il-fatti kif pruvati juru illi, in origine, din il-karrozza li

Il-fatti kif pruvati juru illi, in origine, din il-karrozza li kien qieghed isuq l-imputat kienet ta' čertu Emmanuele Cassar. Dan ittrasferiha lil čertu Victor Micallef. L-imputat kien qieghed isuqha ghaliex kien qed jippruvaha biex jixtriha, ghad li fil-fatt spičča biex ma xtrahiex;

Ghar-rigward tal-karrozza kien hemm polza ta' sigurtà

korrenti f'isem Cassar;

Il-punt hu dan : jekk il-polza tas-sigurtà f'isem Cassar

tistax tiswa biex tiskrimina l-imputat;

Din il-polza l-imputat, malgrado l-opportunità lilu moghtija, ma pproducihiex, imma l-Qorti sejra tiehu l-aktar tezi favorevoli ghall-imputat, illi cjoc f'din il-polza kien hemm l-"extension clause", li tkopri anki "any person who is driving such vehicle on the policy holder's order or with his permission";

Issa, hu principju ndubitat in materja, illi, galadarba t-titolari tal-polza ma jippossedix aktar il-car, allura l-polza, bl-"extension clause" b'kollox, taqa", jekk ma jigix pruvat li kien hemm "assignment" taghha favur ix-xerrej jew l-utent tal-car bl-approvazzjoni espressa tal-kumpannija tas-sigurtà. Dan jigri ghaliex it-titolari tal-polza ma ghandux aktar "insurable interest";

Jghid il-Porter, "Laws of Insurance", pag. 70:—
"Where a vendor has received the consideration and has transferred the property, but has not assigned the policy, neither vendor nor purchaser can sue on the policy; the former has no interest, the latter no title";

Il-punt kien gie deciż fil-kawża "The Ecclesiastical Commissioners for England vs. The Royal Exchange Assurance Corporation", 11 Times L.R. 476. Il-House of Lords, fil-kawża "Rogerson v. Scottish Automobile and General Insurance Company", 41 Ll. L.R. 1(C.A.), irriteniet illi:— "...... if the accused ceases to be interested in the subject matter of the insurance, the policy is at an end, and any extension falls with the rest of the policy";

Fit-test "Motor Insurance" ta' G.W. Gilbert, Third Edition, 1949, p. 276, hemm riportata "in sunto" id-decizioni in materia fil-kawża "Peters vs. General Accident Fire and Life Assurance Corporation Ltd." (1938) 2 All Eng. Rep.

267, b'dawn il-kliem :--

"Mr. Comber took out a policy with the defendant company, but subsequently sold the insured car to Mr. Pope. Mr. Peters was injured by reason of the negligent driving of Mr. Pope, and the latter had judgment awarded against him; which judgment he failed to satisfy. The plaintiff thereupon brought an action against the company under section 10 of the Road Traffic Act 1934, claiming that the extension clause of the policy, covering any person who is driving such vehicle on the policy holders' order, or with his permission, should he implemented. It was held, however, that the legal property in the car passed by reason of the sale, and that at the time of the accident Mr. Pope was driving the car as his own, and not by the order or permission of Mr. Comber, and that therefore the policy issued to Mr. Comber had lapsed, and there could be no assignment in such circumstances without the express approval of the assurers";

Il-Qorti ta' l-Appell ikkonfermat din id-decizjoni;

Ghalhekk, f'dan il-każ, galadarba Emmanuele Cassar kien ittrasferixxa l-car lil Victor Micallef, u galadarba ma gietx pruvata ebda čessjoni ("assignment") approvata mill-kumpannija tas-sigurtà, favur Micallef jew l-imputat, ma jistax jigi

ritenut li kien hemm, ghar-rigward tas-sewqan tal-car millimputat, polza valida tas-sigurtà. Kieku gic pruvat "assignment" favur Micallef, allura l-pozizzjoni kienet tkun diversa, ghaliex, jekk kien hemm l-"extension clause", allura l-imputat kien ikun qed isuq bil-permess tal-"policy holder", li f'dan il-kaz kien ikun Micallef. Imma ebda prova ma saret ta' dan l-"assignment"; u l-prova indiskutibbilment tmiss lill-imputat, nihux biss ghaliex hi prova fil-poter tieghu jew ta' l-awtur tieghu Micallef, imma anki ghax, galadarba hu ma pproduciex lill-Pulizija polza regolari favur tieghu, l-oneri tal-prova in diskarike ngaleb fuqu;

Ghalhekk tiddecidi billi, rigward ghall-kapi lilha devoluti.

tichad l-appell u tikkonferma s-sentenza appellata.