

A the balance of probabilities. It's really a question of the use of the vehicle and the nature of the use. So the

THE RECORDER: It all comes down to the use, doesn't it?

MR POTTINGER: Yes.

B THE RECORDER: Thank you.

MR POTTINGER: That was the -- the grey area which I was seeking just to think about briefly.

THE RECORDER: Well, I understand. But I just wanted to clarify -----

C MR POTTINGER: Yes. No, you can — the -- it's an absolute offence. I think the — and the burden of proof section is at 32-179. The prosecution have to prove the vehicle — used a vehicle on the road. Once that is established it's for the defendant to prove there was a valid policy in force at the time. But the slight grey area here is the — it's the nature of the use that's being contested.

D THE RECORDER: Yes. Thank you. Anything else?

MR POTTINGER: No.

E THE RECORDER: Thank you. Although it's after one o'clock, we're going to rise and we're going to come back within the next five or ten minutes and deal with this submission. I apologise to all those whose luncheon it will interfere with but it may take less time in the end. Thank you very much.

(There followed a short adjournment)

F THE RECORDER: We've considered this case very carefully and we're very unhappy with it. In essence, we are going to take a robust approach and we are going to dismiss this case now thereby allowing the appeal. I don't propose to give any further grounds or reasons. We are not satisfied that the Crown have shown sufficient cause that this man wasn't covered by this policy, if you'll forgive the double negatives, and in the circumstances we allow the appeal.

G MR KENNEDY: I'm very grateful. Costs follow the event.

THE RECORDER: Yes, they do.

H MR KENNEDY: (Inaudible) for costs.