IN THE COURT OF APPEAL 99.386

SUPREME COURT OF QUEENSLAND

Appeal No 3020 of 1999

Brisbane

[Townsville Trade Waste P/L v Commercial Union Assurance Co of Aust Ltd]

BETWEEN:

TOWNSVILLE TRADE WASTE PTY LTD
(ACN 010 110 086)
(First Defendant) Appellant

AND:

COMMERCIAL UNION ASSURANCE COMPANY OF AUSTRALIA LIMITED
(ACN 004 478 371)
(Second Third Party) Respondent

McMurdo P
Davies JA
White J

Judgment delivered 14 September 1999

Separate reasons for judgment of each member of the Court; McMurdo P dissenting.

APPEAL DISMISSED WITH COSTS TO BE TAXED

CATCHWORDS: **INSURANCE - employee crushed by falling truck body - whether "a collision with a motor vehicle" - s 5(1)(a)(ii) *Motor Accident Insurance Act* 1994.**

***Bull v Attorney-General (NSW)* (1913) 17 CLR 370**
***Khoury (M & S) v Government Insurance Office of New South Wales* (1974) 54 ALR 639**
***McEwan v The Council of the City of Gold Coast* [1986] 1 Qd R 337**
***M.A.I.B. v Edwards* 1990 Tas R 248**
***Mancomunidad Del Vapour Fruiniz v Royal Exchange Assurance* [1927] 1 KB 567**
***Re FAI General Insurance Company Limited* [1996] 2 Qd R 230**

***Technical Products Pty Ltd v State Government Insurance Office (Q)* (1989) 167 CLR 45.**
***The Normandy* [1904] P 187**

Counsel: Mr GK Flint for the appellant
Mr RAI Myers for the respondent

Solicitors: Dunhill Madden Butler for the appellant
Carter Newell for the respondent

Hearing Date: 23 July 1999

1 **McMURDO P:** I have read the reasons for judgment of White J and am grateful for her statement of the facts and analysis of the issue in this case.

2 It is no easy task to decide whether the facts of this case come within s 5(1)(a)(ii) of the *Motor Accident Insurance Act* 1994 ("the Act").

3 The essence of the appellant's submission is that the factual circumstances of this case are reasonably describable as a "collision"; the failure of the hydraulics in the garbage collection truck causing the compactor attached to the truck to fall onto the worker standing on the truck chassis underneath the elevated rear body of the truck is a "collision ... with the motor vehicle" under s 5(1)(a)(ii) of the Act.

4 Section 3 of the Act sets out its objects:

> "(a) to continue and improve the system of compulsory third-party motor vehicle insurance, and the scheme of statutory insurance for uninsured and unidentified vehicles, operating in Queensland; and
>
> (b) to provide for the licensing and supervision of insurers providing insurance under policies of compulsory third-party motor vehicle insurance; and
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> (c) to encourage the speedy resolution of personal injury claims resulting from motor vehicle accidents; and
>
> (d) to promote and encourage, as far as practicable, the rehabilitation of claimants who sustain personal injury because of motor vehicle accidents; and

(e) to establish and keep a register of motor vehicle accident claims to help the administration of the statutory insurance scheme and the detection of fraud; and

(f) to promote measures directed at eliminating or reducing causes of motor vehicle accidents and mitigating their results."

Section 5(1) of the Act provides:

"5.(1) This Act applies to **personal injury caused by, through or in connection with a motor vehicle if, and only if, the injury -**

(a) **is a result of -**

(i) the driving of the motor vehicle; or

(ii) **a collision,** or action taken to avoid a collision, **with the motor vehicle;** or

(iii) the motor vehicle running out of control; or

(iv) a defect in the motor vehicle causing loss of control of the vehicle while it is being driven; and

(b) is caused, wholly or partly, by a wrongful act or omission in respect of the motor vehicle by a person other than the injured person."
(My emphasis)

"(2) For an uninsured motor vehicle, subsection (1) applies only if the motor vehicle accident out of which the personal injury arises happens on a road or in a public place.

(3) However, this Act does not apply to personal injury caused by, through or in connection with -

(a) a backhoe, bulldozer, end-loader, forklift, industrial crane or hoist, or other mobile machinery or equipment; or

(b) an agricultural implement; or

(c) a motor vehicle adapted to run on rail or tram tracks; or

(d) an amphibious vehicle; or

> (e) a motor vehicle of a class prescribed by regulation;
>
> unless the motor vehicle accident out of which the injury arises happens on a road."

6 The term "motor vehicle" is defined as "a vehicle for which registration is required under the *Transport Infrastructure (Roads) Regulation* 1991 or the *Motor Vehicles Control Act* 1975, and includes a trailer"[1]. The garbage collection truck in this case was a "motor vehicle" under the Act.

7 Where the interpretation of legislation is ambiguous or obscure it is proper to consider the speech made to the Legislative Assembly by the member moving that the Bill be read a second time[2]. The Second Reading Speech of the Act demonstrates that the purpose of the legislation is beneficial:

> "The need for this Bill today is as important as that previous legislation was in 1936 - to care for all Queenslanders, and all Queenslanders may be comforted by its existence and the protection it affords ... the introduction of this Bill demonstrates the Government's commitment to review existing legislation with a view to modernising the benefits to be delivered."[3]

The Minister then discussed a number of defects in the Act's precursor, the *Motor Vehicles Insurance Act* 1936 ("the 1936 Act") concluding:

> "To sum up, this Bill provides for a new direction in the areas of -
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> rehabilitation opportunity for the injured;
> personal injury claims management and settlement of claims;
> licensing and prudential supervision of insurers; and
> fraud control."[4]

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1 Section 4 *Motor Accident Insurance Act* 1994.

2 *Acts Interpretation Act* s 14B.

3 Hansard 16 February 1994, p 6902.

4 Hansard 18 February 1994, p 6904.

As the Act is remedial or beneficial in its effect, if any ambiguity exists it should be construed beneficially so as to give the fullest relief which the fair meaning of its language will allow, without straining or exceeding the true significance of the provision: see *Bull v Attorney-General for New south Wales*[5]. The interpretation taken of the legislation must be limited to what is fairly open on the words actually used in the legislation: see *Khoury (M & S) v Government Insurance Office (NSW)*[6] and Pearce and Geddes' *Statutory Interpretation in Australia*[7].

8 The respondent has also urged us to consider the Second Reading Speech of the *Motor Vehicles Insurance Act Amendment Act* 1988 ("the 1988 Act") which amended the 1936 Act. The responsible Minister said:

> "it is necessary to amend the Motor Vehicles Insurance Act to -
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> - ensure that cover of 'by, through or in connection with' a motor vehicle relates to the more direct use of a vehicle;
> - ensure CTP liability is restricted just to that - and is not extended to matters which are rightly workers' compensation and public liability claims;
>
> ..."[8].

The 1988 Act achieved that aim, for example, in excluding from the ambit of the legislation cases where workers were injured loading or unloading motor vehicles. There is no reason to conclude from the Second Reading Speech in respect of the 1988

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5 (1913) 17 CLR 370, Isaacs J at 384.

6 (1984) 165 CLR 622 at 638.

7 4th ed, Butterworths 1996, p 222.

8 Hansard 8 September 1988, p 725.

Act or this Act that "collision ... with the motor vehicle" in s 5(1)(a)(ii) of the Act was intended to exclude the unique facts of this case from its operation.

9 White J in her reasons sets out the relevant differences between s 5(1)(a) of the Act and its counterpart in the earlier *Motor Vehicles Insurance Act* 1936, as amended in 1988 to remove the limitation of the word "stationary" in the precursor to s 5(1)(a)(ii) (it was conceded by both parties here and below that it is irrelevant to the interpretation of s 5(1)(a)(ii) whether the motor vehicle was moving or stationary) and to limit the ambit of the precursor of s 5(1)(a)(iv).

10 In addition, s 5(3) of this Act now excludes personal injury caused by a large number of industrial and agricultural motor vehicles likely to be used in a workplace where the motor vehicle accident does not happen on a road; the exclusions do not include the motor vehicle involved in this case. Had Parliament intended to exclude such a factual scenario as this, it could have easily included "garbage collection trucks" within the class of motor vehicles prescribed by regulation in s 5(3)(e).

11 "Collision" is not defined in the Act. Generally, words in statutes should be given their ordinary, natural meaning in context and observing the objects and purpose of the Act. "Collision" has the dictionary definition of "The action of striking against something with force; the action or an act of colliding; (a) violent encounter of a moving body, esp. a ship or vehicle, with another or with a fixed object."[9] The unusual facts of this case fall within that definition although, as White J points out, they do not sit entirely comfortably with the ordinary person's use of the term "a collision ... with the motor vehicle".

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9 The New Shorter Oxford English Dictionary, Clarendon Press, Oxford, 1993.

12 The ordinary meaning of "a collision ... with the motor vehicle" is synonymous with a motor vehicle accident. The term "motor vehicle accident" is defined in the Act as "an incident in which personal injury is caused by, through or in connection with a motor vehicle."[10] This incident clearly comes within that definition, but it is of no assistance as it merely repeats the first part of s 5(1) of the Act; something more must be intended by the expression "a collision ... with the motor vehicle".

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10 s 4 *Motor Accident Insurance Act* 1994.

13 Hardly surprisingly there are no reported cases involving similar facts and law. In *Motor Accident Insurance Board v Edwards*[11] without any discussion of the meaning of "collision", facts involving a woman injured in a fall down stairs onto a forklift truck without first making contact with the roadway, were accepted as amounting to a "collision" under the *Motor Accidents (Liabilities and Compensation) Act* 1973 (Tas). Such cases provide no great assistance and in the end the meaning of "collision" must be found by looking at its ordinary meaning in context and observing the objects and purpose of the Act.

14 It is not essential in order to give a reasonable meaning to s 5(1)(a)(ii) to read in words such as "a collision with the *whole* motor vehicle" or "a collision ... with the motor vehicle *in use as a motor vehicle*" or as the learned primary judge suggested "a collision with the motor vehicle *qua* a motor vehicle"; such words should not be imported: see *McEwan v The Council of the City of the Gold Coast*[12]. It does not matter then whether

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11 [1990] Tas R 248.

12 [1987] 1 Qd R 337 Thomas J at 339, Ryan J at 343 and de Jersey J (as he then was) at 347.

only part of the motor vehicle collided with the deceased or whether the motor vehicle was being used as a motor vehicle at the time of the collision.

15 The dictionary definition of "collision" covers the facts of this case and is consistent with the objects of the Act set out in s 3 and with the purpose of the legislation, to provide an effective insurance scheme for those injured because of motor vehicle accidents. The maritime cases which deal with the term "collision" are of no real assistance but certainly do not support a contrary interpretation.

16 Although a discussion of the facts of this case in ordinary conversation would be unlikely to include a description of it as a "collision with the motor vehicle" it remains exactly that; the words must be given some meaning and the dictionary definition does not give an absurd or unreasonable result in context and observing the objects and purpose of the Act.

17 I am finally persuaded that the facts of this case are capable of constituting

> "personal injury caused by, through or in connection with a motor vehicle (which) ...
> (a) is a result of -
> ...
> (ii) a collision ... with the motor vehicle."

18 I would allow the appeal and set aside the orders made below. The respondent should pay the appellant's costs of and incidental to the appeal and to the proceedings below.

19 **DAVIES JA:** The relevant facts giving rise to this appeal and the relevant legislative provisions have been fully set out in the reasons for judgment of White J. It is therefore unnecessary to repeat them here.

20 The question is, as White J has said, whether the deceased's injury and death were the result of a collision with a motor vehicle within the meaning of s 5(1)(a)(ii) of

the *Motor Accident Insurance Act* 1994 ("the Act") in circumstances in which, on the defendant's premises, the deceased, in order to repair a truck, was standing on its chassis, the rear body of the truck having been raised above his head by means of its hydraulic ram, that rear body fell on him crushing him against the chassis.

21 It must be said at the outset that, despite the wide dictionary definition of "collision", one would not ordinarily describe the deceased's unfortunate accident as a collision with a motor vehicle. Rather one would say that he was crushed by the falling body of the truck. The question is, however, whether that phrase has a wider or different meaning in its statutory context. No help can be derived, in answering that question, either from the objects stated in the Act or from any extrinsic material other than s 2(2) of the *Motor Vehicles Insurance Act* 1936, which was the predecessor of s 5(1), and a statement of its purpose, to both of which I shall refer below.

22 Of the four subparagraphs of s 5(1)(a), three of them, par (i), par (iii) and par (iv) appear to be limited in their operation, not only to an injury which results from the functioning of a motor vehicle as a motor vehicle but to one which results from the movement of a motor vehicle as a motor vehicle. The critical subparagraph, subpar (ii), is not restricted in its operation to an injury resulting from a collision with a moving vehicle; but the question is whether it is, like the other subparagraphs, restricted to an injury resulting from a collision with a vehicle (whether moving or stationary) in its capacity or function as a motor vehicle. The learned primary judge held, in effect, that it was; as his Honour put it, "qua a vehicle".

23 There are at least two reasons, already referred to in passing, why, in my view, that conclusion is correct. The first is that it excludes from the operation of subpar (ii) an event which would not, in ordinary language, be thought of as a collision with a motor

vehicle. The second is that it restricts the operation of subpar (ii) to a category consistent with the restricted operation of the other subparagraphs. The subparagraphs as a whole then provide a consistent and coherent basis for application of the section.

24 That restriction is also consistent with the apparent purpose of s 5(1)(a) so far as that can be derived extrinsically. The provisions of s 2(2) of the *Motor Vehicles Insurance Act* 1936 and the Minister's Second Reading Speech on its introduction are the only indications of this. Before the introduction of that subsection there were two prerequisites to the liability of the motor vehicle insurer; that the liability must be in respect of a motor vehicle and that bodily injury must be caused by, through or in connection with a motor vehicle. Section 2(2) introduced a further prerequisite. It was said by the relevant Minister on his Second Reading Speech introducing that provision that its purpose was to "ensure that cover of 'by, through or in connection with' a motor vehicle relates to the more direct use of a vehicle". It may be safely assumed that s 5(1), which is in similar but relevantly narrower terms, has the same purpose. His Honour's conclusion gives effect to that purpose.

25 In arriving at the conclusion which he did the learned primary judge considered and distinguished the case of *McEwan v The Council of the City of the Gold Coast* [1987] 1 QdR 337, a case which has some factual similarity to this. However the legislative provisions considered in that case, and consequently the questions which the court had to decide, were materially different from that which we must decide here. The questions in that case were those referred to earlier; whether there was legal liability of the defendant in respect of a motor vehicle and whether accidental bodily injury was caused by, through or in connection with a motor vehicle. In the second of these the issue was whether the phrase "the use of" should be interpolated after the words "by, through, or in connection

with". The case was decided before the 1988 amendment adding the further prerequisite in s 2(2). Had the case come before the court after the Act came into force (or even after the 1988 amendment) there would have been an additional question whether the plaintiff's injury, which was caused when a slasher, which he was attempting to repair, and which was attached to a tractor, fell on him, was a result of a collision with a motor vehicle (when stationary). If the learned primary judge in the present case is correct, as I think he is, that question would have required a negative answer resulting in a different decision in the case.

26 I agree with White J that the appeal should be dismissed with costs.

27 **WHITE J:** On the morning of 31 August 1995 the deceased who was employed by the first defendant as an apprentice mechanic was repairing a garbage collection truck in a work bay at the first defendant's premises when he was crushed by the falling rear body of the truck. The question for this appeal is whether the circumstances of his injury and death were the result of "a collision ... with the motor vehicle ..." within the meaning of s 5(1)(a)(ii) of the *Motor Accident Insurance Act* 1994.

28 This is a dependency action by the deceased's parents coupled with a claim for damages for nervous shock. It came before the Northern Judge in the form of two demurrers raised by the respondent ("Commercial"). Commercial is both the second defendant as insurer of the garbage truck and second third party apparently joined in that capacity by the first defendant prior to being joined as a defendant pursuant to s 52 of the *Motor Accident Insurance Act*. WorkCover Queensland has elected to be joined as a defendant only to the extent that the action brought by the plaintiffs against the first defendant is for damages for loss of dependency. The first defendant claims to be

indemnified by Commercial against the claim of the plaintiffs to the extent that their action is for damages other than for loss of dependency and their costs.

29 The factual basis of the demurrers is found in the amended statement of claim and the first defendant's statement of claim against Commercial. The deceased used the truck's hydraulic ram to raise the rear section, which contained a garbage compactor, from the chassis. While the deceased was standing on the chassis under the elevated rear body engaged in repair work it fell on him causing injuries from which he died. The fall was allegedly caused by the collapse of the hydraulic ram consequent upon leaking of fluid from the hydraulic system.

30 The learned judge upheld the two demurrers concluding that the language of s 5(1)(a)(ii) was not apt to cover the circumstances of the deceased's injury. He said that it was not appropriate to describe it "as resulting from a collision with a vehicle qua a vehicle which is what I consider (ii) requires".

31 The indemnity insurance scheme for personal injury created by the *Motor Accident Insurance Act* applies only in the limited circumstances set out in s 5. Section 5(1) provides:

> "**5.(1)** This Act applies to personal injury caused by, through or in connection with a motor vehicle if, and only if, the injury -
>
> (a) is a result of -
>
> (i) the driving of the motor vehicle; or
>
> (ii) a collision, or action taken to avoid a collision, with the motor vehicle; or
>
> (iii) the motor vehicle running out of control; or
>
> (iv) a defect in the motor vehicle causing loss of control of the vehicle while it is being driven; and

> (b) is caused, wholly or partly, by a wrongful act or omission in respect of the motor vehicle by a person other than the injured person."

The previous legislation, the *Motor Vehicles Insurance Act* 1936, prior to amendments in 1988 required the owner of a motor vehicle to maintain indemnity insurance "against all sums for which he ... shall become legally liable by way of damages in respect of such motor vehicle for accidental bodily injury ... to any person ... where such injury is caused by, through or in connection with such motor vehicle". The two expressions of limitation, "in respect of" and "by, through or in connection with" were the subject of extensive judicial consideration. The first focused upon the relationship between liability in damages and the vehicle while the second looked to the relationship between the injury itself and the motor vehicle, *Technical Products Pty Ltd v State Government Insurance Office (Q)* (1989) 167 CLR 45 at 47. These expressions are retained in the present section under consideration, although "in respect of" is now prefaced by "a wrongful act or omission" rather than "legally liable by way of damages". What effect that change might have is of no concern on this appeal.

32 In 1988 s 2, the definition section of the *Motor Vehicles Insurance Act* 1936, was amended to add further limitations on the ambit of the indemnity obligation. It provided:

> "(2) Accidental bodily injury (fatal or non-fatal) caused on or after 22 September 1988 is not injury to which any provision of this Act applies unless it is a consequence of -
>
> (a) the driving of a motor vehicle;
> (b) a collision, or action to avoid a collision, with a motor vehicle when stationary;
> (c) a motor vehicle running out of control; or
> (d) a defect in a motor vehicle."

33 As can be seen, the only substantial changes to those 1988 amendments contained in the new 1994 Act are to remove the limitation in s 2(2)(b) that the motor vehicle be "stationary" and to limit the ambit of s 2(2)(d).

34 Mr G Flint for the appellant referred to and relied upon the several dictionary meanings of "collision" as well as the meaning which has been given to the expression in maritime cases. The dictionary sources reveal that "collision with" means, relevantly, "(violent) contact with". To a large extent the meaning of the expression in the maritime cases depended upon the meaning as ordinarily understood in the Admiralty Court as a striking together of ships, per Gorell Barnes J in *The Normandy* [1904] P 187, 198 which is of little or no assistance to the appellant. Further the meaning of the expression depended in many cases upon the construction of a policy of marine insurance which meaning varied with the context, see for example, *Mancomunidad Del Vapor Frumiz v Royal Exchange Assurance* [1927] 1 KB 567, 573. It is a well recognised canon of construction that a word must take its colour from the context in which it is found, *Technical Products Pty Ltd v State Government Insurance Office (Q)* per Dawson J at 51, rather than by the simple application of a dictionary meaning.

35 Mr RA Myers for the respondent suggested that each of ss (1)(a)(i)(iii) and (iv) envisages the subject motor vehicle as an entire entity and ss (ii) requires the same approach. This would exclude the circumstances in which the deceased sustained his injury, on this analysis, because only part of the motor vehicle fell and struck the deceased. This is not an immediately attractive argument because if, for example, the motor vehicle were on a separate hoist which failed and the motor vehicle fell crushing a person working underneath it may be difficult to resist the conclusion that what occurred was a collision with the motor vehicle. However even this is an awkward use of the

word "collision". There are circumstances which may well fall on one side or the other of what might be described as "a collision with" a motor vehicle within the meaning of s 5(1)(a)(ii) with only a slight variation in the facts. For example, would focussing on the wholeness of the motor vehicle exclude a situation where a car door of a stationary vehicle is opened carelessly so that it strikes and injures a stationary pedestrian or a moving bicyclist. The latter example may easily be described as a "collision with" a motor vehicle while the former does not do so readily. But opinions may well differ.

36 His Honour below was referred to the debates in Hansard both on the 1988 amendments and on the introduction of the 1994 Act. The Minister said of the amending legislation that it was necessary to

> "· ensure that cover of "by, through or in connection with" a motor vehicle relates to the more direct use of a motor vehicle;
>
> · ensure CTP liability is restricted just to that - and is not extended to matters which are rightly workers' compensation and public liability claims ..." Hansard, 8 September 1988 pp 725-6.

37 However, neither the 1988 amendments nor s 5 of the present Act limit the insurance obligation to "the use of" a motor vehicle and it is impermissible to seek to include those words when construing s 5, *McEwan v The Council of the City of the Gold Coast* [1986] 1 Qd R 337. There is a danger in seeking to confine the meaning of "collision" to a collision "with a vehicle qua a vehicle" that such an interpretation ventures in this direction, but in the end I am satisfied that it does not.

38 Moynihan J considered the application of s 5(1)(a)(ii) of the *Motor Accident Insurance Act* in *Re FAI General Insurance Company Limited* [1996] 2 Qd R 230 at 233 but was not required to construe the expression "collision" because there was no doubt

that when a motor vehicle ran into another vehicle which had fallen off the back of a vehicle on the highway a collision with a motor vehicle had occurred.

39 It was submitted that the circumstances of *McEwan's* case decided under s 3(1) of the 1936 Act are indistinguishable from the present. The plaintiff was injured while he was changing the blades on a slasher attached to a stationary tractor. He was working under the slasher which was supported by a prop in an elevated position. The slasher fell on him due to negligence in the system of work. The slasher was held to be a composite part of the tractor and thus a motor vehicle for the purposes of the 1936 Act (it may not be so included under the present legislation, s 5(3)). The Full Court held that the employer's liability was a liability "in respect of" the motor vehicle and that the injury occurred by, through or in connection with a motor vehicle. What is different is that there is now the further limitation that the personal injury must be as the result of a "collision with" a motor vehicle. His Honour below concluded that that case would be differently decided under the present Act.

40 His Honour concluded that the proper approach to the construction of the expression "collision with" is to look at the circumstances as a whole and consider whether they meet the natural and ordinary meaning of the language under consideration in its legislative context. He concluded that when regard is had to the circumstances of the deceased standing on part of the motor vehicle carrying out repairs to it, the failure of the hydraulic hoist being part of the motor vehicle causing the raised rear part of the truck to fall and injure the deceased, his injury could not reasonably be described as being the result of a collision with a motor vehicle. The resolution of this appeal is one of some difficulty. I think that in part the problem arises because in ordinary conversation one would describe the deceased as being "crushed" by the truck and not being in "a collision

with" the truck. If in *Re FAI General Insurance Company Limited* the motor vehicle had fallen off the back of the transporting vehicle injuring a stationary pedestrian, the event would, I suggest, be described in ordinary parlance, as a car crushing a pedestrian but it would nonetheless be a collision with a motor vehicle for the purpose of s 5(1)(a)(ii). While the legislation is beneficial in its scope and there is no basis for reading down the meaning, nonetheless I agree with the learned judge below that to characterise what occurred as "a collision with" a motor vehicle is a significant departure from the natural meaning and use of the expression so as to conclude that these circumstances do not lie within its meaning.

41 The appeal should be dismissed with costs to be taxed.