

**General Accident Fire and Life Assurance Corporation Limited**    *Appellant*

v.

**The Commissioner of Pay-roll Tax**    -    -    -    -    *Respondent*

and

**Sentry Life Assurance Limited**    -    -    -    -    *Appellant*

v.

**The Commissioner of Pay-roll Tax**    -    -    -    -    *Respondent*

(Consolidated Appeals)

FROM :

**COURT OF APPEAL OF THE SUPREME COURT  
OF NEW SOUTH WALES**

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 21ST JULY 1982

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*Present at the Hearing:*

LORD KEITH OF KINKEL

LORD WILBERFORCE

LORD ELWYN-JONES

LORD BRIDGE OF HARWICH

LORD BRANDON OF OAKBROOK

[*Delivered by* LORD KEITH OF KINKEL]

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These appeals are concerned with the proper construction of part of the provisions of section 3(1) of the New South Wales Pay-roll Tax Act, 1971. This Act, by sections 6, 7 and 8, imposes upon employers a liability to a tax, known as "pay-roll tax", in respect of wages paid or payable by them after August 1971. Section 3(1) of the Act contains a number of definitions. "Employer" is defined as meaning "any person who pays or is liable to pay any wages and includes the Crown in right of the State of New South Wales". The definition of "wages" is as follows:—

"'wages' means any wages, salary, commission, bonuses or allowances paid or payable (whether at piece work rates or otherwise

evidence, on the ground that the meaning of the expression in question was to be ascertained in accordance with the ordinary use of language and under reference only to such standard works as dictionaries. The appellants supported the introduction of Mr. Gray's evidence on the ground that the expression was a technical one, in legislation directed to a particular industrial field, namely insurance, so that evidence of the meaning attributed to it by persons working in that field was admissible and relevant. Sheppard J. sustained the respondent's submission, but he did read, without objection from the respondent, a textbook written by Mr. Gray, part of which covered much the same ground as his affidavit. He decided the case in the appellants' favour, but by a majority the Supreme Court of New South Wales (Glass and Mahoney JJ.A., Reynolds J.A. dissenting) reversed his judgment.

Their Lordships do not consider that the admissibility or otherwise of Mr. Gray's affidavit evidence is crucial to the determination of this appeal. There are a number of Australian decisions in other contexts, to the most important of which their Lordships will refer later, which give a very clear picture of the factual background in the insurance industry against which the enactment now requiring to be construed falls to be considered. But having heard argument on the admissibility question, their Lordships think it appropriate to express their opinion. It is the rule that expert evidence as to the meaning of ordinary English words in a modern Act of Parliament of general application is not admissible: *Marquis Camden v. C.I.R.* [1914] 1 K.B. 641, per Cozens Hardy M.R. at page 647. But Phillimore L.J. in that case, at page 650, was careful to confine the rule to statutes not dealing with the customs of a particular locality or the practice of a particular trade. In *Unwin v. Hanson* [1891] 2 Q.B. 115 evidence was led as to the meaning attributed by persons in the country conversant with the cutting of trees to the word "lop", which was different from the generally understood dictionary meaning, and did not cover the cutting off of the top of a tree. The Court of Appeal held that the particular meaning was the correct one, regarding the evidence in question as unnecessary but not as inadmissible. It is not possible to construe any statute entirely in the air. Like any written document, it must be viewed against a background of surrounding circumstances, and this commonly emerges upon proof of the factual situation to which the statute is sought to be applied. Part of this situation emerges in the present case from the evidence about the activities of the agents whose commissions the respondent is seeking to draw into the tax net. But another part is to be found in Mr. Gray's description of the traditional *modus operandi* of those insurance company representatives who are engaged on the industrial insurance side of the business. Their Lordships are of opinion that this description was clearly admissible in evidence. It is another question whether it was right to go further and admit evidence of the general understanding in the insurance industry about the meaning of the expression "insurance canvasser or collector". Their Lordships would answer this question in the affirmative. The expression to be construed is not one of general application. It is confined to the insurance industry and its practices. It is a composite expression whose meaning cannot necessarily be correctly gathered from looking up in the dictionary the words "insurance", "canvasser" and "collector". Further, it appears in conjunction with "time-payment canvasser or collector", the meaning of which is by no means apparent to one unfamiliar with the branch of commerce in which such persons are to be encountered. For these reasons this case falls within the exception to the rule enumerated in *Marquis Camden v. C.I.R.* (*supra*).

The argument for the respondent accepted that "collector" meant a person who went from door to door asking for and receiving payments

persons, to which these contentions would restrict the application of the definition, was "industrial insurance canvassers or collectors", and that the Act, by failing to use that description, had evinced an intention against such restriction. But the evidence made it plain that, although the class of workers exhibiting the requisite characteristics had first grown up in the industrial insurance field (so called because this type of business was started by the British Industry Life Assurance Company), and was still primarily concerned with that field, members of the class were commonly referred to as "insurance canvassers and collectors" without the prefix "industrial". So the omission of the prefix is not inconsistent with the appellants' contentions. Their Lordships consider it more important to observe that if the legislature had been minded to include in the paragraph (d) net commissions payable to the whole category of insurance agents or brokers it would have been easy to find the appropriate language to do so.

Glass J.A. did not commit himself to acceptance of the respondent's formulation of the relevant category of workers. The complexity of that formulation and the difficulty of ascertaining the facts necessary to decide whether a particular person falls within it present some additional ground for the view that the legislature is more likely to have had in contemplation a recognised and clearly identifiable class.

For these reasons their Lordships will humbly advise Her Majesty that the appeals should be allowed, with costs here and in the Supreme Court.

