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under the *Workers' Compensation Act.* To my mind it is perfectly clear that he was entitled to that £1 17s. 11d. before the alleged agreement of compromise was made, and therefore it could not form a consideration for any new promise; that being so, the £1 17s. 11d. was not a consideration at all. There was therefore no consideration to support the agreement, and it has therefore no validity either as an agreement ousting the jurisdiction of the Court, or as a compromise or accord and satisfaction of the plaintiff's claim. The only way of doing justice is to send the case back to the Local Court. I therefore agree with the conclusion of the Supreme Court, although for different reasons from those on which their conclusion was based, that the matter must be remitted to the Local Court for decision.

Appeal dismissed with costs.

Solicitors, for appellants, *Stawell & Cowle.*
Solicitors, for respondents, *Martin & Phillips.*

H. E. M.

[HIGH COURT OF AUSTRALIA.]

THE YORKSHIRE FIRE AND LIFE INSURANCE COMPANY PLAINTIFF, APPELLANT;

AND

THE BRITISH AND FOREIGN MARINE INSURANCE COMPANY LTD. DEFENDANT, RESPONDENT.

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MELBOURNE, *Nov.* 17, 20, 21, 22.

Griffith C.J., Barton and O'Connor JJ.

ON APPEAL FROM THE SUPREME COURT OF VICTORIA.

Fire Brigades Act 1890 (*No.* 1200) (*Vict.*), *secs.* 2, 42, 45, 46—*Contribution to expenses of Fire Brigades Board—"Insurance Company," meaning of—Marine Insurance Company insuring against fire on land—Fire insurance incidental to marine insurance—Premium covering both insurances—Ascertainment of proportion of contribution.*

The definition of "insurance company" in sec. 2 of the *Fire Brigades Act* 1890 (Vict.), includes every person or company who or which carries on the business of fire insurance or who or which carries on some business other than that of fire insurance and, as an incident to contracts made by it, for consideration indemnifies against loss or damage by fire property on land.

Held, that a marine insurance company which issued slips annexed to its policies by which it insured the goods the subject of those policies against fire while on land before shipment or after discharge during transit from or to the shippers' warehouses to or from the ship, or while lying temporarily in such warehouses, was an "insurance company" within the meaning of sec. 2 of that Act, and was liable to contribute to the expenses of the Fire Brigades Boards under sec. 42 thereof.

Decision of the Full Court *The Yorkshire Fire and Life Insurance Co.* v. *The British and Foreign Marine Insurance Co. Ltd.*, (1905) V.L.R., 503; 27 A.L.T., 39, reversed.

The mere fact that a marine policy insures against the risk of fire the hulls of ships while moored to wharves in the Port of Melbourne and goods and merchandise therein, does not render a company issuing such a policy liable to contribute to the Metropolitan Fire Brigades Board under sec. 42 of the Act.

Where the premiums for marine policies cover also the fire risks on land to which the slips apply as above described, and the goods the subject of the policies are, for a short period during the currency of such fire risks, in a Fire Brigades District, the company issuing such slips is liable to contribute to the Fire Brigades Board of that district in respect of so much of the gross premiums received by it, being in respect of the property in question, as is proportional to the extent of the land risk while the property is within the district of that Board, as compared with the extent of the marine risk together with any other risk covered by the slips, regard being had to the average premiums asked by fire insurance companies undertaking fire risks only for similar protection.

APPEAL from the Full Court.

In an action brought by The Yorkshire Fire and Life Insurance Co. against The British and Foreign Marine Insurance Co. Ltd., and The Metropolitan Fire Brigades Board, the following special case was stated by consent of the parties, that is to say:—

1. This is an action brought by the plaintiff on behalf of itself and all other insurance companies which have been assessed in respect of the contribution of insurance companies under the *Fire Brigades Acts* in the years 1903 and 1904 respectively against the defendant, The British and Foreign Marine Insurance Company Limited (hereinafter referred to as the defendant com-

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pany)—the defendant, The Metropolitan Fire Brigades Board (hereinafter referred to as the defendant Board) being a nominal defendant—for a declaration that the defendant company is liable to contribute to the contribution of insurance companies pursuant to the *Fire Brigades Acts* and for a declaration that the defendant company is bound to indemnify or recoup the plaintiff and each of the other insurance companies on behalf of whom it sues a proportionate amount of the defendant company's contribution in respect of the years 1903 and 1904 respectively.

2. Before the 31st days of January in the years 1903 and 1904 respectively, the defendant Board, in accordance with the provisions of the *Fire Brigades Act* 1890, No. 1200, as amended by the *Fire Brigades Act* 1891, No. 1207 (which Acts are hereinafter referred to as the *Fire Brigades Acts*), duly prepared estimates of the probable expenditure which was necessary to be incurred in the execution of the *Fire Brigades Acts* within the metropolitan district during the said respective years 1903 and 1904, and the said estimates were respectively duly approved of by the Governor-in-Council and were respectively within the limit fixed by the Minister administering the *Fire Brigades Acts*.

3. The plaintiff and the other companies on behalf of whom it sues before the 28th day of February in the years 1903 and 1904 respectively duly transmitted to the defendant Board returns showing the total amount of the premiums received by the plaintiff and the said other companies during the years 1902 and 1903 respectively in respect of property situated within the said metropolitan district insured from fire by the plaintiff and the said other companies.

4. The plaintiff and the said other companies on behalf of whom it sues duly contributed and paid to the defendant Board, towards the said estimated annual expenditure for the years 1903 and 1904 respectively, the whole of the proportion of the contribution of insurance companies liable for such contribution under the provisions of the *Fire Brigades Acts* for each of the said years in respect of property within the said metropolitan district insured from fire by the plaintiff and the said other companies.

5. In the years 1902 and 1903 respectively, and at all times material to this action prior thereto, the defendant company

granted policies of insurance both within the State of Victoria and in the other States of the Commonwealth other than the State of Western Australia in consideration of premiums paid therefor in the form annexed hereto and marked A. In some cases the defendant company issued policies of insurance in the said form with slips in the forms B, C and D or B, C. or D annexed hereto, attached to such policies.

6. The property which formed the subject matter of insurance by the said policies with or without such slips or either of them attached thereto respectively mentioned in the preceding paragraph comprised the following:—

(*a*) Goods and merchandise which were within the said metropolitan district at the time the said policies in respect thereof were taken out, being sometimes lying in warehouses or other places, sometimes at railway or customs sheds or upon wharves, and which continued temporarily in some such place until they were despatched out of the colony of Victoria.

(*b*) Goods and merchandise which were not within the said metropolitan district at the time the said policies in respect thereof were taken out but which afterwards during the continuance of the said policies respectively came into the said district whether by ship or otherwise, and were temporarily at warehouses or other places, customs or railway sheds, or upon wharves while in transit from the place of production of such goods to the place of final delivery thereof.

(*c*) Goods and merchandise on board vessels temporarily moored to wharves within the Port of Melbourne, some awaiting delivery to consignees and some despatch upon a voyage.

(*d*) Hulls of vessels temporarily moored to wharves within the Port of Melbourne, some having arrived from a voyage, and some awaiting despatch upon a voyage.

7. The defendant company did not transmit to the defendant Board before the 28th days of February in the years 1903 and 1904 respectively, or at all, returns showing the total amount of the premiums received by or due to it during the years 1902 and

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1903 respectively in respect of the said property insured as described in paragraph 6 hereof, and the defendant company contends that it is not required by the *Fire Brigades Acts* to transmit to the defendant Board the said returns or any returns in respect of such or similar property so insured, and does not intend to send returns in respect of similar business transacted by it in the future.

8. The defendant company has not contributed or paid to the defendant Board towards the said estimated annual expenditure for the years 1903 and 1904 respectively any proportion of the contribution of the whole of the insurance companies liable for such contribution for each of the said years in respect of the premiums received by it under the policies with or without such slips or either of them attached thereto issued by the defendant company on the said property described in paragraph 6 hereof, and claims that it is not liable to contribute to the expenditure of the defendant Board in respect thereof, and does not intend to make any contribution in respect of premiums received by it upon similar business transacted by it in the future.

The questions submitted for the opinion of the Court are:—

1. Whether upon the facts stated the defendant company is liable to contribute towards the annual expenditure of the defendant Board in respect of any, and which, of the premiums mentioned in paragraphs 5, 6 and 7 hereof?

2. If yea, in respect of what proportion (*i.e.*, the whole or some and what part thereof) of such premiums is it liable to contribute?

3. Is the defendant company liable to recoup or reimburse the plaintiff and the other companies on behalf of which it sues a proportionate amount of the defendant company's contribution in respect of the years 1903 and 1904 respectively?

If the answer to the said question No. 1 is in the affirmative, judgment shall be entered for the plaintiff with costs against the defendant company, and if the answer to question No. 3 is in the affirmative, an order shall be made for such accounts and inquiries or other consequential relief as to the Court may appear just. If the answer to question No. 1 is in the negative, judgment shall be entered for the defendant company with costs. The Court to make such order as to the costs of the defendant Board as to it

may seem fit, the defendant, The British and Foreign Marine Insurance Company Limited not to be taken, however, to admit that the defendant Board is entitled to any costs, and reserving its right to contest the same.

The policy exhibit A, was a policy of marine insurance in the ordinary form, containing the following provisions *inter alia* :—

"And the company promises and agrees that the insurance aforesaid shall commence upon the said goods and merchandise from the time when the goods or merchandise shall be laden on board the said ship . . . and continue until the said goods and merchandise be discharged and safely landed at as above. . . . And touching the adventures and perils which the said company is contented to bear and does take upon itself in the voyage so insured as aforesaid, they are of the seas men-of-war, fire," &c.

Exhibit B, headed "Fire Risk—Intercolonial and Coastal," was as follows :—

"Including the risk of fire from time of leaving warehouse at port of shipment during transit whilst at wharf or wharves or jetties until expiry of three days after discharge or until arrival at warehouse at port of destination in which the interest is to be stored whichever may first occur but if any property included herein shall at the time of loss or damage be covered by a fire policy protecting it specially against fire or which would so protect it in the absence of a marine policy this policy shall not insure the same except only as regards any excess of value beyond the amount of such insurance."

Exhibit C, headed "Fire Risk, Warehouse to Warehouse—Outward," was as follows :—

"Including the risk of fire from time of leaving supplier's warehouse during transit to port of export and until shipped, also risk of fire from vessel or lighter's side at port of discharge until the interest is deposited in a bond or in public freestore or in a warehouse of the consignees, but if any property included herein shall at the time of any loss or damage be covered by a fire policy protecting it specially against fire or which would so protect it in the absence of a marine policy, this policy shall not insure the

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same except only as regards any excess of value beyond the amount of such insurance."

Exhibit D was a follows :—

"Covering risks in auctioneers' stores from time of purchase and whilst in transit direct to ship provided interest be at risk of insured."

The Full Court answered the first question asked by the special case by saying that the defendant company was not liable to contribute towards the annual expenditure of the defendant Board in respect of any of the premiums mentioned in paragraphs 5, 6, and 7 thereof: *The Yorkshire Fire and Life Insurance Co.* v. *The British and Foreign Marine Insurance Co. Ltd.* (1).

From this decision the plaintiff company now appealed.

Issacs A.G. and *Mitchell* K.C. (with them *England*), for the appellant company. The defendant company is within the definition of "insurance company" in sec. 2 of the *Fire Brigades Act* 1890. The use of the word "includes" is *primâ facie* for the purpose of enlarging the meaning of "insurance company": *Ex parte Ferguson and Hutchinson* (2); *Nutter* v. *Accrington Local Board of Health* (3); *Dilworth* v. *Commissioners of Stamps* (4). The definition is divisible into two parts: (*a*) any person &c., carrying on the business of fire insurance; (*b*) any person &c. granting for consideration indemnity against loss or damage by fire whether by itself or in conjunction with any contract other than that of insurance. The word "insurance" where last used, must mean "fire insurance," which is the only insurance spoken of, and the word "itself" must refer to the contract of granting indemnity. The defendant company is on the facts within (*a*), or, if not, it is at any rate a company which grants for consideration indemnity against loss or damage by fire in conjunction with a contract other than fire insurance, *i.e.*, marine insurance, and is within (*b*). That being so, the defendant company is made liable to contribute under sec. 42. According to the judgment of the Full Court the property insured, in respect of which companies are liable to contribute, must be permanently situated within one district. That

(1) (1905) V.L.R., 503; 27 A.L.T., 39.
(2) L.R. 6 Q.B., 280.
(3) 4 Q.B.D., 375.
(4) (1899) A.C., 99.

is not the meaning of the words "property situated within" a district. If the property is at any time during the continuance of the fire risk, situated within the district, that is sufficient. Sec. 68, which provides that the owners of uninsured houses or goods damaged by fire shall pay the expenses incurred by the Fire Brigades Boards in saving them from destruction, makes no such provision as to uninsured goods in insured premises. The result of the interpretation given by the Supreme Court to the Act would be to relieve such goods from contribution altogether even if they were covered by one of these slips.

[GRIFFITH C.J.—In view of the provision in sec. 45 for the penalties for neglect to make the returns thereby required or for making false returns, does this action lie ?]

The rule that an action will not lie where a remedy is provided by an Act for breaches of it, only applies where the intention of the legislature is apparent to so restrict the remedy. Here no such intention can be gathered. If a fire insurance company made contracts covering the risk which is covered by the slips, they would be liable to contribution in respect of those contracts. There is no reason why other companies, who make such contracts, should be exempted from contribution.

Duffy K.C. and *Goldsmith*, for the respondent company. The defendant company does not come within the definition of "insurance company." When the Act was passed there were companies carrying on business of fire insurance solely. There were also companies carrying on two or more distinct businesses, *e.g.*, fire and life insurance, or fire and marine insurance. Further there were companies carrying on the business of marine insurance only, but which in the course of that business took fire risks outside those usually taken by marine insurance companies. Practically all the property insured by companies of the first two classes would be stationary, while that included in the fire risks taken by companies of the third class would consist of goods or merchandise either in course of transit to or from ships, or remaining for a few days at warehouses. The object of the Act was that those companies, which insured property permanently within the districts, should contribute to the expenses of the

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Boards, and to let other property contribute when helped by the fire brigades: see sec. 68. The definition of "insurance company" is exclusive, that is to say, the word "includes" means "includes the things specifically mentioned and nothing else." Marine insurance may include other things than insuring against sea risks: *Imperial Marine Insurance Co.* v. *Fire Insurance Corporation Ltd.* (1); *Nelson* v. *Empress Assurance Corporation Ltd.* (2); *Harding* v. *Bussell* (3); *Davies* v. *National Fire and Marine Insurance Co. of New Zealand* (4); *Rodocanachi* v. *Elliott* (5); *Flint* v. *Barnard* (6); *Goldsmiths' Company* v. *Wyatt* (7). So that, in issuing these slips, the defendant company is carrying on marine insurance and not fire insurance. That is an inference which a jury might draw, and the Court may draw it. *Rules of the Supreme Court* 1884, Order XXXIV., r. 1. The words "other than that of insurance" at the end of the definition mean what they say, viz., other than that of any kind of insurance, whether it be marine, life, or accident. Read in that way the definition does not cover a company which carries on the business of marine insurance, and, as incidental to that business, indemnifies against the risk of fire on land. Even if the defendant company is within the definition, it is not liable to contribute. Under sec. 45 the returns have to set out the gross premiums. Unless it is proved that this company charges premiums for the risks covered by the slips, it cannot make a return in respect of them. Even if it be said that a portion of the premium paid for a marine policy is attributable to the risk covered by the slips attached thereto, there is no provision in the Act for apportionment of premiums, and it would be unreasonable to interpret the Act so as to make this company contribute in respect of the gross premiums received for marine policies. The word "situated" in sec. 42 connotes permanence of locality within a Fire Brigades District. The Act does not cover the whole scope of fire insurance, for it makes no provision as to insured goods in transit and passing through several districts.

(1) 4 C.P.D., 166.
(2) (1905) 2 K.B., 281.
(3) (1905) 2 K.B., 83.
(4) (1891) A.C., 485.
(5) L.R. 8 C.P., 649; L.R. 9 C.P., 518.
(6) 22 Q.B.D., 90.
(7) (1905) 2 K.B., 586.

Isaacs in reply. The only effect of the cases referred to is that by usage or special words a marine policy may cover risks other than purely maritime risks. They have no bearing on the question whether this company carries on the business of fire insurance within the meaning of the Act. The test is to look at the contract and see what is the risk the company undertakes. If it undertakes the risk of paying for the property if it is damaged or destroyed while within a particular Fire Brigades District, it is within the Act.

Cur adv. vult.

GRIFFITH C.J. This was an action brought by the plaintiff company suing on behalf of itself and all other insurance companies, which had been assessed in respect of the contribution of insurance companies under the Fire Brigade Acts, against the defendants The British and Foreign Marine Insurance Company and The Metropolitan Fire Brigades Board, asking for the determination of certain questions as to the liability of the defendant company to contribute to the annual expenditure of The Metropolitan Fire Brigades Board. By the *Fire Brigades Act* 1890 provision is made for defraying the expenses of the Board by a fund which is raised in part by contributions from the various companies insuring from loss by fire property within the metropolitan district. Those companies contribute in proportion to the gross amount of the premiums received by them in respect of property situated in the metropolitan district and insured by them. The main questions in the present case are whether the defendant company is liable to contribute to the fund, and, incidentally, if so, how its contribution is to be calculated. The defendant company is a marine insurance company, issuing marine insurance policies in the ordinary way. By the policies in common use by that company it agrees that the insurance shall commence upon the goods and merchandise from the time when the goods and merchandise shall be laden on board the ship, and continue until the goods and merchandise be discharged and safely landed. So that the marine risk begins when the goods are put on board ship, and continues until they are discharged. But the company has latterly been in the habit of attaching to the policies slips covering fire

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risks upon the goods the subject of marine policies, either before shipment of the goods or after they are discharged. The slips issued are in three different forms. [His Honor read the three forms, Exhibits B, C and D, set out in the special case, and continued]. It is quite clear from the terms of those documents that the goods in question are insured against fire while on land, as well as insured by the marine policies against fire while afloat. It is stated in the special case that the property which formed the subject-matter of the policies in respect of which the plaintiff claimed that the defendant company was liable to contribute is comprised in four categories. [His Honor read the four sub-paragraphs (*a*) (*b*) (*c*) and (*d*) of paragraph 6 of the special case and continued]. With respect to the last two, it is quite clear that the fire risk on the property included in them is covered by the marine policies, and the Attorney-General did not press the claim on behalf of the plaintiff that the defendant company should be liable in respect of them. We are therefore not concerned with them. I confine myself to the first two classes of goods. Those are all goods on land and in the metropolitan district at the time when they are covered by the contract of indemnity against fire contained in the slips. The question is whether the defendant company comes within the Act, that is, is this company an insurance company for the purpose of contribution? To determine that questions it is necessary to have recourse to the provisions of the Act.

Apart from any argument derived from the specific language of the Act, it is obvious that this defendant company carries on the business of fire insurance, that is, it carries on the business of insuring from loss by fire property on land. That is *primâ facie*, not marine insurance. The Act is called "an Act to make better provision for the protection of life and property from fire and for other purposes." The whole scope of the Act is to deal with protection against fire. The interpretation clause, sec. 2, defines the term "insurance company." It says:—"Insurance company includes any person or persons incorporate or unincorporate carring on the business of fire insurance or of granting for consideration indemnity in whole or in part against loss or damage by fire whether by itself or in conjunction with any contract

other than that of insurance." *Primâ facie*, then, this company falls within the definition of a fire insurance company. The Act evidently does not deal with companies which are not fire insurance companies. It is said that this definition is exclusive or comprehensive, and that a company must fall within the words of the definition in order to be affected by the Act. In one sense that is true. It does not include a company which only carries on the business of life insurance. But it is immaterial whether it does or does not include other companies than those described if in fact they accept premiums for fire insurance. So it is unnecessary to consider in what sense those words are exclusive or comprehensive.

But reliance is placed on the particular words of the definition. It says:—"Insurance company includes any person or persons incorporate or unincorporate carrying on the business of fire insurance." Stopping there, the defendant company is clearly within the definition. It is an incorporated body carrying on the business of fire insurance. It is said that you cannot stop there. In the first place I think you can. That part of the sentence is complete in itself, and is sufficient to show that the defendant company falls within the Act. But it is said another construction is open which is raised by the following words : "or of granting for consideration indemnity in whole or in part against loss or damage by fire whether by itself or in conjunction with any contract other than that of insurance." Those words may be read as an alternative definition of what is meant by persons carrying on the business of fire insurance, viz., persons carrying on the business of granting indemnity against loss by fire by itself, or carrying on some other business in conjunction with which they incidentally grant indemnity against loss by fire, although they cannot properly be said to carry on the business of fire insurance. An instance has been given of the case of sales of wool by brokers where one of the conditions of sale is that purchasers will be protected against the risk of fire for a limited time while the goods remain in the warehouse of the broker. Possibly the definition was intended to cover such a case. Possibly it was intended to cover the case of carriers who, as an incident of their business, expressly agree to indemnify against loss by fire.

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But it is contended that the words "whether by itself or in conjunction with any contract other than that of insurance," are also exclusive, and that, if a company carries on the business of granting indemnity against loss by fire in conjunction with another business of insurance other than fire insurance, it does not carry on the business of fire insurance within the definition.

It is doubtful whether the antecedent of the word "itself" is the word "business" or the word "contract" which is implied in the words "granting for consideration indemnity." If the antecedent is "business" then the clause would run "carrying on business . . . whether by itself or in conjunction with any contract other than that of insurance,"—a very singular construction. But even if that construction be right, and I do not think it is, the words "other than that of insurance" mean other than that of the insurance spoken of before, *i.e.* fire insurance, and not other than that of insurance of an entirely different kind. So that whichever be the antecedent of the word "itself" the words "other than that of insurance" refer only to that insurance or indemnity which has just been spoken of. The simple effect is that, if a company carries on the business of granting indemnity against fire, it does not matter if in the same contract it has made some stipulation for something else. The words are not exclusive but inclusive, and mean that a company cannot escape from liability to contribute merely because, in conjunction with a contract of indemnity against fire, it makes another contract of a different kind. So that in my opinion the defendant company falls within the definition.

But even so, it is said that no duties are imposed upon the defendant company when regard is had to the other provisions of the Act. It is also said that those other provisions may throw light upon the construction of the definition clause. That is no doubt correct. Let us see what the effect of those other provisions is. The funds of the Metropolitan Board are made up of separate contributions, one-third of the estimated annual expenditure being contributed by the Treasurer of Victoria, one-third by the municipalities within the metropolitan district, and one-third by the insurance companies insuring from fire property situated within the metropolitan district respectively. Sec. 45 (1) provides

that, for the purpose of ascertaining the contribution to be paid by each insurance company every such company is to send in an annual return showing the total amount of the premiums received by or due to such company during the year preceding the return in respect of the amounts held at risk. Sub-sec. (2) provides that such premiums are to be "the gross premiums received by or due to such company in respect of all property situate within the metropolitan district . . . insured from fire by such company." Sec. 46 (1) using slightly different terms, directs how the arithmetical calculation of the contribution of each insurance company is to be made, and states that it is to be calculated upon "the amount of the premiums received by or due to such company during the past year in respect of risks held by such company on property situate within the metropolitan district." It is said that it would be absurd to require the defendant company to bring into the calculation the gross premiums received for marine policies and the slips attached to them. I agree, but it does not follow that it should not bring into account anything, or that, if it undertakes an indemnity against fire on land in consideration of a single payment which also covers the marine risk, it should not account for a portion of that money. But the governing section to my mind is sec. 45, which applies, by virtue of the definition in sec. 2, to cases where fire insurance is not the only subject matter of the contract. The provisions of sec. 46 for calculating the amount of the contribution to be paid by each insurance company are subsidiary provisions, and must be moulded so as to give effect to the principle provision. Obviously the proper basis of calculation is such a portion of the whole premium as represents the consideration that each company receives for granting indemnity against fire. This is not in any way a forced construction of the Act. For these reasons I am of opinion that the defendant company is liable to contribute. The learned Judges of the Supreme Court thought that the defendant company did not carry on the business of fire insurance, and therefore was not liable to contribute. I am unable to agree with that conclusion. I think the defendant company is liable to contribute in both classes of cases. The first question is:—[His Honor read it and continued]. The answer is that the defendant company is liable

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to contribute in respect of premiums received for the goods mentioned in the first two categories.

The second question is—In respect of what proportion of such premiums is the defendant company liable to contribute? That question the Supreme Court did not answer, as it came to the conclusion that the defendant company was not liable to contribute at all. The answer to that question, in which I think my brethren agree, is that the defendant company is liable to contribute in respect of so much of the gross premiums received by it, being in respect of the property in question, as is proportional to the extent of the land risk while the property is within the district of the Board, as compared with the extent of the marine risk together with any other risk covered by the slips, regard being had to the average premiums asked by fire insurance companies undertaking fire risks only for similar protection.

Some interesting questions arose during argument, one as to whether, in the case of goods passing through several fire districts while subject to the protection offered by the slips, the defendant company would be liable to contribution in respect of each of those districts. That is a matter which it will be time enough to determine when it arises. The amount of contribution in any such case would probably be so small that it would not be worth the expense of issuing a writ.

There is a third question asked, viz., is the defendant company liable to recoup the companies on whose behalf the plaintiff sues, in respect of the years 1903 and 1904? That point has not been argued. If the question were answered in the affirmative, there would be very great difficulties in the way of the Court undertaking the inquiries which would thereby be rendered necessary. But having regard to sec. 42 (3), requiring the payments to be made before a certain day, to sec. 45 (4), imposing a penalty for default in sending in returns and for making incorrect or incomplete returns, and to sec. 46 (2) under which the Board is to determine the amounts of the contributions, if the plaintiff company thinks it worth while to proceed in respect of past contributions, possibly the proper course will be to induce the defendant company to make returns, leaving the Board to enforce the contributions when the returns are made, or to take proceed-

ings to enforce the penalties if they are not made. For these reasons I think the appeal should be allowed, and the questions answered as I have stated.

BARTON J. The *Fire Brigades Act* 1890 is "an Act to make better provision for the protection of life and property from fire and for other purposes." Certain financial provisions occur in it relating to the creation of funds to meet the probable expenditure of the Fire Brigades Boards created by the Act, of which there are two, the Metropolitan Fire Brigades Board, and the Country Fire Brigades Board. Those funds are, under sec. 42, to be provided by equal annual contributions by the Treasurer of Victoria, out of the consolidated revenue, by the municipalities whose districts are within or partly within the metropolitan or any country district (as the case may be), out of the city, town or municipal fund of such municipalities respectively, and by the insurance companies insuring from fire property situated within the metropolitan or any country district (as the case may be). Each of the parties mentioned is to contribute one third of that expenditure. Then provision is made by sec. 43 as to how the amount of the municipal contribution is to be ascertained, and by sec. 44 that the amount of any contribution payable by a municipality may be raised, if necessary, by the council increasing the annual town or general rate, and so on. Then sec. 45 relates to the returns to be made by insurance companies for the purpose of ascertaining the proportion which each of them is to contribute, and provides that the return of each company is to show "the total amount of the premiums received by or due to such company during the year preceding the return in respect of the amounts held at risk by such company during the whole or any part of that year." That return is to be supported by a declaration of its truth, and a penalty is imposed for default in transmitting the return, or for furnishing an incorrect or incomplete return. Then sec. 46 provides for ascertaining the amount of the contribution of individual insurance companies. It says: "The contribution of the whole of the insurance companies shall be made by each of the said insurance companies providing annually by quarterly payments such a sum of money as shall amount to the *pro ratâ*

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proportion of such contribution calculated upon the amount of the premiums received by or due to such company during the past year in respect of risks held by such company on property situate within the metropolitan district or any country district as may appear by the return hereinbefore provided for." These sums are to be determined by the Board and are to be fixed at such amounts "as shall produce upon the aggregate of such sums of money payable for each such district by all the said insurance companies the total amount of the contribution to be provided by the whole of the insurance companies for the year."

These financial provisions are for the purpose of casting the burden of providing for the expenditure of the Board under the Act upon the parties whom Parliament considers most concerned, viz., the public, represented by the Treasurer; the ratepayers, whose property is within the districts where fires may occur; and the insurance companies insuring against fire, whose operations are reasonably possible upon modern principles owing to the protection afforded by the agencies which exist in all the cities and towns for the extinction of fires. Now, if the defendant company is an insurance company within the meaning of this Act, and is carring on the business of fire insurance, in my opinion it is subject to the liabilities which are declared by the Act, and for the determination of which, provision is made by the Act. I turn to the interpretation clause, sec. 2, which defines "insurance company" in this way:—"'Insurance company' includes any person or persons incorporate or unincorporate carrying on the business of fire insurance or of granting for consideration indemnity in whole or in part against loss or damage by fire whether by itself or in conjunction with any contract other than that of insurance, and shall include as well the company as its agent or agents." In the first place, I will consider whether the defendant company carries on the business of fire insurance. It issues, in connection with policies of marine insurance, slips in the form stated in the annexures to the special case, and they include provisions which, without doubt, relate to and establish an indemnity against fire occurring on land in certain cases, and that not in the course of the journey between two terminal sea ports, as in some of the cases cited, but before the beginning, and after the end of the

normal fire risk accepted in the marine insurance policies. It is no demonstration that this company is not carrying on the business of fire insurance to say that risks, which in themselves are fire risks, are by apt words included in the whole contract of which the marine contract is part. There are cases which go to establish that, in some such circumstances, apt words for the purpose of making such an inclusion will not deprive the main contract of its quality of a marine insurance. But those cases do not show that when such words occur, either in a new policy or in a slip issued in connection with a policy, if those terms or those slips are habitually part of the transactions of the company, the additional business constituted by the acceptance of such risks is not a carrying on of the business of fire insurance, under whatever name you designate the policy. I take it that it needs no argument to show that a company is not freed from liability in respect of carrying on the business of fire insurance merely by the fact that similar operations may sometimes be found in connection with marine policies. That objection in my judgment fails.

It is then said that the defendant company is not carrying on the business of fire insurance because it is not making a specific charge for the additional risk against which it insures property the subject of marine policies while that property is on land before shipment or after discharge. It is said the company throws in, to use its own term, this risk, and that it and the marine risk are undertaken for the same premium. That may be so, but that is no proof that there is no valid contract. There was no suggestion in argument that, if the defendant company were sued upon the contract resulting from one of the slips, it would be able to set up as a valid defence that it was *nudum pactum*. The company is bound at law to answer to the risk it has accepted in the case of fire occurring to the property, and under the circumstances, described in any of the slips, before shipment or after discharge.

One test as to whether this is a binding contract, and, if it is, whether carrying it on habitually is a business of fire insurance, is to consider how matters would go if other companies confined themselves to the issuing of policies for similar marine risks with-

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out issuing such slips or incurring any liability in respect of fire on land. It is obvious to any one that this company, in the event of such competition, would receive the difference between the rates which the other companies would have to take for the more limited insurance and the rates which this company charged. It is said this company charges nothing extra for the risk covered by the slips, but it must be receiving that margin, and it is in respect of that margin that it receives consideration, and that it is carrying on the business of fire insurance.

But although they are carrying on the business of fire insurance, if the view put on behalf of the defendant company as to the interpretation of the other parts of the definition clause be right, it does not follow that it is liable to contribute. That interpretation is this: that the words "whether by itself or in conjunction with any contract other than that of insurance," apply to the business of fire insurance mentioned in the clause, as well as the business therein described as that of "granting for consideration indemnity in whole or in part against loss or damage by fire." If that is established then, as the other business which the defendant company carries on is also an insurance business, viz., marine insurance, it is contended, and it might possibly be successfully contended, that the position of the defendant company is not one aimed at by the interpretation clause. Without questioning the interpretation put by the learned Chief Justice on the words "other than that of insurance," I arrived at my construction of this interpretation clause without reference to the meaning he puts on those words, because I think sufficient can be deduced from the clause to establish the plaintiff's case without resort to that meaning of the words. There are two businesses mentioned in this interpretation clause, one, the business of fire insurance, and the other, that of granting for consideration indemnity against loss by fire, and, although the contract of fire insurance is a contract of indemnity against loss by fire, and might well be so described, still the legislature has drawn a distinction between the two businesses, and it may be conceded that they intended a distinction in that respect. Whether they did or did not, it seems to me the business of fire insurance is intended to be one thing, and the business of "grant-

ing for consideration indemnity against loss by fire whether by itself or in conjunction with any contract other than insurance," is intended to be another thing. I cannot apply the words "whether by itself," &c., to the words "carrying on the business of fire insurance." I adopt that construction, first, because it is the more natural and reasonable construction, and secondly, because I think it is the more grammatical. I have not heard any reason advanced in argument which would justify the taking those words out of that more natural current of thought and placing them in a different one, and I cannot myself see in the context any reason for supposing that the legislature intended such a curious limitation of the class to be deemed insurance companies. If my own view of the interpretation is correct, then it is only necessary *qua* this company to come to the conclusion that it is a number of persons, incorporated and carrying on the business of fire insurance. That it is carrying on the business of fire insurance is made plain enough, and that it is a body of persons incorporated is not denied. It seems to me for the reasons I have given that the first two lines of the interpretation clause cover the position of this company, and that it therefore is under the liability which flows from its being an insurance company as there defined.

Under these circumstances there was another construction raised by counsel for the defendant based mainly on the words "situated within the metropolitan or any country district," in sec. 42 (1) (*c*). It was argued with some force that the word "situated" implied a permanent, or, at any rate a somewhat continuous stationary position of the property within a particular district. I do not agree with that contention because I think that the use of the word "situated" was never intended to confine the operations of companies insuring against fire on land to property which in its nature remained necessarily stationary. To come to that conclusion would prevent the provisions of the Act in these financial clauses from applying in the case of insurances effected upon large classes of moveable personal property, such as wool and grain, which cannot be turned to use unless they are brought to a market either here or elsewhere. Such a construction would have the effect of excluding from liability

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to contribute in respect of such property companies which carry on the business of insuring against fire such property either in conjunction with other business or by itself, and they would probably be, in the eyes of the framers of the Act, a principal source from which it might be expected that contribution would flow. A construction therefore which gives sufficient effect to the word "situated" is admissible so long as it is equally reasonable with that suggested by the defendant's counsel, and I think myself a more reasonable construction can be found. When insurance is undertaken upon goods, they are inevitably situated somewhere. Are they less situated in a district, for the purpose of contribution, because they move about in that district, or because, being placed on a train, for instance, they are taken from that district into another and become situated there? The fact that there may be some difficulty in ascertaining the proportion of the premium to be allocated to the insurance of the goods while in a particular district is not to my mind a good reason for concluding that it was not intended to subject insurances on such goods to contribution. A very large portion of the revenue derivable by the Board from fire insurance companies would be lost if such a construction were accepted, while the goods at risk would still have the benefit of protection. It seems much more probable that the intention of the framers of the Act was that, while using words indicating the locality of the property insured, those words would be satisfied by the presence of the goods in the district during the time in respect of which the contribution is to be assessed. That I take to be the meaning of the word "situated."

I think the questions asked by the special case should be treated in the manner indicated by the learned Chief Justice, as to which we have given joint consideration.

O'CONNOR J. I am of the same opinion. The liability which the plaintiff seeks to impose upon the defendant company in this proceeding is founded upon sec. 42 (1) (*c*) of the *Fire Brigades Act* 1890, which makes it imperative upon "insurance companies insuring from fire property situated within the metropolitan or any country district (as the case may be)," to contribute annually

towards the expenses of the working of this fire brigade system. The liability, therefore, of the defendant company depends upon the construction which is to be placed upon that section. There can be no question, I think, that the defendant company did insure from fire certain property which is mentioned in the special case. There is no mystery about the contract of fire insurance. It may be described as an undertaking to pay compensation to the owner of goods if they are destroyed by fire within a certain period. That undertaking may be for a money consideration, commonly called a premium, or it may be for any other consideration. So long as there is an undertaking to compensate the owner of the goods if they are destroyed by fire, that is an insurance of the goods from fire. But it is said that this section cannot apply to the fire insurance of goods which are covered by the slips attached to the special case. In regard to the greater portion of these goods I think that contention is clearly untenable. The goods insured are described under two heads, the first is:—[His Honor read paragraph 6 (*a*) of the special case and continued.] I cannot see how it can be said that goods in that position at the time of the insurance being effected are not situated within the metropolitan or a country district within the meaning of sec. 42. The argument applies, no doubt, with greater force to the second class of goods, viz.:—[His Honor read paragraph 6 (*b*) of the special case and continued.] There is no doubt the greater bulk of goods insured, the premiums of which are returned under this Act by the different insurance companies, are goods situated permanently in the metropolitan or a country district, such as goods in warehouses, or property, or stores, or furniture in houses. The great bulk of the revenue which the Fire Brigades Boards derive from the metropolitan and country districts is drawn from the goods which may be described as stationary. But we have to consider whether or not by the Act it was intended, in using the word "situate," to confine the liability to contribute in respect of goods to cases of that character. What is the object of the Act? The object in the financial part of it was to compel those who are benefited by the Act to contribute towards the cost of this fire brigades system. The public is benefited, therefore the Treasurer pays out of the

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consolidated revenue; the ratepayers of the various municipalities are benefited, and therefore the various municipalities pay out of their municipal funds; and finally the insurance companies, whose risks are lessened by the existence of this system of fire brigades, are benefited very largely. So it was contended for the plaintiff that, inasmuch as fire insurance companies would receive just as much benefit from the service of the fire brigades whether the goods insured travel in a railway train and are there destroyed by fire, or are stationary or situated in some building, they should contribute in the one case just as in the other. It was intended by the legislature that the insurance companies should contribute in respect of such goods. It seems on principle that we should give such a construction to the word "situated" as will enable the obligation to contribute to be placed upon insurance companies in regard to the saving of goods while they are travelling exactly the same as if they are situated in a building. The word "situated" is grammatically used as meaning not only permanently placed, but also being in some position. In my opinion, that word is used to cover not only goods which are permanently placed in the building, but any goods whether moving or stationary, the subject of insurance, which are in the metropolitan or a country district. Otherwise there would be shut out from the obligations of this Act a very large portion of the property and produce which is continually coming from, and going to, the country districts, travelling by train or moving about in other ways. Therefore the argument which is founded upon the use of the word "situated" on behalf of the defendant company cannot be upheld. I think, therefore, that the goods mentioned in the second class (*b*) are included, exactly in the same way as the goods mentioned in class (*a*) of the special case.

But a more substantial objection was that raised in the argument of Mr. Duffy, viz., that it is not enough that an insurance company should insure from fire property situated in the metropolitan or a country district in order to make it liable to contribution under sec. 42, but that the company must be such an insurance company as is intended by the interpretation clause to come within the provisions of the Act. That interpretation clause is one of that class the substantial meaning of which is plain enough, but which

certainly does not bear very critical examination, judged by the rules of exact language or expression. In interpreting Acts of Parliament, although it is necessary if possible to give every word of a particular clause some meaning, it is not always possible to do so. Acts of Parliament are not more exempt than any other documents from looseness of language or inaccuracy of expression, and it is sometimes impossible, doing the best one can, to give full and accurate meaning to every word. Looking at this interpretation clause from that point of view, I see no difficulty in finding its meaning in it. The first part defines insurance company as:—"Any person or persons incorporate or unincorporate carrying on the business of fire insurance." That must be taken as a definition by itself because otherwise there would be no definition in distinct terms of the great bulk of insurance companies intended to be brought under the Act. In an Act of this kind there would be expected to be, first, a direct definition of insurance company as a company carrying on the business of fire insurance. That is what the part of the definition clause which I have read does. But then other businesses of a similar kind have to be provided for. It is well known that persons or corporations do not always carry on the business of fire insurance by itself, but combine with another business that of taking fire risks. That may be done for the purpose of making their contracts attractive to their customers. For instance, carriers often undertake to insure against fire the goods they carry. That is a very great convenience to the persons who employ them. In the same way marine insurance companies save their clients the trouble of effecting a second insurance of the goods the subject of the marine risk. So for various reasons it is to the interest of some companies to combine the business of granting indemnity against loss or damage by fire with other business. It seems to me that the plain purport of this definition was to include that class of persons and to take care that every person or company who makes a contract to insure against fire, whether that contract is made separately or in conjunction with another contract except that of fire insurance, thereby obtaining the benefit of the Act, shall be an insurance company within that definition. That being so, sec. 42 (*c*) appears to me to cover the case of the defendant

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company. It is an insurance company within the definition, and it insures from fire property within the metropolitan or a country district. It appears to me entirely immaterial how it carries on that business, or in what forms it makes its contracts, whether it carries on the business of fire insurance as ancillary to the business of marine insurance, or whether the insurance against the risk of fire is included in the body of the marine policy, or is occasionally included in slips such as those before us in this case. That being so, I see no difficulties in carrying out the provisions of the Act.

There was a good deal of argument as to the difficulty of making the returns as provided for by sec. 45. The central idea of that section is to make insurance companies themselves give information about their business, and they are liable to penalties if they do not give correct information. No one can give it with the same accuracy as they can. They give it at the risk of being liable to a penalty if they have not given correct information. In the ordinary case they are required to make a return of the whole of the premium. In a case of this kind that would be unreasonably harsh. They have to make a return of the amount of the premium in respect of the fire risk. It may be a difficult matter to separate the proportion of the premium from what is held at fire risk. It may be that nothing additional is charged for the fire risk. If that be true that is the only return they are bound to make. That is a matter which, if contested in any proceeding under sec. 45, may be decided then. But certainly there is no reason why a company in a similar position to that of the defendant company should not make this return of premiums showing in the manner indicated by the learned Chief Justice the value put upon that part of the premium which covers the fire risk. I therefore entirely concur with the mode in which the learned Chief Justice has answered these questions, both as regards the question of liability and that of apportionment of the premiums.

As to the third question I agree that it is a very difficult one, and one that we are not called upon to answer.

GRIFFITH, C.J. I wish to add that according to the rule of

computation suggested, the amounts of the premiums that would be stated in the returns of the company are substantially the amounts the company would have to pay by way of re-insurance of the fire risk, which, if paid by the company would, under sec. 45, have to be deducted.

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Appeal allowed. Judgment appealed from discharged. Judgment for the plaintiff with costs. Respondent to pay costs of the appeal.

Solicitors, for appellant company, *Malleson, Stewart & Co.*, Melbourne.

Solicitors, for defendant company, *Moule, Hamilton, & Kiddle*, Melbourne.

B. L.

Roll (Vic) v sen 19 619

Appl Ross-Jones & Marinovich, Re; Ex parte Green (1984) 56 ALR 609

Rev Taxation, Deputy Commissioner of v Mooney (1907) 4 CLR 1439

[HIGH COURT OF AUSTRALIA.]

MOONEY . . . . . APPELLANT;
DEFENDANT,

AND

THE COMMISSIONERS OF TAXATION (NEW SOUTH WALES) . . . } . RESPONDENTS.
PLAINTIFFS,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

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SYDNEY, *Sept.* 7, 8, 11. *Dec.* 22.

Griffith C.J., Barton and O'Connor JJ.

Land and Income Tax Assessment Act 1895 (*N.S. W.*) (59 *Vict. No.* 15), *secs.* 15, 30, 39, 44, 67, 68—*Income—Profits arising from sale of mine—Persons obliged to furnish returns—Income not exceeding* £200 *a year—Default assessment—How far assessment conclusive—Appeal to Court of Review.*

The appellant in 1903 received £1,680 as part of the purchase money of a mine of which he was joint owner, and which had been sold in 1901 for a price payable by instalments. He also received during that year £50 admitted to be income. By the *Land and Income Tax Assessment Act* of 1895, sec. 27, the amount of taxable income for the year immediately preceding the year of assessment is to be taken as the basis of calculation of the amount on which the tax is payable in that year, and by sec. 68 "income" includes "profits"