APPENDIX

DIGEST OF CASES ON APPEAL.

Money counts.—*Recovery of money paid under duress.—Payment need not be attended by a protest.—But pressure must have been illegal or* contra bonos mores.*—Revenue.—Income Tax.—Additional tax.—Sec.* 65 (3) *of Act* 31 *of* 1941. *—Construction of.—Recovery of interest by Commissioner.—Date from which payable.—Effect of sec.* 80 *of Act.—Law at time proceedings taken to be followed.* The law does not require as a condition precedent to successful recovery of money paid under duress of goods that the payment should have been attended by a protest. It is sufficient if from the totality of the evidence it appears that the payment was involuntarily made. But the plaintiff's action founders if the pressure brought to bear upon him was legal pressure taken in pursuance of a legal judgment, an appeal against the judgment having failed and the legality of the writ not being in question. For a final judgment puts an end to the cause of action and the plaintiff cannot recover where the fear induced by the threat to execute against his goods was neither illegal nor *contra bonos mores.* Section 65 (3) of the Income Tax Act, 31, of 1941, should be regarded as dealing with a situation where the tax chargeable (on the basis of which the *quantum* of the additional tax is to be calculated) is arrived at by an initial determination by the Commissioner on the basis either of an estimate, an agreement, or on the accounts rendered by the taxpayer and no objection has been lodged to such determination or, if it has been lodged, has been allowed by the Commissioner. Section 80 of the Income Tax Act, 31 of 1941, contemplates that the taxpayer who has appealed against the decision of the Commissioner overruling the taxpayer's objection to the assessment levied against him is nevertheless liable to pay the tax claimed as at the date fixed in the assessment unless the Commissioner otherwise directs. The Commissioner is therefore entitled to claim interest as from the date of the original assessment. The recovery of interest by its inclusion in a statement is a procedural matter and the Commissioner is entitled to follow the law as it stands at the time proceedings are taken. [VAN WINSEN, J.] (C.P.D. April 21-23; June 15). *Kruger* v. *Commissioner for Inland Revenue.*

CASES

DECIDED IN

THE SUPREME COURT OF SOUTH AFRICA

S.A. LAW REPORTS, NOVEMBER, 1971 (4).

HERON INVESTMENTS (PTY.) LTD. v. SECRETARY FOR INLAND REVENUE.

(APPELLATE DIVISION.)

1971. *May* 24; *August* 2. OGILVIE THOMPSON, C.J., RUMPFF, J.A., JANSEN, J.A., TROLLIP, J.A., and RABIE, J.A.

Revenue.—Income tax.—Deductions.—Expenditure incurred in making alterations to leased premises.—Expenditure in circumstances of a capital nature.—Act 58 *of* 1962, *sec.* 11 (a).

Where the appellant, a private company whose income consisted mainly of rentals received from the letting of its fixed property, had incurred expenditure in making alterations to its income-earning structure in order to retain its lessee for a substantial period under a new lease,

Held, that such expenditure was of a capital nature and was not claimable as a deduction under section 11 (*a*) of Act 58 of 1962.

Appeal in terms of sec. 86 (1) (*b*) of Act 58 of 1962 from a decision of the Transvaal Income Tax Special Court (GALGUT, J.). The facts appear from the judgment of OGILVIE THOMPSON, C.J.

H. Rotchschild, S.C. (with him *H. J. Swersky*), for the appellant: The expenditure, other than in respect of the items conceded, was incurred in the production of income within the principles enunciated in *Port Elizabeth Tramway Co. Ltd.* v. *C.I.R.* 1936 C.P.D. 241, in that they are so closely connected with the business operations that they may be regarded as part of the costs of performing it. These principles have frequently been approved of by this Court. See *C.I.R.* v. *Genn and Co. (Pty.) Ltd.*, 1955 (3) S.A. 293. The words "of a capital nature" have been held to "elude precise and comprehensive definition". See *S.I.R.* v. *Cadac Engineering Works (Pty.) Ltd.*, 1965 (2) S.A. 511; *New State Areas Limited* v. *C.I.R.*, 1946 AD. 610 at p. 627. The emphasis on the "purpose" or "object" of the expenditure in the judgments cited above runs throughout the authorities. See *Lockie Bros. Ltd.* v. *C.I.R.*, 1922 T.P.D. at p. 44; *Sub-Nigel Ltd.* v. *C.I.R.*, 1948 (4) S.A. at p. 592; *Atlantic Refining Co. of Africa (Pty.)*

Ltd. v. *C.I.R.* 1957 (2) S.A. at p. 335A-B and E-F; *C.I.R.* v. *Drakensberg Garden Hotel (Pty.) Ltd.* 1960 (2) S.A. at p. 481D-E; *C.I.R.* v. *African Oxygen Ltd.*, 1963 (1) S.A. at p. 690D-E; *S.I.R.* v. *Cadac Engineering Works (Pty.) Ltd., supra*; *S.I.R.* v. *John Cullum Construction Co. (Pty.) Ltd.*, 1965 (4) S.A. at pp. 705H; 706A; 713A-B; 714E-F; *Boyd Building Ltd.* v. *Minister of National Revenue* 54 D.T.C. 271; *Income Tax Case No.* 984, 25 S.A.T.C. 59.

In considering the surrounding circumstances the Courts also take into account the nature of the expenditure and what was factually done and achieved in pursuance of the taxpayer's intention and purpose. The end result is of minor importance, however, since it is trite law that the expenditure, to be deductible, need not actually have resulted in an achievement of the object. See Wells and Isaacs, *South African Income Tax Practice*, para. 354, p. 572. Where the work done involves some degree of improvement as where a dilapidated or worn out subsidiary of the whole is replaced with a modern substitute better than that which has gone before, the work may nevertheless be a repair and not an improvement. *Morcom and Others* v. *Campbell-Johnson and Others*, (1955) 3 All E.R. at p. 267A-B. An improvement materially adds to the value or utility of the property or appreciably prolongs its useful life. The word "improvement" means "make or become better" and an improvement is something better than what went before. Looked at in the concept of a business situation, it can only mean "to make more valuable". Bell, *South African Legal Dictionary*. 3rd ed., p. 367; *Bellingham and Another* v. *Blommetjie*, 1874 Buch. 38. See also *Salisbury Municipality* v. *Nestlé's Products (Rhodesia) Ltd.*, 1963 (1) S.A. at p. 340. The expenditure is more properly to be regarded as working the source of profit rather than the bringing into existence of an asset for the enduring benefit of the appellant's trade. See *C.O.T.* v. *Rhodesia Congo Border Timber Co. Ltd.*, 24 S.A.T.C. 602.

B. O'Donovan, S.C. (with him *C. J. M. Nathan*), for the respondent: On the criteria laid down in the decided cases the expenditure in the instant case was of a capital and not of a revenue nature. It was made with a view to bringing into existence an asset or advantage for the enduring benefit of the trade. See *New State Areas Ltd.* v. *C.I.R.*, 1946 A.D. at p. 624; *C.I.R.* v. *African Oxygen Ltd.*, 1963 (1) S.A. at p. 688H; *S.I.R.* v. *John Cullum Construction Co. (Pty.) Ltd.*, 1965 (4) S.A. at pp. 712G-713C; 713G; 714D-H; *Regent Oil Co. Ltd.* v. *Strick* (1965) 3 All E.R. 174 (H.L.) at pp. 202B-203G. The alterations were designed to secure a benefit for the appellant for the whole of the duration of Price Forbes' lease. The fact that an alteration does not add to the value of a building does not prevent it from being an improvement. *Woolworth & Co. Ltd.* v. *Lambert*, (1936) 2 All E.R. 1523 at pp. 1533-1534. The expenditure was "once and for all" and not recurrent. *C.I.R.* v. *African Oxygen Ltd.*, 1963 (1) S.A. at p. 689G; *S.I.R.* v. *John Cullum Construction Co. (Pty.) Ltd.*, 1965 (4) S.A. at p. 713A. The expenditure was incurred in order to improve the earning capacity of the taxpayer's capital asset. Expenditure upon equipping, adding to or improving, the income-earning machine or structure is of a capital and not of a revenue nature. *New State Areas*

Ltd. v. *C.I.R., supra* at p. 627; *S.I.R.* v. *Cadac Engineering Works (Pty.) Ltd.*, 1965 (2) S.A. at pp. 519A, D; 521H-522B; 523G, H; 524E-H. *S.I.R.* v. *John Cullum Construction Co. (Pty.) Ltd., supra*, at pp. 704D-705A; 705H-706F.

Rothschild, S.C., in reply.

Cur. adv. vult.

Postea (August 2nd).

OGILVIE THOMPSON, C.J.: Appellant appeals direct to this Court—the consents required in terms of sec. 86 (1) (*b*) of the Income Tax Act, 58 of 1962, having been duly filed—against the decision of the Transvaal Special Court dismissing appellant's appeal against assessments for normal tax for the years of assessment ended 30th June, 1965, and 30th June, 1966. The aforesaid appeal was directed against respondent's refusal to allow any portion of two amounts of R36 548 and R7 302 expended, in the circumstances hereinafter detailed, by appellant in making alterations to a building, known as Price Forbes House, owned by it, as deductions against appellant's gross income for the tax years 1965 and 1966 respectively.

Upon an examination of the facts of the case in the light of the principles set out in *New State Areas Ltd.* v. *Commissioner for Inland Revenue*, 1946 A.D. 610, and *Secretary for Inland Revenue* v. *Cadac Engineering Works (Pty.) Ltd.*, 1965 (2) S.A. 511 (A.D.), the Special Court came to the conclusion that the expenditure upon the alterations claimed by appellant to be deductible must be regarded as capital expenditure and that it was, therefore, inadmissible for deduction in terms of sec. 11 (*a*) of the Act. Appellant's appeal to the Special Court was, accordingly, dismissed.

It is not disputed that the expenditure in issue was incurred exclusively for the purposes of trade and in the production of income. The sole question for decision by this Court is, accordingly, whether the said sums of R36 548 and R7 302—or any portion of them—constituted expenditure of a capital nature and were, therefore, rightly held to be inadmissible for deduction under sec. 11 (*a*) of the Act. It may at once be mentioned that during the 1965 and 1966 tax years appellant incurred certain expenditure in respect of repairs to Price Forbes House, which said expenditure was allowed as a deduction under sec. 11 (*d*) of the Act. Although certain of the items included in the aforementioned amounts of R36 548 and R7 302 might, if adequately specified, conceivably also have been admissible for deduction under sec. 11 (*d*) of the Act, no such claim was advanced. We were informed that it was not possible to achieve a satisfactory break-down of the amounts now claimed in so far as they might include repairs *stricto sensu*. In the present proceedings appellant's claim for deduction is accordingly restricted to a claim under sec. 11 (*a*) of the Act.

Appellant is a private company whose income consists mainly of rentals derived from the letting of fixed property. Appellant is the owner of consolidated stand no. 557, situated at the corner of Frederick and Sauer Streets, Marshalltown, Johannesburg, on which Price Forbes

House was erected in 1956. This building is on the southern fringe of the central business area of Johannesburg and consists of a basement, a ground floor, and eight additional floors. The cost of the land and the building was approximately R550 000. In October, 1956, and while the building was still being erected, Price Forbes (Africa) Ltd., a firm of insurance brokers and to whom I shall hereafter refer as "Price Forbes", concluded with appellant a written lease of the 4th, 5th and 6th floors of the building together with two kitchens and a store room on the mezzanine floor. The rental for the premises so hired was R1 911 per month, subject to adjustment in regard to municipal rates. The period of the lease was 9 years and 11 months. It was at the request of Price Forbes that the building, when completed, was given the name of Price Forbes House.

During 1964—that is to say, while the original lease had still some two years to run—Price Forbes advised the appellant that it had been offered other premises and requested to be released from the contract of lease. At that time the letting of office accommodation in Johannesburg was difficult; other buildings nearer to the business centre of Johannesburg than Price Forbes House were standing with several floors unrented. Appellant, being anxious not to lose Price Forbes as a tenant, accordingly entered into negotiations in an endeavour to induce it to remain and also intimated its willingness to alter the leased premise to suit Price Forbes's requirements. These negotiations proved successful. Appellant agreed to make the alterations required by Price Forbes and the latter concluded a new lease with appellant on 8th December, 1964, for a period of 9 years and 11 months commencing 1st December, 1964. The premises thus leased were the same as those which were the subject of the earlier lease plus a portion of the 3rd floor of the building. The rental agreed upon was R2 350 per month throughout the period of the lease. As had been the case under the previous lease, the rent was calculated at the rate of 10 cents per square foot. The effect of this was that appellant acquired an additional 2 cents per square foot for that portion of the 3rd floor now hired by Price Forbes and for which appellant had previously received 8 cents per square foot. Incorporated in the aforementioned figure of R2 350 was an amount of R139 which was intended to cover a possible increase in municipal rates and taxes over the period of the lease. It would appear that some such increase has since supervened. So far as is material to this appeal, clause 5 of the new lease of 8th December, 1964 reads:

"5. In order to suit the requirements of the lessee, the lessor shall proceed forthwith to effect, and to complete the same as soon as possible, certain alterations to the leased premises, which shall be as mutually agreed upon between the lessor and the lessee. The cost of such alterations shall be borne by the lessor, provided however, that in the event of the lessee for any reason whatsoever giving up occupation of the leased premises at any time before the first day of December, 1979, a sum equivalent to one-third of such cost shall be borne by the lessee and paid by it to the lessor when the lessee so gives up occupation."

This clause was the result of a compromise between, on the one hand, appellant's endeavours to obtain a 15 year lease coupled with its reluctance to undertake extensive alterations for a 10 year lease and, on the other hand, Price Forbes's unwillingness to bind itself for more than a 10 year period.

The alterations to the leased premises made by appellant pursuant to its aforementioned agreement with Price Forbes consisted of the creation of larger and more modern offices by removing certain of the brick and plaster inner walls and substituting therefor demountable partitions. Consequential alterations were the changing of electrical lights and electrical points, the reconstruction of existing fittings and the installation of new linoleum flooring. In addition, double windows were fitted and six air conditioning units were installed; panelling of executives' offices, and of portions of the landings, was also done. The aforementioned demountable partitions consisted of a solid base, approximately 6 foot 6 inches in height, with glass louvres superimposed to afford light and ventilation. According to the statement of case, demountable partitions are more expensive than brick walls of similar dimensions. The statement of case also records, as agreed facts: (i) that the general tendency in the construction of modern office blocks is to instal demountable partitions rather than brick and plaster walls, since these partitions facilitate any alterations of lay-out that may subsequently be required; (ii) that commercial firms prefer demountable partitions as conveying an impression of a more modern building; but that some types of tenant—e.g. banks and medical practitioners—require sound—proof offices and accordingly insist upon interior walls made of brick; and (iii) that, having installed the demountable partitioning, appellant hoped that, on termination of the new lease with Price Forbes, market conditions at that time would not make it necessary to replace the partitioning by brick walls as the cost of such replacement will be very high.

The aforementioned amount of R36 548 claimed as a deduction in the 1965 tax year was made up as follows:

"(*a*) Demountable partitions, fixed complete, including doors, door handles and locks, glass and glass louvres	R15 714
(*b*) Electrical installation, including new and special light fittings	4 759
(*c*) Air conditioning units	1 904
(*d*) Secondary timber window frames	671
(*e*) Reconstruction and building in of existing fittings and shelves	200
(*f*) Indoor plants	60
(*g*) Wallpaper	100
(*h*) Linoleum flooring	3 318
(*i*) Panelling	1 044
(*j*) Painting	5 815
(*k*) Architects' fees	2 023
(*l*) Contingencies	940
	R36 548."

The R7 302 claimed as a deduction in respect of the 1966 tax year is not itemised in the record before us, but this figure represents the cost of the installation of new materials such as partitioning, linoleum flooring, pavelite flooring, wallpaper, electrical equipment and wall skirtings; it also included the sum of R456 in respect of painting. In addition to the above, certain other alterations were effected to the leased premises at a total cost of R4 123 paid by Price Forbes.

The expenditure upon air conditioning units (R1 904), secondary timber window frames (R671), and on indoor plants (R60), were, both in the Special Court and in this Court, conceded by the appellant to be of a capital nature, and thus to be inadmissible for deduction. It is re-

corded as an admitted fact in the statement of case that there was no increase in the value of the building as the result of the alterations, save in regard to the installation of air conditioning. Further, it is likewise recorded that a landlord is usually entitled to demand increased rents for areas which have air conditioning. In the course of delivering the Special Court's judgment, the learned President (GALGUT, J.), remarked that:

"There is no doubt on all the evidence that the alterations in this building constitute an improvement, even though they may not have added to the actual value of the building."

The learned President also said the following:

"The evidence indicates that it is quite a usual procedure for a building owner when erecting his building to arrange the accommodation on certain floors to suit the prospective tenant. It appears also that even in a building which is already in existence alterations will in certain cases be done by a landlord to suit a good tenant. It is obvious that the nature of the alterations and the extent thereof will depend on the standing of the tenant and the period of the lease which is to follow."

The statement of case mentions that appellant had on two previous occasions carried out alterations to suit Price Forbes at the latter's request, and that appellant recouped the cost of these alterations by way of increased rental. The statement of case also contains the following passage, viz.:

"It is not unusual for a landlord to effect alterations to suit a tenant whom he may wish to have or retain."

In support of the contention that the expenditure in issue was of a revenue character, counsel for appellant stressed this last-cited passage in the stated case, and emphasised that—except for the conceded items relating to air conditioning, window frames and plants—the alterations, on the Special Court's findings, neither increase the value of the building nor enhance its income earning potential. These features, said counsel for appellant, show the expenditure in question to be of a recurrent nature; and he went on to submit that the alterations in issue were undertaken solely in order to facilitate the letting of the premises to Price Forbes and that, properly regarded, the expenditure incurred in making the alterations neither added anything to, nor equipped, appellant's income earning structure, but was merely incidental to the performance of appellant's income producing operations. The expenditure, so the submission concluded, did not bring into existence any asset or advantage for the enduring benefit of appellant's trade, but was incurred in working appellant's source of profit.

I am unable to regard the above-cited passage, relied upon by counsel for appellant, as establishing that it is a normal incident of the business of letting business premises for landlords to effect alterations of the magnitude of those presently under consideration in order to acquire new, or to placate existing tenants. The passage from the Special Court's judgment last-cited above accords no significant assistance to such a contention. In my opinion, the record before us discloses no real support either for any such aforementioned incident or for regarding the expenditure in issue to be of a recurring nature as submitted by counsel for appellant. The circumstances of the present case are entirely different from those which obtained in the cases of *BP. Australia Ltd. and Mobil Oil of Australia Ltd.* v. *Commissioner of Taxation of the Commonwealth of Australia*, 1965 (3) All E.R. 209

(P.C.) and 225 (P.C.), upon which counsel for appellant sought to place some reliance.

Submitting that the alterations, extensive though they admittedly are, were all substantially consequential upon the installation of the demountable partitions, counsel for appellant argued that there had been no addition whatever to the structure of the building. While this is in a sense quite true, the leased premises as thus newly equipped remain, of course, in the ownership of appellant, and sight must not be lost of the modernisation aspect. If and when Price Forbes vacate, there will presumably be tenants who require—as Price Forbes required—offices equipped in this manner. Having regard to the increase in rates which has already occurred, the aforementioned amount of R139 incorporated in the aggregate of the rental payable by Price Forbes under the new lease, and the slightly higher income obtained by appellant for the portion of the third floor leased by Price Forbes under the new lease, may, I think, safely be ignored. Similarly as regards any future potential increase in rental derivable from the installation of air conditioning. Nevertheless, assuming in favour of appellant that the alterations in no respect whatever increased the value of the building or enhanced its income earning potential, that assumption is not, in my opinion, of any particular assistance to appellant. For it is clear that appellant's primary purpose in causing the alterations to be made was to retain, in the tenants' market then prevailing, Price Forbes as its lessee under the new lease for a further ten years and, indeed, as appellant hoped, for an additional five years thereafter. The provision in clause 5 of the new lease that Price Forbes would bear one third of the cost of the alterations if it gave up occupation before 1st December, 1979, would manifestly tend to operate as an inducement for Price Forbes to remain for the full 15 years. The position, as revealed in the record before us, simply was that Price Forbes had intimated its desire to vacate and, as a condition of agreeing to sign a new lease, insisted upon the alterations being made. In short, Price Forbes would continue as tenants only if that portion of the building which they hired was equipped in conformity with their requirements. The expenditure incurred by appellant in effecting the stipulated alterations was made "once and for all", and there was a complete absence of any element of recurrence in relation to this expenditure. As already mentioned, appellant actually stood to recover a third of the expenditure in the event of Price Forbes vacating before 1st December, 1979.

Under all the circumstances, the expenditure in issue cannot, in my opinion, rightly be said to form part of the performance of appellant's income earning operations. I can find no sufficiently close link (see *Commissioner for Inland Revenue* v. *Genn & Co. (Pty.) Ltd.*, 1955 (3) S.A. 293 (A.D.) at p. 299) between that expenditure and such last-mentioned operations as to render the expenditure part of the working of appellant's source of profit. On the contrary, the true view appears to me to be that appellant incurred the expenditure in question in order to equip its income earning structure—the portion of the building leased to Price Forbes—in order to obtain the rental income paid by Price Forbes for the substantial period of the new lease.

Furthermore, the alterations, in addition to modernising that portion of the building let to Price Forbes, were designed to bring, and actually brought, appellant the advantage, despite the then prevailing tenants' market, of a lease by an approved and desirable tenant for a substantial period. That, indeed, was, as already mentioned, appellant's main purpose in effecting these alterations. In my opinion, the advantage so sought and obtained by appellant was, in relation to appellant's business of letting this building, an "advantage for the enduring benefit of a trade" within the meaning of that oft-quoted expression as explained in *Secretary for Inland Revenue* v. *John Cullum Construction Co. (Pty.) Ltd.*, 1965 (4) S.A. 697 (A.D.) at pp. 712-714.

The various considerations I have mentioned lead, in my opinion, irresistibly to the conclusion that the expenditure incurred by appellant in making the alterations in issue was of a capital nature, and that the decision of the Special Court was, therefore, correct in law.

For the aforegoing reasons, the appeal is dismissed with costs, such costs to include the fees of two counsel.

RUMPFF, J.A., JANSEN, J.A., TROLLIP, J.A., and RABIE, J.A., concurred.

Appellant's Attorneys: *Judah & Feldman*, Johannesburg; *Kalil & Dennis Nathan*, Bloemfontein. Respondent's Attorneys: *Deputy State Attorney*, Johannesburg and Bloemfontein.

PILLAY v. PUBLICATIONS CONTROL BOARD.

(DURBAN AND COAST LOCAL DIVISION.)

1971. *July* 26, 30. MULLER, J.

Publications and Entertainments.—Act 26 *of* 1963.—*"Publication or object."—Definition of in sec.* 1 (1) (*viii*) (c).—*Musical play bringing Immorality Act into contempt.—Effect.—Play undesirable under sec.* (5) (2) (c), (d) *and* (e).—*Application under sec.* 14 *to set aside Board's ruling dismissed with costs.*

The mere duplication of a typescript brings it within the meaning of a "publication or object" as defined by section 1 (1) (viii) (*c*) of the Publications and Entertainments Act, 26 of 1963.

If the author of a play brings the Immorality Act, 23 of 1957, into contempt and creates a state of mind in the audience which may induce some members of the audience not to observe the prohibitions of the Act, or to be more amenable to possible temptation to commit a contravention thereof, the play will be undesirable.

The respondent Board had declared the script of a certain musical revue undesirable in terms of section 8 of Act 26 of 1963. The applicant applied, under the provisions of section 14 of the Act, for the setting aside of the Board's ruling. The Court was of the view that the play was undesirable because parts of it were likely to be disgustful to persons who were likely to read or see it, and furthermore that parts of it dealt in an improper manner with crime, sexual intercourse, marital infidelity and adultery. It accordingly came to the conclusion that the script was undesirable within the meaning of section 5 (2) (*c*), (*d*) and (*e*) of the Act, and dismissed the application with costs.

Application under sec. 14 of Act 26 of 1963 for the setting aside of a ruling of the respondent Board. Facts not material to this report have been omitted.

D. J. Shaw, Q.C. (with him *H. E. Mall*), for the applicant.

W. H. Booysen, for the respondent.

Cur. adv. vult.

Postea (July 30th).

MULLER, J.: The applicant is an Indian school teacher who has written the text of a musical play entitled "It's a Colourful World". She is a member of an amateur theatrical group known as "Music and Drama", which has its headquarters in Durban. This revue was produced in Durban under the auspices of "Music and Drama", the applicant being the director of the production.

According to applicant's affidavit, the revue was staged in Durban where it ran for three weeks during January and February, 1971, playing to a full house on most nights. The audiences were not racially segregated. According to an affidavit filed by the chairman of the respondent Board, no age limit was imposed on the audience, and the revue was presented to school children and students as well as adults of the White and Coloured races.

The respondent Board has declared the script of this musical revue undesirable in terms of sec. 8 of the Publications and Entertainments Act, 26 of 1963. In so far as its opinion is relevant, the Board regards the script as a whole as undesirable in terms of secs. 5 (2) (*c*), (*d*), (*e*) and 6 (1) (*b*) of the said Act. The Board has also singled out two acts of the play headed "Kia Capers" and "Free Love" as harmful to public morals within the meaning of sec. 6 (1) (*c*) and (*d*) of the said Act.

The applicant now applies, under the provisions of sec. 14 of the said Act, for the setting aside of the Board's ruling.

The nature of the present proceedings appears from the judgments in the cases of *Publications Control Board* v. *William Heinemann Ltd. and Others*, 1965 (4) S.A. 137 (A.D.), and *S.A. Magazine Co. (Pty.) Ltd.* v. *Publications Control Board*, 1966 (2) S.A. 148 (T) at p. 150. A number of cases under the Act have recently been decided in this Division. They are referred to as *Republican Publications (Pty.), Ltd.* v. *Publications Control Board* Nos. 1. 2 and 3, reported at 1971 (2) S.A. 1 (D); 1971 (2) S.A. 162 (D), and 1971 (2) S.A. 243 (D).

The first point which has been argued by Mr. *Shaw*, on behalf of the applicant, is that the script of this revue is not a "publication or object" as defined in sec. 1 (1) (viii) (*c*) of the Act. According to that definition, "publication or object" includes any writing or typescript which has in any manner been duplicated or made available to the public or any section of the public. In the present case, after the applicant had written the text of the revue, a typewritten stencil was made and 25 copies were roneoed and bound. Eighteen copies of the script were distributed amongst the cast of the revue. The balance has been accounted for.