Appl FCT v McCabe (1990) 21 ALD 740
Appl C A Ford Pty Ltd t/as Caford Castors v C-G of Customs (1993) 34 ALD 123
Refd to S v Crimes Compensation Tribunal [1998] 1 VR 83

[HIGH COURT OF AUSTRALIA.]

THE FEDERAL COMMISSIONER OF TAXATION . . . . . } APPELLANT;

AND

BROKEN HILL SOUTH LIMITED . . . RESPONDENT.

H. C. OF A. 1941.

MELBOURNE, *Oct.* 28;

SYDNEY, *Nov.* 7.

Rich A.C.J., Starke, McTiernan and Williams JJ.

Income Tax (Cth.)—Assessment—Deductions—Calls on shares—Companies carrying on "mining operations"—Appeal from board of review—Question of law—Income Tax Assessment Act 1922-1934 (*No.* 37 *of* 1922—*No.* 18 *of* 1934), *secs.* 23 (1) (*i*), 51 (6)—*Income Tax Assessment Act* 1936-1938 (*No.* 27 *of* 1936—*No.* 46 *of* 1938), *secs.* 78 (1) (*d*), 196.

Where enginemen and caretakers are employed to look after and preserve a base-metal mine which is in a "closed-down" condition, because the ore is low grade and unprofitable to work at the prevailing price of lead, and it is intended to extract the lead ore from the mine as soon as the price of lead improves to a certain level, it is open to a board of review to find that "mining operations" within sec. 23 (1) (*i*) of the *Income Tax Assessment Act* 1922-1934 and sec. 78 (1) (*d*) of the *Income Tax Assessment Act* 1936-1938 are being carried on therein.

What is a question of law in relation to appeal from the board of review considered.

APPEAL from the board of review.

Willyama Mining Pty. Ltd. was formed in 1934 by a group of three mining companies, one of which was Broken Hill South Ltd., to take over the assets of another company, then in liquidation, which had been purchased by the group. The main asset consisted of the mine, mining rights, shaft equipment and surface buildings comprised in a lease of a lead-ore mine at Broken Hill, known as Block 14. Prior to 1930 the mine had been operated and a large amount of base-metal ore extracted. In 1930 the ore left in the mine was estimated at 220,000 tons, but was low grade, and, owing to the fall in price, it became unprofitable to mine and to concentrate

the ore. The manager of Broken Hill South Ltd., who was the only witness called on the appeal, and who had been also the only witness called before the board, stated in evidence that the ore could be mined if lead rose to thirty pounds sterling per ton, and such a price in present circumstances was not impossible. As, however, lead had not reached that price, the Willyama company activities from its incorporation had been confined to the preservation of the mine, the only employees being surface men who acted as watchmen to prevent fire and acts of destruction by vandals, and engine drivers who periodically ran the engines to work the pumps to keep the water below the 400 feet level. The company was bound to employ "workmen and miners" under the labour covenants in its lease. The manager stated that these activities were necessary and inevitable in base-metal-mining operations, and that all mines at Broken Hill had closed down at some time or other while metal prices were depressed. He referred to these as "closed-down operations," and as "an inevitable part of a mining operation where base metal is being mined."

In its income-tax returns for the years ending 30th June 1934, 1935, 1936, 1937 and 1938 respectively, Broken Hill South Ltd. claimed as deductions, pursuant to sec. 23 (1) (*i*) of the *Income Tax Assessment Act* 1922-1934 and sec. 78 (1) (*d*) of the *Income Tax Assessment Act* 1936-1938, calls it had paid on shares in the Willyama company, but these deductions were not allowed by the Federal Commissioner of Taxation. The decisions of the commissioner disallowing the taxpayer's objections to the assessments were, at the request of the taxpayer, referred to the board of review, which, by a majority, reversed the decisions of the commissioner.

The commissioner appealed to the High Court from the decision of the board of review. Upon the appeal coming on to be heard before *McTiernan* J., his Honour, under sec. 18 of the *Judiciary Act* 1903-1940, directed that the case be argued before the full court.

Under sec. 23 (1) (*i*) of the *Income Tax Assessment Act* 1922-1934 and sec. 78 (1) (*d*) of the *Income Tax Assessment Act* 1936-1938, deductions from the assessable income are allowed in respect of "calls on shares in a mining company or syndicate carrying on mining operations in Australia for . . . base metals."

Tait, for the respondent. There is a preliminary objection to this appeal. There is no question of law involved on this appeal, and an appeal from the board only lies where, in the opinion of the High Court, it involves a question of law (*Income Tax Assessment Act* 1922-1934, sec. 51 (6); *Income Tax Assessment Act* 1936-1938, sec.

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196). Whether the Willyama company was carrying on "mining operations" is a question of fact. There is no legal interpretation, and the sole question was whether there was any evidence on which the board of review could find as a fact that mining operations were being carried on.

[STARKE J. referred to *Usher's Wiltshire Brewery Ltd.* v. *Bruce* (1).]

If the company is carrying out the terms of its mining lease, it must be carrying out "mining operations."

Sholl, for the appellant. The preliminary objection is completely covered and answered by the decisions of this court in *Australian Slate Quarries Ltd.* v. *Federal Commissioner of Taxation* (2) and *Ruhamah Property Co. Ltd.* v. *Federal Commissioner of Taxation* (3). In both cases it was laid down that the proper inference to be drawn from a given set of facts is a matter of law. The Willyama company is not carrying out the terms of its lease, because it is obliged to employ competent "workmen and miners." It has not employed the latter. "Mining operations" as used in legislation in New South Wales is not necessarily synonymous with "mining operations" as used in the *Income Tax Assessment Acts*. There must be actual excavating at the time that calls are made to justify the deductions (*Australian Slate Quarries Case* (4); *Deputy Federal Commissioner of Taxation* (*Q.*) v. *Stronach* (5)).

Tait, for the respondent. There was ample evidence to justify the board's finding.

Cur. adv. vult.

NOV. 7.

The following written judgments were delivered :—

RICH A.C.J. This case comes before us on a reference by a single justice under sec. 18 of the *Judiciary Act* 1903-1940.

The order directs that the case be argued before the Full Court on the notice of appeal, the transcript as amended at this hearing, and the evidence and exhibits.

It is an appeal under sec. 51 (6) of the *Income Tax Assessment Act* 1922-1934 from the board of review, which, by a majority, allowed an objection by the respondent to an assessment. The objection was that a deduction in respect of certain calls paid by the respondent taxpayer on shares held by it in a mining company —Willyama Mining Pty. Ltd.—had been wrongly disallowed.

(1) (1915) A.C. 433.
(2) (1923) 33 C.L.R. 416.
(3) (1928) 41 C.L.R. 148.
(4) (1923) 33 C.L.R., at pp. 420, 424.
(5) (1936) 55 C.L.R. 305.

By sec. 23 (1) (*i*) of the Act a deduction is authorized from the assessable income of so much of the assessable income as is paid in calls on shares in a mining company or syndicate carrying on mining operations in Australia for gold, silver, base metals, rare minerals or oil. The Willyama company was formed to take over the assets of Broken Hill Pty. Block 14 Co. Its main asset is mining lease No. 14. It is also the lessee of two other leases, but it is not necessary, the chairman of the board says, to consider these two leases, because the activities of the company are confined to Block 14. This lease was originally granted for the mining of silver, lead and tin, but subsequently the right was given to mine for copper, antimony, calcium, gold, sulphur and zinc. All the evidentiary facts were before the board. Only one witness was called, and his evidence was not disputed. This witness—Mr. Andrew Fairweather—is the general manager of Broken Hill South Ltd. and its representative on the committee of management of the Willyama company. He said that "its operations have not been ore-winning operations simply because we have never had economic conditions that would make it economical to extract the ore. When the prices of metal are high enough and the demand increases sufficiently Block 14 can be and will be worked." The company has fulfilled the conditions of the leases to the satisfaction of the New-South-Wales Government and has employed a staff of surface-men and engine drivers, who are engaged in protecting the mine from damage by fire or vandalism and, by pumping, to keep the upper levels of the mine free from water. The mines at Broken Hill have "closed-down" periods owing to strikes, fires and unfavourable prices. Similar operations—maintenance and safeguarding of the leases and pumping water—are carried on during these periods. The conditions of the grants require the companies to drain their mines and employ a certain number of workmen.

On these facts the majority of the board decided that the deduction claimed by the respondent of the sum of £800 paid by it in calls during the relevant income year to Willyama Mining Pty. Ltd., which had been disallowed by the appellant, should be allowed to the respondent as a deduction, and that the assessment should be amended accordingly. This conclusion I am not averse from upholding. The policy of the section in question was to encourage mining by giving a concession to taxpayers in respect of outgoings contributed for the purpose of carrying on that activity. I do not think a narrow application should be given to the section, and I regard it as extending to work which is preparatory or ancillary to the actual winning of metal or ore. Maintenance work done by the

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Willyama company during the relevant years was of this description. I am, therefore, of the opinion that the appeal should be dismissed.

I must not, however, be taken as agreeing in the objection by the taxpayer to the competence of the appeal. Under sec. 51 (6) of the *Income Tax Assessment Act* 1922-1934 a right of appeal is given to the commissioner from a decision of the board of review which involves a question of law. "If some question of law be involved in the decision of the board we apprehend that the whole decision of the board, and not merely the question of law, is then open to review: Cf. *Ex parte Walsh and Johnston*; *In re Yates* (1)" (*Ruhamah Property Co. Ltd.* v. *Federal Commissioner of Taxation* (2)). The facts in the present case are not in doubt, and the decision depends upon the application of the section conferring a right to deduction. That involves an appreciation of its meaning and some conclusion as to the extent of its operation. "The proper legal effect of a proved fact is essentially a question of law, but the question whether a fact has been proved when evidence for and against has been properly admitted is necessarily a pure question of fact" (*Wali Mohammad* v. *Mohammad Bakhsh* (3)). It has been said that it is difficult to distinguish between conclusions of law and conclusions of fact. "My Lords, it may not always be easy to distinguish between questions of fact and questions of law for the purpose of the *Taxes Management Act* 1880, or similar provisions in other Acts of Parliament. The views from time to time expressed in this House have been far from unanimous, but in my humble judgment where all the material facts are fully found, and the only question is whether the facts are such as to bring the case within the provisions properly construed of some statutory enactment, the question is one of law only" (*Farmer* v. *Cotton's Trustees* (4), per Lord *Parker*). "I agree," said Lord *Macnaghten*, "in thinking that the question whether a temporary staging is a scaffolding within the meaning of the Act is not a mere question of fact on which the finding of the county-court judge is final. It is a mixed question of fact and law. When the facts are ascertained it is a question of law on which the Court of Appeal is entitled, and I think bound, to express an opinion" (*Hoddinott* v. *Newton Chambers & Co. Ltd.* (5)). In *O'Brien* v. *Dobbie & Son* (6) *Collins* M.R. considered whether the law (the construction of a statute) could confer upon a ladder the infliction of the incapacity of ever becoming a scaffolding.

(1) (1925) 37 C.L.R. 36.
(2) (1928) 41 C.L.R., at p. 151.
(3) (1929) L.R. 57 Ind. App. 86, at p. 92.
(4) (1915) A.C. 922, at p. 932.
(5) (1901) A.C. 49, at p. 56.
(6) (1905) 1 K.B. 346, at p. 348.

Similarly in this case the question is whether the proper construction of sec. 23 (1) (*i*) of the *Income Tax Assessment Act* 1922-1934 confers upon the operations deposed to the blessing of being exempted from the liability sought to be imposed upon them by the appellant's assessment.

The appeal should be dismissed.

STARKE J. Appeals by the Federal Commissioner of Taxation against the decision of a board of review sustaining the claim of the taxpayer to a deduction of calls on shares in a mining company carrying on mining operations from its income assessable to income tax under the relevant *Income Tax Assessment Acts* for the years 1934-1938 all inclusive. Under these various Acts a deduction is allowed from the assessable income in the year of income of calls paid on shares in a mining company carrying on mining operations in Australia for gold, silver, base metals, rare minerals, or oils: See *Income Tax Assessment Act* 1922-1934, sec. 23 (1) (*i*); *Income Tax Assessment Act* 1936-1940, sec. 78 (1) (*d*).

An appeal to this court may be brought from any decision of the board which involves a question of law (*Income Tax Assessment Act* 1922-1934, sec. 51 (6); *Income Tax Assessment Act* 1936-1940, sec. 196). The taxpayer objects that the decision of the board from which the commissioner appeals involves no question of law.

The expression "mining operations" is not a term of art; it is popular and not technical (*Australian Slate Quarries Ltd.* v. *Federal Commissioner of Taxation* (1)). The common understanding of those words is not a question of law but of fact (*Girls Public Day School Trust* v. *Ereaut* (2); *Attorney-General for the Isle of Man* v. *Moore* (3)). But if there be no material which would justify the meaning given by the tribunal to the words, that is a question of law. This court has no authority to decide whether the finding is correct, but only whether there is any material upon which the tribunal could reasonably so find (*American Thread Co.* v. *Joyce* (4); *Currie* v. *Inland Revenue Commissioners* (5)).

Willyama Mining Pty. Ltd. was formed in 1934 by a group of three Broken Hill mining companies (consisting of the taxpayer, North Broken Hill Ltd., and the Zinc Corporation Ltd.) to take over the assets of Broken Hill Pty. Block 14 Ltd. (in liquidation) which had been purchased by the group for £1,750. The main asset consisted of a mine on Block 14, shaft and equipment and surface

(1) (1923) 33 C.L.R., at p. 424.
(2) (1931) A.C. 12.
(3) (1938) 3 All E.R. 263, at p. 267.
(4) (1913) 6 Tax. Cas. 1.
(5) (1921) 2 K.B. 332.

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Starke J.

buildings, and of mining rights in respect of silver, lead, tin, copper, antimony, calcium, gold, sulphur, and zinc. The ore body remaining in the mine was large : it was estimated at 220,000 tons, but was of low grade. No ore has been extracted from the mine since the Willyama company took it over, owing to economic conditions in the years in question here, namely, the low price of metal and the cost of production, rendering operations unprofitable. But the company has nevertheless employed a staff of surface men and engine drivers who have been engaged on the mine in performing, in some measure, what are called the labour covenants in the mining lease, and in maintaining and protecting the mine from damage by fire and otherwise and in pumping (occasionally) to keep the upper levels of the mine free from water. It may be observed that the maintenance expenditure of the company for the years 1934-1938 inclusive averaged over £2,000 per annum, which I presume rendered necessary the calls upon its shares.

The commissioner contends that the mine was closed down, or, in other words, the company was not engaged in extracting ore from its mine and was consequently not engaged in mining operations. But the majority of the board took the view that the common understanding of the expression "mining operations" covered activities in connection with a mine additional to the mere extraction of ore or metals such, for instance, as the provision and maintenance of plant both above and below the surface and work connected with the protection and safety of the mine and the mining rights. In my opinion, this was a conclusion which the board might reasonably adopt in point of fact, and, if so, there was material before the board upon which it could reasonably find that the Willyama Mining Pty. Ltd. was during the years in question here carrying on mining operations. It is not for this court, as I have said, to determine whether the decision of the board was correct, but only whether there was material before it upon which it could reasonably reach its conclusion.

In my opinion, the decision of the board was a decision of fact and involves no question of law. Consequently, this appeal should be dismissed.

McTIERNAN J. This is an appeal under sec. 196 of the *Income Tax Assessment Act* 1936-1940 from a decision of the board of review. The majority of the board, whose decision prevailed under the Act (sec. 194 (*b*)), decided that the company, Willyama Mining Pty. Ltd., to which the taxpayer company, the present respondent, paid calls in the years under review, carried on mining operations

for base metals, and that the calls were therefore allowable deductions. The deductions were allowed under sec. 78 (1) (*d*) of the Federal *Income Tax Assessment Acts* 1936-1938 or under similar provisions of the earlier Acts.

Sec. 196 provides that the commissioner or taxpayer may appeal to this court from any decision of the board of review which involves a question of law. This so-called appeal is a proceeding in the original jurisdiction of the court. Both parties concurred in asking that the appeal be referred to the Full Court under sec. 18 of the *Judiciary Act*, as the question whether the calls paid are an allowable deduction would, if sec. 78 (1) (*d*) remained unamended, recur annually. The taxpayer company raises the preliminary objection that the decision of the board does not involve any question of law, and that the appeal is therefore incompetent. There is no conflict of evidence about what the operations were which the Willyama Mining Pty. Ltd. carried on or about any other issue of fact in the case. The question what those operations were is one of fact. The question whether the operations, which the board found indisputably that the company carried on, are mining operations within the meaning of sec. 78 (1) (*d*) or the other similar provisions, is one of law. If there were before the board materials proving the purposes of the company's operations, upon which the board could properly find that such operations came within the scope of sec. 78 (1) (*d*) or the other provisions applicable, their decision does not involve any question of law and is not subject to be corrected by this court.

The company to which the calls were paid was formed in 1924 by a group of three mining companies working at Broken Hill to take over a mine there situate from which lead had been won for many years. The company which formerly owned the mine closed it down because it was uneconomic to work it any longer. The circumstances in which Willyama Mining Pty. Ltd. acquired the mine and did the work now in question are concisely stated by the chairman of the board of review:—"In 1921 the Block 14 company's difficulties were aggravated by the enactment of legislation which compelled Broken-Hill mining companies to pay high rates of compensation to miners proved to be suffering from certain diseases. Thereafter, the company had extreme difficulty in meeting its commitments and, although it continued to work the mine for some years, it was eventually forced to cease operations and was wound up in 1933 or 1934. In the course of the winding up the Minister of Mines, in consequence of representations made by the general manager of the Block 14 company, sought to prevent the loss which might result

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McTiernan J.

from the abandonment of the mine, and he accordingly approached the group which eventually formed the Willyama company, and asked them to take over the mine. His arguments were that he wanted the ore in the mine to be left within the handling of companies which would realize its value under proper market conditions, and that the abandonment of the mine might lead to fires, water seepage, vandalism, &c., which would not only destroy the development work on the mine, but would also damage adjoining and connected properties in which the group was interested. The group decided to accede to these representations, and formed the Willyama company for that purpose. It was the policy of the group to meet the wishes of the Government as far as possible, but what they had mainly in mind was that, although at the time of taking over the mine would be distinctly a burden, the day would come when economic conditions would allow them to realize a profit on the working of the remaining ore, which was estimated to amount to at least 220,000 tons. No concern without the facilities available to the group for the installation and employment, in Broken Hill, of suitable treatment plant could have taken over the mine with any expectation of profit. No ore has been extracted from the mine since the Willyama company took over. The extraction of the ore is admittedly a matter for the indefinite future; it must await an improvement—which is not yet in sight—in the prices of the metals which can be produced from the mine. If there should be a sufficient improvement in the prices the Willyama company, with its present equipment, would not be in a position which would warrant the commencement of actual mining. It would first have to provide itself with, or obtain the use of, a mill capable of treating Block 14 ore. At present there is no such mill in existence. The sole activities of the Willyama company during the years under review and up to the present time have been in the nature of maintenance by way of watching the mine for the purpose of preventing losses by vandalism and fires and by way of occasional pumping for the purpose of keeping the water below the 400 feet level—above which most of the timber work exists and below which the gangways and drives are mostly in solid rock which will withstand immersion. These operations are called 'closed-down' operations, for which the terms of every mining lease require a minimum number of workmen to be employed. In this respect the terms of the lease of Block 14 have been complied with. The workmen employed are not miners, but surface men and engine drivers."

No-one would doubt that activities, such as those done at the mine, come within the scope of mining operations when done in or

about a mine from which ore is being won or which is temporarily closed down but with the expectation of a resumption of the work of extracting ore. But it is said in the present case that so much time had elapsed since any ore was won from the mine, and the prospect of such work being done again was so remote and indefinite, that it was not reasonable to find that the work done by the company formed part of or was ancillary to any set of operations usually carried on to extract ore from the mine, and was not, therefore, mining operations. The correctness of that conclusion depends on the question whether there was any probable ground for anticipating that economic and other conditions would within a reasonable time enable the extraction of ore from the mine to be resumed. It is purely a question of fact whether there was any probable ground for regarding the work as preparatory to the eventual opening up of the mine. That was a question—really a matter for the opinion of business men—which the members of the board are peculiarly fitted to decide. They did not agree. In my opinion the evidence given about the economic factors which are likely to affect mining for lead afford a reasonable basis for the conclusion that the opening up of the mine may not be so long deferred that no practical or real connection can be discerned between the work done at the mine and the eventual extraction of ore.

In my opinion the appeal should be dismissed with costs.

WILLIAMS J. The Federal Commissioner of Taxation has appealed against a decision of the board of review, the effect of which is that the respondent is entitled to deduct from its assessable income calls paid by it as a shareholder in Willyama Mining Pty. Ltd. in the years of income ending 30th days of June 1934, 1935, 1936, 1937, and 1938 respectively. The assessments were made under the Federal *Income Tax Assessment Act* 1922-1934, which, by sec. 23 (1) (*i*), allowed a deduction of so much of the assessable income as was paid in calls on shares in a mining company carrying on mining operations for base metals, and under the *Income Tax Assessment Acts* 1936 and 1936-1938, which contained, in sec. 78 (1) (*d*), a provision to the same effect.

The point at issue is whether the company was carrying on mining operations for base metals in those years. If it was, then, admittedly, the respondent is entitled to the deductions.

The company was incorporated under the *Companies Act* 1928 (Vict.) on 12th April 1934. It acquired the lease of a lead-ore mine at Broken Hill known as Block No. 14. This mine had commenced to operate in 1885, and had been worked continuously until 1930,

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Williams J.

many millions of pounds worth of ore having been extracted in that period. By that time the great bulk of the more payable oxidized ore had been extracted, and the ore which remained was mainly pillars of lower grade sulphide ore. An expert has estimated the total amount of ore still remaining as 220,000 tons, but experience has shown that such estimates are often greatly exceeded. In 1930 the price of ore fell to such an extent that it became unprofitable to continue to extract it from the mine, concentrate it with the available plant, and sell it. The mine was in a closed-down condition when the company acquired it. The only witness called before the board and this court was Mr. Fairweather, the general manager of the respondent, who said that the mine could be worked profitably again if the price of ore rose to thirty pounds sterling per ton, the use of lead was increasing, no new lead mines were being discovered, and the possibilities of such a price, although rare in the past, would not be so remote in the future.

Since the company was incorporated its activities at the mine have been confined to its preservation, the only employees engaged being surface men who act as watchmen to protect the mine against vandalism and the outbreak of fire, and engine drivers who periodically run the engines to work the pumps and keep the water below the 400 feet level. Mr. Fairweather said the bailing and watching of a mine is a necessary and unavoidable concomitant of mining operations, and that in his experience of Broken Hill, extending over thirty-six years, every mine had been closed down at periods when the price of metals was such that a profit could not be shown on the working.

An appeal only lies to this court from a decision of the board which involves a question of law. The meaning of an ordinary English expression, such as "mining operations," used in an Act, is one of fact, and the question whether the facts proved in evidence come within the expression is also one of fact: See the authorities collected by *Jordan* C.J. in *Australian Gas Light Co.* v. *The Valuer-General* (1). The only question of law which arises on the appeal, therefore, is whether there is any evidence on which the board could reasonably conclude that the company was carrying on mining operations for base metals in the relevant years, the duty of the board being to determine what the expression meant in the vernacular of mining men at the time the relevant Acts were passed (*Attorney-General for the Isle of Man* v. *Moore* (2), per Lord *Wright*;

(1) (1940) 40 S.R. (N.S.W.) 126, at pp. 137, 138; 57 W.N. 53, at p. 55.
(2) (1938) 3 All E.R., at p. 267.

Australian Slate Quarries Ltd. v. *Federal Commissioner of Taxation* (1)). There is no suggestion that this common meaning was not the same then as it is to-day.

Mr. *Sholl* contended that a company would only be carrying on mining operations when it was preparing the mine with a view to undertaking the winning of the ore within a reasonable time, or actively engaged in winning the ore, or maintaining the mine with a view to resuming the winning of the ore within a reasonable time. He submitted the evidence showed that the two main motives for maintenance were to encourage good relations with the New-South-Wales Government, which desired that this should be done, and to protect the respondent's neighbouring mine from damage, and the probability of it ever becoming payable to work the mine again was so remote that the closed-down condition in which the company acquired the mine could be fairly described as a permanent and not a temporary state of affairs. But it appears to me the expression is susceptible of a wider operation. The company is a mining company. The bona fides of its directors in spending the shareholders' funds on the maintenance of the mine have not been attacked. No limit of time can be imposed on the period it would be reasonable to keep the mine in working order in the hope of again putting it to profitable use. As long as the directors consider it advisable to do so it would be difficult to say the mine is moribund. Mr. Fairweather's evidence that periods of being closed down are amongst the vicissitudes of mining is uncontradicted. No distinction can be drawn between a closing down of a mine at the time of and after its acquisition. Operation is a word of wide import. The *Oxford Dictionary* enumerates amongst its meanings action, activity, and work. The maintenance of a mine while in this condition can be reasonably described in the common understanding of the term as a mining activity or work directly connected with the use of the mine to obtain base metals.

The appeal should be dismissed.

Appeal dismissed with costs.

Solicitor for the appellant, *H. F. E. Whitlam*, Commonwealth Crown Solicitor.

Solicitors for the respondent, *Blake & Riggall.*

O. J. G.

(1) (1923) 33 C.L.R., at p. 424.