grond daarvan dat die landdros in die verrigtinge voor hom op 13 Oktober 1964 inderdaad met 'n mondelinge eksepsie te doen gehad het en dat hy die bestaan van die beweerde ooreenkoms tussen die eiser en die garage, nl. dat die garage met die saak teen die verweerder in die naam van die eiser sal voortgaan, vir doeleindes van die eksepsie, moes aanvaar het en dit aan die eiser moes oorgelaat het om die bestaan van die ooreenkoms by die verhoor te bewys".

Die appèl teen die landdros se bevinding is gehandhaaf.

Nou kom die bo
teen dié beslissing v

Na my mening w
by ooreenkoms aan
feite 'n skuldoorsaa
(die garage) ten vol
datum) aan die eise
het hy natuurlik gee
feit dat tydens die
partye die bev
skuldoorsaak
alleen die aan
stelde feite ui
diger het met
feite gemaak i

Dit skyn n
landdros die
beslissing var
eksepsie teen
behoorlik vir ... gewees het om sy beslissing op ander feite te
gee as dié wat deur die partye ooreengekom word as synde die enigste tersaaklike feite.

66/1/405 SIR v HARTZENBERG
dicta at 409A & 409H
appl: Wildrice Invest CIR 87/1/247/T
dictum at 409A-C
appl but dictum at 409H
dist: Collins v CIR 90/4/622/D
dictum at 409C-410D
appl: CIR v Collins 92/3/709/A
cons: Nuwe SA Prinsipale Beleg v Saambou Holdings 92/4/400/W
dictum at 409A-B
appl: De Leef Family Trust v CIR 93/3/355/A
dictum at 409A-B
appl: CIR v Viljoen 95/4/479/E
cons: CT Mun v Table Mountain Aerial Cableway 96/1/919/C
dictum at 408 in fin
appl: Erf 3183/1 Ladysmith (Pty) v CIR 96/3/950/A
ref: Haslam v Sefalana Empl Ben Org (p.972) 98/4/964/W

Al het die Hof *a quo* bevind dat die derde party (die garage) uit hoofde van die betaling deur hom van die hoofskuld, sonder meer 'n skuldoorsaak teen die borg verkry het, kan dit nie gesê word dat daardie skuldoorsaak, ook sonder meer, op die eiser oorgedra is nie; en nog minder kan dit gesê word dat die landdros kennis van so 'n moontlike oordrag moes geneem het.

Adv. *Witepski*, vir die eiser-respondent, het aangevoer dat die eiser as betaalde skuldeiser selfs na betaling van die skuld nog regte oorgehad het wat aan die betaler oorgedra kon en moes word en dat 'n informele ooreenkoms genoeg was om daardie regte by die skuldeiser te laat bly, onder andere, die reg om die skuld in te vorder van die borg wat nie betaal het nie. Dit is nie nodig om stil te staan by die geldigheid van hierdie argument nie. Dit blyk afdoende uit wat reeds gesê is, dat die landdros hierdie en ander dergelike konsiderasies moes ignoreer by die oorweging van die feite wat voor hom geplaas was. Hy het tereg so gehandel en sy beslissing op die ooreengekome feite was korrek.

Die appèl moet, m.i. slaag, met koste in albei Afdelings, en die vonnis van die landdros van „uitspraak vir die verweerder met koste" moet herstel word.

BEYERS, WN.-H.R., RUMPFF, A.R., BOTHA, A.R., en HOLMES, A.R., het saamgestem.

Appellant se Prokureurs: *P. J. Heyns & van Lill*, Upington; *van der Wall, Botma & de Bruin*, Kimberley; *van de Wall, Leinberger, Potgieter & Coetsee*, Bloemfontein. Respondent se Prokureurs: *Lange, Joubert, Carr & Blaauw*, Upington; *Frank, Engelsman & Horwitz*, Kimberley; *Heath, Venter & Horn*, Bloemfontein.

MESDLW-G

SECRETARY FOR INLAND REVENUE v. HARTZENBERG.

(APPELLATE DIVISION.)

1965. *November* 19, 26. BEYERS, A.C.J., BOTHA, J.A., HOLMES, J.A., TROLLIP, A.J.A., and MARAIS, A.J.A.,

Revenue.—Transfer duty.—Payment of.—"Acquire".—Meaning of in sec. 2 of Act 40 *of* 1949.*—Cancellation of a deed of sale.—What amounts to in sec.* 5 (2) (a).

Although the ordinary legal meaning of the word "acquire" implies the acquisition of *dominium*, in section 2 of Act 40 of 1949 the word is used in its wider meaning and includes the acquisition of a *jus in personam ad rem acquirendam*. Transfer duty therefore becomes payable under section 2 upon the acquisition by a person of a personal right to obtain *dominium* in immovable property. No purported cancellation of a transaction by which such a right was acquired can therefore be a cancellation such as is contemplated by section 5 (2) (*a*) of the Act, unless the effect of such a cancellation is to extinguish the right acquired under the transaction. Thus the formal cancellation of a deed of sale, accompanied by the simultaneous substitution for that deed of a new deed of sale between the parties, in respect of the same property, where the object of the parties is a variation of the terms of the original deed, is not such a cancellation of the deed as is contemplated by section 5 (2) (*a*) of the Act. Likewise in the case of a mere substitution of a new deed of sale for the original one, in order to take advantage of a lower rate of transfer duty which has since been introduced.

The decision in the Witwatersrand Local Division in *Secretary for Inland Revenue* v. *Hartzenberg*, 1965 (4) S.A. 282, reversed.

Appeal from a decision in the Witwatersrand Local Division (CLAYDEN, J). The facts appear from the judgment of BOTHA, J.A.

W. S. McEwan (with him *D. M. Williamson*), for the appellant: Upon a proper consideration of all the relevant circumstances there was no genuine cancellation, within the meaning of sec. 5 (2) (*a*) of Act 77 of 1964, of the "transaction whereby property has been acquired". It is conceded that it is a general principle that a person is entitled so to order his affairs as to escape taxation. See *C.I.R.* v. *Estate Kohler*, 1953 (2) S.A. 591. Nevertheless, that principle will not preclude or deter the Court from examining any transaction in order to ascertain its true nature or in order to discover whether the parties have a real intention which differs from their simulated intention. See *Zandberg* v. *van Zyl*, 1910 A.D. at p. 309; *Dadoo Ltd.* v. *Krugersdorp Municipal Council*, 1920 A.D. at p. 548; *Bailey* v. *C.I.R.*, 1933 A.D. at pp. 221-2; *New State Areas, Ltd.* v. *C.I.R.*, 1946 A.D. at p. 627; and cf. *R.* v. *Gillett*, 1929 A.D. at p. 371; *McAdams* v. *Flander's Trustee and Bell, N.O.*, 1919 A.D. at p. 228. The Court must give effect to the transaction

according to what it finds to be the real intention of the parties. See *Commissioner of Customs & Excise* v. *Randles Bros. & Hudson, Ltd.*, 1941 A.D. at p. 381. In the present case, although the parties openly expressed the intention to take advantage of the new reduced rates of A duty, that did not mean that the cancellation of the first agreement represented their real intention. It was a simulated intention, the real intention being to preserve intact the contractual relationship between them which had existed since 1961. In the light of the relevant circumstances and considerations there was no real or genuine intention to B cancel "the transaction whereby property has been acquired". The second agreement brings about so small a change in the contractual arrangements between the parties that, in effect, the new agreement is but a minor variation of the old. To say that in those circumstances, there was a real intention to cancel, is to clothe the form of the second transaction with a substance that, in fact, was never there. Although C the second agreement might, perhaps, regulate the rights of the parties *inter se*, it does not follow that, in so far as Act 77 of 1964 is concerned, there was an effective cancellation within the meaning of sec. 5 (2) (*a*) so as to alter the date of acquisition of the property for transfer duty purposes from 1961 to 1964.

D *H. Rothschild*, for the respondent: There is no room for an assertion by appellant that there was neither a cancellation nor an intention to cancel. Cf. *C.I.R.* v. *Estate Kohler*, 1953 (2) S.A. at p. 592; *Boshoff's Estate* v. *C.I.R.*, 1953 (3) S.A. at p. 387; *Commissioner for Customs & Excise* v. *Randles Bros. & Hudson, Ltd.*, 1941 A.D. at p. 381; *Beaton* v. *Baldachin Bros.*, 1920 A.D. at p. 315; *Dadoo* v. *Krugersdorp Muni-* E *cipality*, 1920 A.D. at pp. 543-8; *Minister of Finance* v. *Gin Bros. & Goldblatt*, 1954 (3) S.A. at p. 13. The transaction is not *in fraudem legis*. It is not alleged that there is something fraudulent or dishonest in the transaction and accordingly it does not fall within the principles upon which transactions have been held to be *in fraudem legis*. See F *Kohler's* case, *supra* at pp. 592-3; *Randles Bros.* case, *supra* at p. 395; *Massyn* v. *United Dominions Corporation*, 1961 (3) S.A. at p. 791; *Dadoo's* case, *supra* at pp. 542, 543, 545, 547. "Where a transaction is not disguised, so as to escape the provisions of the law but falls in truth within those provisions", the transaction must be interpreted and dealt G with according to its tenor. There is no merit in saying that there was no real cancellation, because the cancellation may have been conditional upon a new sale being entered into, if that was the case. The fact is that the previous contract no longer exists, and appellant does not dispute that this is so in fact. The statute does not contain provisions designed to prevent avoidance or evasion such as are contained in the Income H Tax Act. The appellant seeks to act herein as if such provisions did exist. Cf. *Kohler's* case, *supra* at p. 592. The *onus* of proving that the transaction is something else than it appears to be is, in any event, on appellant, and he has failed to discharge this *onus*. See *Randles Bros.* case, *supra* at p. 381; *Zandberg* v. *Van Zyl*, 1910 A.D. at p. 314; *Massyn* v. *United Dominions Corporation*, 1961 (3) S.A. at p. 791; *United Insurance Co., Ltd.* v. *Keak and Another*, 1962 (3) S.A. at p. 624.

McEwan, in reply.

Cur. adv. vult.

Postea (November 26th).

BOTHA, J.A.: On 20th July, 1961, the respondent, to whom I shall refer as the purchaser, entered into a written deed of sale in terms of A which he acquired from Afrikaner Behuisings (Eiendoms) Bpk., certain immovable property for R4,600. R130 of the purchase price was payable in cash and the balance in monthly instalments of R30. According to this deed, to which I shall refer as the 1961 agreement, the purchaser was entitled to possession of the property sold with effect from 1st B August, 1961, from which date the risk in the property passed to him. Transfer duty was apparently not paid by the purchaser in respect of this transaction, and by 22nd June, 1964, he had paid only R130.73 in respect of the purchase consideration.

In the meantime, sec. 2 of Act 77 of 1964 was enacted. This section C substituted a new section for sec. 2 of the Transfer Duty Act, 40 of 1949, as amended. The substituted section provided for a reduced rate of transfer duty payable in respect of certain acquisitions of immovable property where the date of acquisition was 16th March, 1964, or thereafter. It is clear that if the transaction here in question had taken place on or after 16th March, 1964, the duty payable in respect thereof would D have been less than was otherwise payable.

By reason of these circumstances, the purchaser, on 22nd June, 1964, entered into a new agreement with Afrikaner Behuisings (Eiendoms) Bpk., whereby the 1961 agreement was, in terms, cancelled, and a new deed of sale constituted between the same parties, in respect of the E same property and at the same price. This agreement, which will be referred to as the 1964 agreement, provided for the refund to the purchaser of the amount of R130.73 paid by him under the 1961 agreement, but under the new deed of sale constituted by the 1964 agreement, the exact amount, viz. R130.73, was payable in cash, in respect of the purchase price, on the signing of the agreement, and the balance in monthly F instalments of R34. As under the 1961 agreement, the purchaser was, under the 1964 agreement, entitled to possession of the property sold with effect from 1st August, 1961, from which date the risk in the property was deemed to have passed to him.

The 1964 agreement was openly entered into to enable the purchaser G to take advantage of the lower rate of transfer duty introduced in 1964 in respect of acquisitions of property on or after 16th March, 1964. This is clear from the papers before us, and the agreement itself says so.

The purchaser thereafter tendered transfer duty to the appellant, to H whom I shall refer as the Secretary, on the basis that the property was acquired by him after 16th March, 1964, in terms of the 1964 agreement. The Secretary, however, declined to accept duty on that basis, and claimed that the duty payable should be calculated in accordance with the provisions of sec. 2 of the Transfer Duty Act, 1949, as it read in July, 1961, and before its substitution by sec. 2 of Act 77 of 1964, and on the basis that the property was acquired by the purchaser on 20th July, 1961, in terms of the 1961 agreement.

In consequence of this dispute between the parties, the purchaser successfully sought an order before CLAYDEN, J., in the Witwatersrand Local Division declaring that transfer duty is payable in respect of the deed of sale dated 22nd June, 1964, and is to be calculated in accordance with the provisions of sec. 2 of the Transfer Duty Act, 1949, as substituted by sec. 2 of Act 77 of 1964. (See the judgment reported at 1965 (4) S.A. 282). By consent of the parties, an appeal against the order of CLAYDEN, J., is made direct to this Court.

Under sec. 3 of the Transfer Duty Act, 1949, duty on the value of property acquired is payable within six months of the "date of acquisition", which expression is by sec. 1 defined, in the case of the acquisition of property by way of a transaction, as the date on which the transaction was entered into, and "transaction" is defined to include any agreement of sale. If transfer duty is not paid within six months of the date of acquisition, a penalty is in terms of sec. 4, as amended, payable at the rate of 7 or 12 per centum per annum (as the case may be) on the amount of the unpaid duty calculated from the date of the expiration of the said period to the date of payment of duty. Sec. 12 prohibits the registration of an acquisition of property where the duty payable under the Act has not been paid.

Sec. 5 of the Act deals with the determination of the value of the property acquired on which the duty shall be calculated, and in subsec. (2) (*a*) it is provided that:

> "If a transaction whereby property has been acquired, is, before registration of the acquisition in a deeds registry, cancelled, or dissolved by the operation of a resolutive condition, duty shall be payable only on that part of the consideration which has been or is paid to and retained by the seller and on any consideration payable by either party to the transaction for or in respect of the cancellation thereof."

It is clear therefore that no transfer duty is payable in respect of an acquisition of property where the transaction, under which the property has been acquired, is cancelled prior to the registration of the acquisition, and no consideration has passed or is to pass between the parties to the transaction.

The purchaser's contention, upheld by CLAYDEN, J., in the Court *a quo*, was that he was entitled in accordance with the principle enunciated in *Inland Revenue Commissioners* v. *The Duke of Westminster*, 1936 A.C. 1, and recognised by our Courts (see *Commissioner for Inland Revenue*, v. *Estate Kohler and Others*, 1953 (2) S.A. 584 (A.D.) at p. 592), so to order his affairs that the transfer duty payable by him under the appropriate Act is less than it otherwise would have been, and that he was therefore entitled to cancel the 1961 agreement, in order to avoid liability to pay transfer duty in respect of the acquisition under that transaction, and to enter into a new deed of sale in 1964 so as to take advantage of the lower rates of duty introduced in respect of acquisitions on or after 16th March, 1964.

The purchaser was undoubtedly entitled, if he could, so to arrange his affairs that the duty payable by him under the Act is less than it otherwise would have been, but the question to be determined in this appeal is whether he has succeeded in achieving that result. He could only have done so if the purported cancellation in 1964 of the 1961 agreement was such a cancellation as is contemplated by sec. 5 (2) (*a*) of the Transfer Duty Act, 1949.

Transfer duty is by sec. 2 of the Act imposed on the value of any immovable property "acquired" by any person by way of a transaction, or in any other manner. Although the ordinary legal meaning of the word "acquire" implies the acquisition of *dominium*, it is clear that in sec. 2 of the Act the word is used in its wider meaning and includes the acquisition of a *jus in personam ad rem acquirendam*. (Cf. *Minister of Finance* v. *Gin Bros. and Goldblatt*, 1954 (3) S.A. 7 (O) at p. 10, and the authorities there cited and the judgment on appeal at p. 884). Transfer duty therefore becomes payable under sec. 2 upon the acquisition by a person of a personal right to obtain *dominium* in immovable property. No purported cancellation of a transaction by which such a right was acquired can therefore be a cancellation such as is contemplated by sec. 5 (2) (*a*) of the Act, unless the effect of such a cancellation is to extinguish the right acquired under the transaction.

Thus the formal cancellation of a deed of sale, accompanied by the simultaneous substitution for that deed of a new deed of sale between the same parties, in respect of the same property, where the object of the parties is a variation of the terms of the original deed, is in my view not such a cancellation of the deed as is contemplated by sec. 5 (2) (*a*) of the Act. This is so because there was neither in fact nor in law an effective termination of the original deed, but a mere substitution therefor of a new deed, which did not have the effect of extinguishing the *jus in personam ad rem acquirendam* acquired under the substituted deed. A variation of the terms of a deed of sale may be brought about either by a subsequent agreement formally effecting the alterations, or by a simple substitution for the original deed of a new deed containing the variations agreed upon. In either case the effect would be the same, and in neither case would the *jus in personam ad rem acquirendam* acquired under the original deed be extinguished. There can in my view be no difference in the result in this respect where the original deed is formally cancelled and simultaneously substituted by a new deed between the same parties in respect of the same property.

The cancellation of a transaction contemplated by the Legislature in sec. 5 (2) (*a*) is apparent also from the provisions of sec. 5 (2) (*b*), the relevant portion of which reads as follows—

> "(*b*) Upon the subsequent disposal of property referred to in para. (*a*), the person so disposing of it shall, in the declaration to be made by him in terms of sec. 14, set forth the circumstances of such previous transaction and of the cancellation thereof and shall furnish particulars relating to the payment of duty in connection therewith . . ."

It is, I think, clear from the above provisions that the cancellation contemplated in sec. 5 (2) (*a*) is a cancellation which terminates the relationship between the parties to the transaction, and restores to the seller his full rights of disposal over the property concerned. A purported cancellation of a transaction which does not have that effect, cannot have any effect either on the *jus in personam ad rem acquirendam* acquired by the purchaser under the transaction, and cannot, therefore, be a cancellation for the purposes of sec. 5 (2) (*a*).

In the case under consideration, there is no difference at all between the essential elements of the 1961 agreement and the new deed of sale con-

stituted by the 1964 agreement. Both agreements are between the same parties, in respect of the same property, and for the same consideration. Even the provisions in the two agreements regarding the date on which the purchaser was entitled to possession of the property, and the date on which the risk in the property sold passed or is deemed to have passed to the purchaser, are identical. The 1964 agreement, which purported to cancel the 1961 agreement, at the same time resurrected, therefore, with minor variations, the very agreement it purported to cancel. There was no moment of time at which the purported cancellation could have had any effect, for before it could have had any effect, the agreement that it purported to cancel, was resurrected. The 1964 agreement, therefore, did no more than substitute for the 1961 agreement a new deed of sale, with minor variations in regard to the payment of the purchase price, between the same parties in respect of the same property and at the same price. It follows that the purported cancellation of the 1961 agreement neither extinguished the *jus in personam ad rem acquirendam* acquired by the purchaser thereunder, nor restored to the seller full rights of disposal over the property concerned. There was, therefore, in my view, a mere substitution of a new deed of sale for the 1961 agreement, and not a cancellation of that agreement within the meaning of sec. 5 (2) (*a*) of the Transfer Duty Act.

The appeal is allowed with costs, and the order of the Court below is altered to read: "application dismissed with costs".

BEYERS, A.C.J., HOLMES, J.A., TROLLIP, A.J.A., and MARAIS, A.J.A., concurred.

Appellant's Attorneys: *Deputy State Attorney*, Johannesburg; *Deputy State Attorney*, Bloemfontein. Respondent's Attorneys: *Van den Bergh, Melamed & Nathanson*, Johannesburg; *H. Louis Israel*, Bloemfontein.

70(1)SA186(W)
71(3)..627.628(T)

MINISTER OF JUSTICE v. KHOZA.

(APPELAFDELING.)

1965. *November* 18, 30. BEYERS, WN.-H.R., VAN BLERK, A.R., RUMPFF, A.R., WILLIAMSON, A.R., en WESSELS, A.R.

**Werkgewer en dienaar.—Ongevalle Wet*, 30 *van* 1941.—*Ongeval wat weens en uit die diens ontstaan.—Wat uitmaak.—Art.* 2 *en art.* 7 *van Wet.*

In 1960 het die respondent, 'n Bantoekonstabel, saam met 'n blanke konstabel, S, in 'n Polisievangwa 'n aantal gearresteerdes bewaak. S het 'n polisierewolwer in 'n holster gehad wat hy met sy amptelike werksaamhede as

konstabel by hom moes dra. Terwyl die vangwa gery het, het S die rewolwer uitgehaal en op respondent gerig. Respondent het hom gewaarsku dat hy van tevore gesien het hoe een konstabel 'n ander een skiet terwyl hy met 'n vuurwapen gespeel het. S het gesê: „jy is 'n bang kaffer; ek sal jou doodskiet". 'n Skoot het afgegaan en respondent is in sy bors getref as gevolg waarvan hy blywende kwetsure opgedoen het. S het nie die opset om te dood gehad nie: sy handeling was 'n vertoning van bravade teenoor sowel die respondent as die gearresteerdes, gebore uit 'n puerile mentaliteit. Respondent het 'n geding om skadevergoeding teen die appellant in 'n Plaaslike Afdeling ingestel. Appellant het gepleit dat die aksie onontvanklik was, onder andere ingevolge artikel 7 van die Ongevalle Wet, 30 van 1941, wat bepaal dat geen regsgeding deur 'n werksman teen sy werkgewer ingestel mag word nie indien hy skadevergoeding eis ten opsigte van 'n besering veroorsaak deur 'n ongeval. Volgens artikel 2 van die Wet beteken ongeval „'n ongeval wat uit 'n werksman se diens ontstaan en in die loop daarvan plaasvind, en wat persoonlike besering tot gevolg het". Die Plaaslike Afdeling het die pleit afgewys. Op 'n appèl,

66/1/
dictum
appl:
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appl:

Beslis, aangesien dat die ongeval weens sy diens en uit daardie diens ontstaan het, dat die spesiale pleit moes gehandhaaf gewees het.

Die beslissing in die Witwatersrand Plaaslike Afdeling in *Khoza* v. *Minister of Justice*, 1964 (3) S.A. 78, omvergewerp, en die bevel in *Khoza* v. *Minister of Justice*, 1965 (4) S.A. 286, tersyde gestel.

Appèl teen beslissings in die Witwatersrandse Plaaslike Afdeling (LUDORF, R., en CLAYDEN, R.). Die feite blyk uit die uitspraak van RUMPFF, A.R.

O. Rathouse, Q.C. (bygestaan deur *Z. Sutej*), namens die appellant: At the hearing it was conceded by respondent's counsel that two of the elements of the definition of "accident", as defined in sec. 1 of Act 30 of 1941, were present, i.e. (i) that the shooting was an accident, and (ii) that the accident arose in the course of the workman's employment. As to concession (i), see Halsbury, *Laws of England*, 2nd ed., vol. 34, para. 1154; Willis, *Workmen's Compensation*, 36th ed., pp. 8-9; *Trim Joint District School Board* v. *Kelly*, 1914 A.C. 667 at pp. 679, 681-2, 708; *Nicosia* v. *Workmen's Compensation Commissioner*, 1954 (3) S.A. at p. 900. As to concession (ii), see *Halsbury, supra*, para. 1161; *Willis, op. cit.*, p. 22; *Davidson & Co.* v. *McRobb*, 1918 A.C. at p. 314. The accident arose not only in the course of respondent's employment but also out of such employment. On this question the numerous decisions of the English Courts are not altogether harmonious and cannot always be reconciled. See *Simpson* v. *Sinclair*, 1917 A.C. at p. 133.

**Master and servant.—Workmen's Compensation Act*, 30 *of* 1941.—*Accident arising in course of and out of employment.—What constitutes.—Secs.* 2 *and* 7 *of Act.*

In 1960 the respondent, a Bantu constable, together with a Bantu constable, S, had been guarding a number of arrested persons in a police van. S had had a police revolver in a holster which he had to have with him for his official duties as constable. While the police van was moving, S had taken out his revolver and pointed it at respondent. Respondent warned him that he had previously seen one constable shoot another whilst playing with his revolver. S replied: "You are a scared 'kaffer'; I will shoot you dead." A shot went off and respondent was hit in his chest as a result of which he sustained permanent injuries. S had not had any intention to kill: his conduct was a display of bravado towards both the respondent and the arrested persons, born of a puerile mentality. Respondent had instituted an action for damages in a Local Division against the appellant. Appellant had pleaded that the action was not entertainable, *inter alia* in terms of section 7 of the Workmen's Compensation Act, 30 of 1941, which provides that no action can be instituted by a workman against his employer if he claims damages for an injury caused by an accident. According to section 2 of the Act accident means "an accident arising out of and in the course of a workman's employment and resulting in a personal injury". The Local Division had dismissed the plea. In an appeal,

Held, as the accident had arisen in the course of his employment and out of such employment, that the special plea should have been upheld.

The decision in the Witwatersrand Local Division in *Khoza* v. *Minister of Justice*, 1964 (3) S.A. 78 reversed, and the order in *Khoza* v. *Minister of Justice*, 1965 (4) S.A. 286, set aside.