MOOTS

SMITH vs. BUS COMPANY LTD.*

MR. SMITH was traveling by bus through a place which had a rather sinister reputation. Passengers were informed by public notices that the Bus Company Lts, did not take any responsibility for any harm which might be caused to their person or property. Owing to the gross negligence of the Company's employee stationed near a bridge coupled with the slight negligence of the driver, injuries of a serious character were caused to Mr. Smith. The gross negligence of the employee consisted in not having given warning of damage in the bridge and the slight negligence of the driver in not having asked for detailed information.

Mr. Smith is suing the Bus Company Ltd. for damages :

1. for the loss which be suffered for not having kept his appointment;
2. for the expense incurred in hospital;
3. for the loss which he will sustain since he has been maimed;

on the ground of the invalidity of the Company's declaration relating to its responsibility.

Professor V . Caruana , B.Litt., LL.D., kindly consented to hear the case.

Counsel for plaintiff : M. A. Pace, L.P. ; Mr. P. Mallia, B.A.

Counsel for defendant : Mr. J.A. Micallef;
Mr. E. G. Bonello, B.A.

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After having congratulated the students who had acted as counsel for their successful attempts to explain their respective contentions, Professor Caruana made some comments on the duties of a lawyers, especially as regards the honesty and integrity which should always be the leading stars in all his forensic activities. He then proceeded to the examination of the case under discussion.

A contract or a clause thereof could be agreed upon either expressly or tacitly and in this case it was as clear as ether that the agreement as regards mere transport had reached its conclusion ; however the question whether the responsibility clause had been agreed upon or not was not as clear as that the clause had been brought to the notice of the public by notices, the effect of which had always been the subject of prolonged controversies both in English and Continental laws. Professor Caruana did not think that a public notice was sufficient to impose conditions whioch were not customary and of which the general public was ordinarily unaware,. The necessity of the clause being " common knowledge" can be clearly inferred from Thompson v. L.M. & S. Railway Co. (1930). Consequently no agreement had been arrived at as regards that clause and therefore it was to be considered inexistent.

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* Reported by Joe M. Ganado, B.A.

However, Professor Caruana, "for argument's sake" went on to deal with the other question anent the clause's validity. Amongst legal writers the opinion prevailed that such clauses were altogether invalid owing to public welfare at large which demanded that no person could relieve himself of the responsibility imposed by law. And, apart from this, there was a still more convincing argument : a contract (if it may be so called) would be devoid of any binding element were we to recognize validity to clauses relieving the obligor of all responsibility in case of non-performance.

The Bus Company Ltd. was responsible for the acts of its employees, since the principles relating to contractual, not to delictual, liability were to be applied ; it followed that employees were to be considered as a mere " longa manus" of the employer and this eschewed all questions relating to "culpo in eligendo".

Judgment was therefore given for the plaintiff, damages being awarded. As regards the nature of the damages claimed, Professor Caruana said that No(1) had evoked considerable discussion and not without cause : he thought the claim was also in this point well based at law, if Mr. Smith's transaction had reached its final stages and would have been completed at the meeting, since it was correct, as Planiol et Ripert said, to hold that the distinction between foreseen and unforeseen damages referred to the quantity of the damages rather than to their cause.