23 ta Frar, 1950. Imhallef:

L-Onor. Dr. W. Harding, B.Litt., LL.D.

Nolegg — "Perils of the Seas" — Danni — Forza Magguri — Bastiment — Kaptan — "Ship-Owner" — Artiklu 410 tal-Kap. 17.

John Aquilina versus Giovanni Coleiro 119, (*)

- In-nologijant ma haz responsabili ghad-danni li ssofri d-merkanzija fil-kors tal-vjajij minhabba vjolenza ta' l-elementi—rih u bahar.
- Imma jekk il-bastiment gie espost ghall-vjolenza ta' duwk l-elementiminhabba htija ten-noleggjant, ma hemmæ lok ghall-ezenzjoni tieghu minn dik ir-responsabilità.
- Wiehed mill-obligi tal-kaptan huwa dak li jitlaq ghall-vjajg mill-aktar fis possibili; u ghall-obligi tal-kaptan huwa responsabili wkoll ix"ship owner". Ghaldaqstant, jekk il-kaptan jirritarda l-partenza tal-bastiment minghajr raguni tajba, huwa jongos minn wiehed mill-obligi mpliciti tieghu, u ta' dan in-nuqqas jirrispondi wkoll ix-"ship-owner".
- Ghalhekk, jekk minhabba dewmien ingustifikat tat-tlug tal-bastiment, dan jiltaqa' ma' maltempatu li ma kisna jiltaqa' maghha kieku telaq meta kellu jillaq, u minhabba ail il-maltempata l-merkanzija. jigrilha l-kisara, dik il-hsara ma niz effett ta' forza magguri, im-

ma ksara dovuta ghall-htija tal-kaptan, li ghalika jirrispondi n-noleggajant.

II-Qorsi, - Rat l-att tac-citazzjoni ii fiha l-attur ippremetta illi permezz ta' kuntratt ta' nolegg, iffirmat fil-5 ta' Novembru 1946, bejn Messrs. Albanozzo & Co. ghan-nom ta' l-attur u Messrs, Carmelo Caruana ghad-ditta konvenuta, lattur innoleggja minn ghand id-ditta konvenuta l-vapur "San Gorg M.', u dan sabiex l-istess vapur imur Tripli biex ighabbi minn 200 sa 250 barri u minn 80 sa 100 majjal, u igib l-istess kariku Malta, bin-nol u taht il-kondizzionijiet fl-istess kun tratt specifikati; fost liema kondizzionijiet kien hemm dik li l-attur kellu ighabbi kaxex ta' bajd frisk, u eventwalment merkanzija obra sal-kumplament tal-bastiment; illi l-konvenut, kuntrarjament ghall-kondizzjonijiet tal-kuntratt, ghabba kwantità ta' btieti ta' l-inbid u merkanzija ohra tieghu, u b'hekk mhux biss il-majjali mghobbija kellhom spazju tant ristrett illi saritilhom fisara kbira, izda wkoll, sabiex jaghmel dina t-taghbija kuntrarja ghall-kondizzjonijiet tal-kuntratt, ilbastiment gie mdewwem fit-tluq tieghu minn Tripli ghal Malta, b'mod illi l-bastiment iddawwar izjed minn gurnata fil-port ta' Tripli, u telag minn hemm fis-7 a.m. tal-Hadd, 17 ta' Novembru 1946, u wasal Malta fit-8.35 a.m. tat-Tlieta, 19 ta' Novembru 1946; illi kicku ma tilefx iż-żmien biex jistenna u jehabbi l-imsemmija btieti ta' l-inbid, il-vapur kien jitlaq minn Tripli almenu 24 siegha qabel u kien jasal Malta mhux izjed tard mit-Thejn, 18 ta' Novembru 1946, filghodu; illi fil-vjagg tieghu minn Tripli bil-kariku fuq imsemmi, bejn it-Tnein, 18 ta' Novembru u t-Tlieta, 19 ta' Novembru 1946, il-vapur iltaqa' ma' maltemp qawwi, li beda t-Tnejn fil-ghodu u toawwa izjed matul il-lejl bejn it-Tnejn u t-Tlieta; u illi minhabba fi-istess maltemp, il-barrin ta' l-attur batew hafna u sebgha minnhom mietu, u b'hekk l-attur gie jsofri telf u hsara; u talab li, wara li tkun premessa kwalsijasi dikjarazzjoni nećessarja u moghti kull provvediment opportun, jigi minn dina l-Qorti dikiarat illi l-konvenut nomine huwa responsabili minhabba fid-dewmien fuq imsemmi fit-tluq tal-vapur "San Gorg M." minn Tripli, dewmien dovut ghar-ragu-

^(*) Ceduta fl-Appell, 26, 6, '50.

nijiet fuq indikati, tad-danni li sofra l-attur ta' telf u hsara fil-barrin, kağunat mill-maltemp waqt il-vjağğ minn Tripli ghal Malta — danni li jiğu likwidati f'ğudizzju separat. Bl-ispejjeż;

Rat in-neta ta' l-eccezzionijiet tal-konvenut nomine, li

fiha dan qal li d-domanda hija infondata;

Ezaminat l-inkartament tal-process fl-ismijiet "Aquilina vs. Coleiro", Citaz. 37 ta' l-1947, deciż mill-Qorti ta' l-Appell fis-27 ta' Gunju 1949;

Semghet id-difensuri;

lkkunsidrat:

Illi, ghal dak ii jirrigwarda l-provi, il-kollitiganti ghamlu riferenza "wholesale" ghall-provi migbura fil-process fuq imsemmi (ara verbal f'dan is-sens fol. 16 ta' dan il-process); a ghallekk il-kwistjoni odjerna ghandha tigi rizoluta in bazi ghal dawk il-provi;

Illi f'dak il-process i-attur odjern kien talab id-dikjarazzjoni ta' responsabilità tal-konvenut nomine odjern ghad-danni li hu sofra fl-okkazjoni ta' l-istess nolegg odjern, konsistenti fil-perdita ta' hames barrin u 21 majjal, ''minhabba tagh-

bija difettuża'';

Illi din il-Qorti, diversament presjeduta, kienet laqghet it-talba:

Illi l-konvenut nomine ghamel appell kontra dik il-parti tas-sentenza dwar il-barrin, u ssottometta li, in kwantu ghall-barrin, l-Ewwel Qorti kienet iddecidiet fuq kawżali diversa cjoè l-maltemp li ltaqa' mieghu l-vapur minhabba fid-dewmien kolpuż tal-konvenut, u mhux fuq il-kawżali ta' taghbija difettuża. Il-Qorti ta' l-Appell, fis-sentenza taghha fuq citata, laqghet din id-deduzzjoni u rrevokat l-ewwel sentenza gharrigward tal-barrin; biss irriżervat favur l-attur, anki kontra l-istess konvenut nomine, u anki in riferenza ghad-danni li hu sofra in rigward ta' dawk il-barrin, kwalunkwe azzjoni ohra fug kawżali diversa;

Illi appuntu bić-čitazzjoni odjerna l-attur qieghed jiddedući l-azzjoni tieghu dwar il-barrin, "bażata issa fuq il-kawżali ta' maltemp", precedut mid-dewmien kolpuż tal-konve-

nut:

Ikkunsidrat;

Illi deher mill-provi illi l-attur innoleggja dan il-bastiment, u bhala noleggjatur kellu jghabbi minn Tripli minn 200 sa 250 barri u minn 80 sa 100 majjal, "sotto e sopra coperta"; u barra minn hekk, gie pattwit fil-kuntratt tan-noleggiili "il noleggiatore si obbliga di caricare casse di uova fresca ed eventualmente altra merce, fino al completamento del bastimento":

Illi mili-"log-book" tal-kaptan, li estratti minnu jinsabu ežibiti fol. 36 et seq. tal-process l-iehor, jirrizulta li, ghal-kemm ir-rih beda jiždied fil-lejl tal-Hadd, 17 ta' Novembru 1947 (infatti skond il-kalendazzjonijiet fil-"log-book", mentri fl-4 p.m. hemm "wind force 2 to 3", f'nofs il-lejl hemm "wind increased to 6"), u ghalkemm l-ghada, it-Tnejn, 18 ta' Novembru 1946, fl-4 a.m. ir-rih kompla jiždied (fil-"log-book", infatti jinghad "wind increasing 6-7"), eppure hu car, skond il-"log-book", illi l-aqwa tal-maltempata kien fil-lejl bejn it-Tnejn, 18 ta' Novembru 1946 u t-Tlieta, 19 ta' Novembru 1946. Jirrizulta wkoll mill-"log-book" illi kien fis-6.30 a.m., tat-Tlieta, 19 ta' Novembru, li l-bastiment waqaf biex jarmi l-bahar l-annimali mejta — dawn qabel ma nstemghux; u ghalhekk hu car li l-annimali mietu appuntu fit-traversata tal-lejl fuq imsemmi, meta t-tempesta lahqet l-apici taghha;

Ma hemma bżonn jinghad li skond il-liği (art. 629 u 636 (f) Kap. 15 — liema artikoli huma bazati fuq l-art. 239 (6) u 695 tal-Merchant Shipping Act), kopja awtentika tal-''log-book'' taghmel prova tal-kontenut taghha sa prova in kuntrarju;

Il-perit adoperat fil-kawża l-ohra (u certament, meta l-partijiet ghamlu riferenza ghall-provi tal-kawża l-ohra, hija inkluża anki l-prova tal-perizja) ikkonkluda, kwantu ghall-barrin, li dawn, ghalkemm matul il-vjagg kienu marsusin u batew ukoll, però, bl-ispazju sija pure ristrett li kellhom, kienu jaslu Malta hajjin; ghaliex huma annimali li jifilhu l-istrapazz; però fil-kondizzjonijiet li kienu, mietu minhabba l-maltemp;

Ghalhekk jongos li l-Qorti težamina l-pont jekk kienx hemm mill-parti tal-konvenut dewmien kolpuž li, kieku ma kienx hemm, kienet tigi evitata dik il-maltempeta; fi kliem iehor, jekk il-bastiment giex assoggettat ghall-"peril of the sea" minhabba l-fatt kolpuz tal-konvenut;,

Ikkunsidrat fuq din il-kwistjoni;

Illi jekk id-dewmien kienx kolpuż jew le jiddependi millpont jekk il-konvenut kellux jew te d-dritt li jghabbi l-btieti ta' l-inbid li l-karikazzjoni taghhom, kif jirriżulta mill-provi. ikkağunat id-dewmien. L-attur isostni li n-nolegg kien totali, b'mod li kien ghall-bastiment kollu, čjoè ghall-kapacità tieghu intiera, mentri l-konvenut isostni li n-nolegg ma kienx totali;

Il-konvenut, biex jassoda t-teži tieghu, issottometta illi l-kliem stampati fil-kuntratt "libero per la sua intiera e salutifera portata" gew imhstrin qabel ma gie ffirmat il-kuntratt. Imma l-Qorti tirrileva illi l-kancellament ta' dawk il-kliem gbandu jigi interpretat konsistentement mal-kliem l-iehor talkuntratt tan-nolegg. Issa, aktur V-isfel fil-kuntratt, hemmi ir-rižerva li žamm Albanozzo ghall-attur (ara xhieda ta' Carmelo Caruana fol. 42 tal-process l-ieĥor), koncepita bil-kliem manoskritti, "il noleggiatore si obbliga di caricare casse di uova fresca ed eventualmente altra merce fino al completamento del bastimento". Issa hu car li, jekk l-attur zamm iddritt li jikkompleta hu stess it-taghbija totali tal-bastiment, din ir-rižerva mbijiex končiljabili ma' dak li jippretendi l-konvenut, li hu kien liberu ighabbi merkanzija ohra. U hu ta' min josserva illi l-klawsoli manoskritti jirbhu l-klawsoli stampati - dan skond il-gurisprudenza kostanti u pacifika tal-Qrati Inglizi (ara n-numru kbir ta' gudikati citati fin-nota (h) pag. 371, Vol. 30, Halsbury's Laws of England), fein appuntu jinghad illi fic-"charter-parties" "more weight is to be given to the written than to the printed terms"; ghar-raguni, kif spjegata minn Lord Ellenborough fis-sentenza "Roberston vs. French" (1803) 4 East, 130, p. 134, illi "the written terms embody the special stipulations which the parties, after consideration of all the circumstances, have introduced for the purpose of meeting their special requirements" (ara wkoll sentenza Trib. ta' Genova, 28. X. 95, Leopold vs. Gabella, Coen, voce Commercio Marittimo, §318);

Anki jekk, ghall-grazzja ta' argument jinghad li hemm xi ambigwith, allura, in bazi ghall-principju li "parol evidence.

aithough not admissible to vary the terms of the charter-party, is admissible to explain them if ambiguous" (ara gudikati, nota (m) ibidem, pag. 368), hemm ix-xhieda ta' listess Garuana fejn qal li Abanozzo, agent ta' l-attur, kien soltu jirrizerva l-ispazju superfluwu biex jista' jimpedixxi neguzjauti ohra li jgibu kariki huma. Jekk imbaghad il-konvenut irid isostni li kien hemm dak li jissejjah "an indipendent collateral agreement", fis-sens li hu seta' jghabbi btieti ta' linbid, il-Qorti hi tal-fehma li l-konvenut ma wasalx biex jippreva dan, ghaliex hu car mill-provi li, anki jekk l-attur fl-ahbar akkonsenta li jitghabba inbid, akkonsenta però taht il-kondizzjoni li jkun hemm spazju bizzejjed ghall-annimali; u mir-relazzjoni partikolareggjata ta' l-espert adoperat jirrizulta li dan i-i-pazju ma kienx hemm, u l-provi jsostnu ezuberantement dik il-konkluzjoni;

Ghuthekk it-taghhija ta' l-inbid kienet kolpa kontrattwali

mrfl-partr tai-konvenut;

Mill-provi jirrizulta wkoll illi kienet it-taghbija ta' dan l-mbro li ikkagunat id-dewmien fit-tluq tal-bastiment minn Tripli, kif fuq imsemmi. Deher mill-provi, infatti, li l-kaptan dam jistenna gurnata shiha, ghaliex l-inbid ma kienx lest fuq il-bankina. Intilfet b'hekk gurnata shiha; u l-bastiment, minflok ma telaq minn Tripli s-Sibt filghodu; 16 ta' Novembru 1946, telaq il-Hadd, fis-17 tax-xahar;

Ikkunsidrat;

Illi ghalhekk sa issa l-provi juru li l-barrin mietu bhala effett tal-maltempata, u li l-bastiment ma kienx jinkontra din il-maltempata kieku ma kienx hemm il-kolpa kontrattwali tal-konvenut, konsistenti filli hu ghabba, bla jedd, inbid, u filli din il-karikazzjoni ta' l-inbid irritardat it-tluq tal-bastiment b.gurnata;

Illi fil-kuntratt tan-noleģi hemm is-solita ezenzjoni ta' responsabinta tan-noleģijant, koncepita b'dawn il-kliem (fol. 11 Dok: X tal-process l-iehor):— "Il fatto divino, gli impedimenti principi, incendio, e tutti i pericoli di mare, fiumi, e navigazioni di qualunque natura, nel corso del presente viaggie, eccettuati". B'dawn il-kliem in-noleģijant, kif ighidu l-awturi Ingliži, "contracts himself out of liability";

Illi f'dan il-każ, l-eccezzjoni rilevanti hi dik dwar "perils of the seas" — liema frażi giet definita f'diversi kawżi li gew quddiem il-Qrati Ingliżi (ara Nugent vs. Smith, 1, C.P.D. 19, 423; u Thames and Mersey Marine Insurance Company vs. Hamilton, Fraser and Co., 12 App. C. 484) bhala li thisser "all kinde of marine casualties, such as shipwreck, foundering, stranding, etc., and every species of damage to the ship or goods at sea by the violent and immediate action of the winds or waves, not comprehended in the ordinary wear and tear of the voyage, or directly referable to the acts and negligence of the shipowner or his servants as its proximate cause";

of the shipowner or his servants as its proximate cause";

Illi kieku l-kwistjoni preženti kellha tigi valjata semplicistikament in baži ghar-raģunament li l-mewt tal-barrin ģiet kaģunata "by the violence of wind or waves", u kwindi "sic et impliciter" taqa taht il-klawsola ta l-ežoneru tan-noleģ-gjant mir-responsabilità tieghu, allura l-argument kien jista jieqaf f'dan il-pont; ghaliex dan kien ikun "a peril of the sea". Hekk, f'kaž analogu, ģie dečiž illi "where horses on board were injured in a storm by the rolling and pitching of the ship, and by kicking one another in the confusion, so that they died, the loss was considered to proceed from a peril of the sea" (Carver, Carriage by Sea, n. 128):

the sea" (Carver, Carriage by Sea, p. 128);

Illi però, l-attur qieghed isostni illi l-bastiment gie espost ghal dik li tissejjah "elemental viotence" — vjolenza ta' l-elementi, rih u bahar — minhabba d-dewmien ingustifikat tan-noleggjant. Kieku l-partenza minn Tripli saret bla dak id-dewmien, il-maltempata kienet tigi evitata;

Ikkunsidrat fug dan il-pont;

Illi hu pacifikament ricevut bha'a principju generali illi, kif caserva l-kompjant Imhallef Dr. Luigi Camilleri, Appell Inferjuri "Cjantar vs. Gatt", 15 ta Mejju 1926, "l'efficacia del caso fortuito e della forza maggiore, quali mezzi liberatori dalla responsabilità, cessa quando questi avvenimenti sieno preceduti da dolo o colpa dell'agente". F'kazijiet simili, kif ighid il-Chironi (Tratt. Colpa Extra-Contratt., Lib. II, no. 542 bia), "da tale stato illecito ebbe esistenza diretta il danno, sebbene paia derivato dal caso fortuito o dalla forza maggiore". F'dawn il-kazijiet il-"vis major" ma tiskagjonax lil min jinvokaha; ghaliex "culpa praecessit casum";

I'lli fid-dottrina u l-gurisprudenza tal-kummerć marittimu, dan il-principju rcieva applikazzjoni specifika u kostanti. Fir-Roxoe's "Admiralty Practice", 3rd. Edition, pag. 193. hemm citat il-principju, fuq l-awtorità tas-sentenza mognu-ja minn Lord Macnachten, fil-kawza The Xantho, 1887, 12 App. Case, 503, illi, ghar-rigward ta' l-ezoneru tar-responsahilità tax-"ship owner" ghal "acts of God", fosthom is-sinistri tal-bahar, "even in cases within the very terms of the exception in the bill of lading, the ship owner is not protected if any default or negligence on his part has caused or contributed to the loss". L-Imhallef Ingliz Lord Watson, fil-kawża Hamilton vs. Pandorf, li giet quddiem il-House of Lords bhala Qorti Suprema (1887, L.J. 57, Q.B. 24 — 12 App. C. 518), presjeduta minn Lord Halsbury, qal hekk:— "When a ship owner, who is bound by the implied terms of the contract to carry with ordinary care, claims the benefit of the exception, the Court will, it necessary, go behind the proximate cause of damage, for the purpose of ascertaining whether that cause was brought into operation by the negligent act or default of the ship owner, or of those for whom he is responsible" (ara wkoll Carver's "Carriage by Sea", 6th. edit., pag. 126);

on the exception";

Aktar tard, l-istess awtur ikompli jghid:— "To escape liability the ship owner must show that the loss or damage was caused by one of the perils excepted in the contract of affreightment. If he does so, he will escape liability, unless the plaintiff establishes that the loss or damage would not have occurred but for some breach of one of the ship owner's implied undertakings";

Ma hemmx bżonn jinghad li wiehed mill-obligi tal-kaptan, u kwindi tax-"ship owner", hu dak li jiflaq mill-aktar fis possibili (art. 345 Ch. 17). "The voyage", jinghad fil-Carver, ibidem, pag. 393, "ought to be commenced without

needless delay". Jekk il-kaptan jongos li jaghmel dan, allura jkun hemm "breach of one of the ship owner's implied undertakings". Is-sentenza moghtija mill-Qrati Inglizi fil-kawża Siordet vs. Hall. 1828, 4 Bing. 607, tattalja ruhha ferm ghall-każ preżenti fil-principju minnha stabbilit b'dawn il-kliem:— "The exception does not apply where, though the loss is occasioned by the act of God, the efficient cause without which the act of God would not have been operative, was negligence". Minghajr dak id-dewmien it-tempesta ta' dak il-lejl partikulari ma kienetx tkun operativa fuq il-barrin ta' l-áttur :

Ighid il-Carver a propozitu:— "The voyage must be commenced without needless delay. If there has been an impro-

per loss of time after the goods have been delivered for shipment by the shippers, and damage or loss results, the shipowner is answerable. Thus, where there has been negligent delay in provisioning the ship, so that she was detained at the port of loading, and was, consequently, frozen up there for a long time, the ship-owner was liable to the charterers for consequent damages';

Del resto, it-Ligi Maltija (art. 410 Kap. 17) turi čar li saegwi din it-teorija. Infatti, fl-artikolu čitat jinghad illi, jekk il-vjagg, sija fl-inizju tieghu kemm fil-kors tieghu, jigi sospiž temparaneament minhabba f'embargo jew forza magguri ohra, allura ma hemmx lok ghad-danni, kwante volte ma jkunx

hemm htija tal-kaptan jew tan-noleģģjant;

Illi fil-kaz prezenti hu car illi, kieku l-bastiment ma ğiex indebitament imdewwem fil-partenza mill-konvenut, kif ga nehad il-maltempata kien jevitaha; u ghalhekk il-htija tal-konvenut "contributed to the loss", jew "brought into operation the exception"; il-hsara "would not have occurred", kieku ma kienx hemm dak id-dewmien kolpuz, u t-tempesta kienet tkun "not operative" ghar-rigward tal-barrin ta' l-attur;

Ikkunsidrat;

Illi f'każijiet simili l-klawsola ta' l-eżoneru ma tiskagunax lill-konvenut malgrado l-''peril of the sea'', anki ghal dottrina ohra ricevuta f'materja nawtika. Fil-kuntratt tan-nolegg rego'anti din il-kawża (Dok. X tal-process l-iehor) hemm il-klawsola ''Il capitano procedera al più presto possibile direttamente per Malta''. Ighid il-Halsbury (Vol. XXX, pag. 292):— ''Time-charter parties frequently provide that the captain shall prosecute his voyage with utmost despatch''. Issa, meta hu hekk, ''the ship owner will be liable to the charterer in damages for any failure by his servants or agents to comply with this stipulation. Moreover''— u hawn hu l-pont importanti ta' din id-dottrina— ''a breach of the stipulation may amount to a deviation''. L-istess il-Hurst (op. cit. p. 177) ighid:— ''In other words, undre and unjustified delay will have the same effect as a deviation from the usual course''. Issa dan l-effett — u hawn hi l-importanza ta' dan

il-principju fil-fattispecje ta' dan il-process — hu preciżament illî n-noleggjant ma jkunx kata' aktar, f'kaz ta' dewmien kolpuz, jirreklama l-beneficeju ta' l-accidenti eccettwati fil-kuntratt. F'dan il-kaz, la darba kien hemm dewmien kolpuż, ilkonvenut ma jistax aktar jinvoka favur tieghu l-eccezzjoni sti-pulata fil-kuntratt, tal-''pericoli di mare''. Fatt simili ''pre-cludes the ship owner from relying on any exception in his favour contained in the charter-party, and renders him liable for any loss or damage to the cargo, unless he can show that this loss or damage must have occurred even if there had been no deviation" (p. 293 Halsbury). Ighid il-Hurst (op. čit. pag. 125):— "...... the benefit of exceptions contained in the contract of carriage will be lost";

(†handu jiği osservat ti ghall-applikazzjoni ta' dan il-prinčipiu ma hemmx bzonn li r-riskju ikun gie awmentat; ankorkê r-riskju baqa' ta' l-istess entità, il-fatt hu li jkun gie alterat. "Deviation", ighid il-Hurst (p. 178), "may also be constituted by an unreasonable and inexcusable delay in the commencement of the voyage...... This is on the principle that the risk is altered". U ftit qabel, dan l-awtur wera x'forza kien gieghed jaghti lill-kelma "altered", meta gal "altered. though not necessarily increased";

F'dan il-każ ir-riskju gie alterat ghaliex, mentri bla dak id-dewmien ir-riskju kien ikun ghail-maltemp li seta' iingala' bejn is-16 u t-18 ta' Novembru 1946, bid-dewmien ir-riskju kjen ghall-maltemp bein is-17 u d-19 ta' dak ix-xahar;

Ikkunsidrat:

Illi ghalhekk il-konvenut hu responsabili avvolja l-barrin mietu bil-forza ta' l-elementi tan-natura, minhabba li dik il-"vis major" kienet preceduta minn htija tieghu li, kieku ma kienetx hemm, il-"vis major" ma kienetx ikollha effett fuq il-barrin ta' l-attur. Hu anki responsabili ghaliex bid-dewmien kolpuz, ammontanti dottrinalment ghal deviazzioni, hu tilef id-dritt li jinvoka favur tieghu l-ezoneru kontemplat fil-kuntratt tan-nolegg;

Ikkunsidrat:

Illi ma tiswiex lill-konvenut l-osservazzjoni illi l-kawża prossima tal-heara kienet il-maltemp. Dan hu veru, imma hu wko!l veru "in subjecta materia" (ara Lloyd v. General Iron Screw Collier Co., 1864, 3 H. & C. 284) illi "The Court will look at the 'causa causans', and the fact that the proximate cause of the loss or damage is excepted will not avail the shipowner, if its operation was induced by his negligence.......". Il-fatt li d-dewmien ma kienx l-ahhar fiz-zmien ma jfisser xejn, ghaliex hu pacifiku l-principju illi "a negligent act may be the affective cause of an injury though it be not proximate in time, if it is the partilular incident in a chain of events which has in fact led to the injury" (Halsbury, Vol. XXIII, p. 593);

Ikkunsidrat:

Illi fil-petizzjoni ta' l-appell fil-process l-iebor gie osservat mill-konvenut illi, meta ma hemmx terminu stabbilit biex tiği ezegwita obligazzjoni, allura d-debitur ghandu jiği kostitwit in mora per mezz ta' att gudizzjarju, biex jista' jkun responabili ghad-danni. Apparti l-fatt li f'dan il-każ l-obligazzioni tal-konvenut kienet li ma jdumx ma jibda l-vjagg u li ma ighabbix merkanzija tjeghu ("di non fare"), u ghalhekk, skond l-art, 1171 Kap. 23, il-kostituzzjoni in mora ssir bilfatt ta' l-infrazzjoni stess, hu čar li, f'dan il-każ il-principju hu divers. Skond l-art. 336 (1) Kap. 17, "The master is responsible for the goods entrusted to his care, but he is not answerable for any loss or damage occasioned by reason of any defect inherent in the goods or of circumstances beyond his control". Issa n-noleggjant hu responsabili ghall-attijiet tal-kaptan fl-isfera tad-doveri tal-kaptan bhala impjegat tieghu. Qal Lord Kenyon (ara Carver, p. 389):— "The defendants" — vwoldiri x-"ship-owners" — "are responsible for the acts of their servant in those things that respect his duty ner" "to deliver the goods in good order at their destination. unless prevented by certain excepted perils" (ibid. p. 127). Jekk, ghalhekk, ma hemmx difett fil-merkanzija, jew "vis major'' effikaci biex teżonera (bhal ma hemmx f'dan il-każ), ir-responsabilità hi konsegwenza diretta tad-dispozizzjoni talligi f'din il-materja partikulari. Il-kaptan, u per mezz tieghu n-noleģējant, f'kaz simili jkun nagas mill-obligazzjoni tieghu skond il-ligi; u ghalhekk jirrispondi ghad-danni;

Illi l-kwistjoni tal-previzjoni, ossija prevedibilità tad-dan ni, ma tidholx f'dan l-istadju, ghaliex f'din il-kawża qieghda tintalab biss dikjarazzjoni ta' responsablità, u mhux likwidazzjoni tal-bsara; u certament, jekk il-konvenut naqas milli jikkonsenja l-merkanzija fi stat tajjeb, skond ma nghad fuq, alfura hu responsabili ghal dik il-merkanzija. Li-element talprevižjoni, jew prevedibilità, jista' talvolta jidhol fil-gudizzju tal-likwidazzjoni tad-danni, u, jekk ikun il-każ, skond il-partiti tal-hsara li jintalbu;

Ghal dawn il-motivi; Il-Qorti tiddecidi; Adezivament ghad-dikjarazzjoni mitluba; Bl-ispejież kontra l-konvenut nomine.