[HIGH COURT OF AUSTRALIA.]

THE VICTORIAN RAILWAYS COMMISSIONERS . . . . . } APPELLANTS;
DEFENDANTS,

AND

GEORGE BROWN . . . . . RESPONDENT.
PLAINTIFF,

ON APPEAL FROM THE SUPREME COURT OF VICTORIA.

H. C. OF A. 1905.

MELBOURNE, *Nov.* 14, 15, 16, 17, 25.

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

Railways Act 1890 (*Vict.*) (*No.* 1135), *sec.* 93 (*Victorian Railways Commissioners Act* 1883 [*No.* 767], *sec.* 72)—*Railway employé—Dispensing with services—* "*Compensation*"—*Meaning of* "*to be computed under the provisions of Act No.* 160."

An employé or officer of the Victorian Railway Service who held office in the Railway Department at the time of the passing of the *Victorian Railways Commissioners Act* 1883, and whose services are dispensed with for no fault of his own, but at the pleasure of the Commissioners, is entitled to compensation for the loss of his office. Such compensation is to be computed in the same manner as the compensation provided for by sec. 12 of Act No. 160 is by that section directed to be computed.

So held by *Griffith* C.J. and *Barton* J.; *O'Connor* J. dissenting.

Decision of the Full Court of Victoria, *Brown* v. *The Victorian Railways Commissioners*, (1905) V.L.R., 472; 27 A.L.T., 25, affirmed.

APPEAL from the Supreme Court.

In an action brought by George Brown against the Victorian Railways Commissioners a special case, for the opinion of the Full Court, was stated by consent of the parties, which was as follows:—

"1. The plaintiff, George Brown, was in the year 1866 employed as an engine cleaner in the Department of Railways, the said Department having in the year 1862 been declared to be a

temporary Department by the Governor in Council under the provisions of the *Public Service Act* (No. 160).

"2. The plaintiff continued to be employed as such cleaner, and afterwards, in the year 1874, he was employed as an engine driver in the said Department, and he was at the time of the passing of the *Victorian Railways Commissioners Act* 1883 employed as an engine driver, and always during the whole period of his service received payment of the wages fixed for the class of work which he was performing.

"3. By rules obtaining in the Department of Railways, and followed in practice from about the year 1866, it was provided, *inter alia*, that a person employed at that time as a cleaner should, subject to steadiness in character and economy in working, after two years' service be entitled to the position of second-class fireman, and after three years to the first-class, and then to the position of fourth-class driver, and so on up to the position of first-class driver.

"4. In the list of persons employed in the railway service on 31st January, 1884, including day labourers and supernumeraries, published in the *Government Gazette*, Wednesday, 28th May, 1884, and purporting to be pursuant to sec. 38 of Act No. 767, the following entry is contained :—

Name.	*Branch.*	*Rank, Position, or Grade.*
BROWN, George,	Locomotive	Engine-driver.

"5. The plaintiff on 14th July, 1903, was employed as 'driver-in-charge' in the Railway Department, stationed at Sale.

"6. The plaintiff on 14th July, 1903, was 54 years of age.

"7. The defendants, by a notice in writing dated 14th July, 1903, informed the plaintiff that they had no longer any use for the plaintiff's services, and that they had under the provisions of the Railways Acts determined his employment and removed him from their service.

"8. The defendants have refused to pay to the plaintiff any compensation or retiring allowance or anything in lieu thereof.

"9. The plaintiff's services were not dispensed with in consequence of any change in the Department or reduction in the number of officers, save and except in so far as the fact that an employé's services are terminated by the Commissioners exercising

H. C. OF A. 1905.

VICTORIAN RAILWAYS COMMISSIONERS v. BROWN.

their will may amount to a change in the Department or a reduction in the number of officers; nor was he charged under the provisions of any of the sections of the Railways Acts with any offence, misconduct, or breach of regulations of the Department."

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

1. Is the plaintiff in the above circumstances entitled to any compensation or retiring allowance, or any other amount in lieu thereof, by way of damages or otherwise?

2. If yea, on what basis should such compensation or retiring allowance or such other amount be assessed?

The Full Court, to whom the special case was referred, answered the questions as follows (*Brown* v. *The Victorian Railways Commissioners*) (1):—

1. The plaintiff is entitled to compensation within the meaning of sec. 23 of the *Railways Act* 1890.

2. Such compensation should be assessed at the rate of one month's salary, according to the rate of salary paid to him at the time when his services were dispensed with, for each year of service, and a proportionate sum for any additional time less than a year.

Judgment was entered accordingly.

The defendants now appealed to the High Court.

Mitchell K.C. and *Cussen*, for the appellants. The question is what are the rights of employés of the Victorian Railways Commissioners who were in the service of the Railway Department at the time of the passing of the *Victorian Railways Commissioners Act* 1883 (No. 767)? The rights now in question are given by sec. 93 of the *Railways Act* 1890 [(sec. 72 of the *Victorian Railways Commissioners Act* 1883 (No. 767)], under it every such employé "shall be entitled to compensation or retiring allowance to be computed under the provisions of Act No. 160, and to have his rights privileges and immunities saved to him as if" Act No. 767 "had not been passed." The Full Court has held that the effect of that provision is to give to the respondent, who was dismissed for no fault of his own, a right to compensation to be calculated according to the arithmetical provisions of

(1) (1905) V.L.R., 472; 27 A.L.T., 25.

sec. 16 of Act No. 160, *i.e.*, that he is entitled to get one month's salary for each year of service. After Act No. 160 was passed, the Railway Department was declared by the Governor in Council to be a temporary Department, and therefore that Act did not apply to an officer in that Department (sec. 2). The intention of Act No. 767 was to put railway employés in the same position as other public servants and not in a better position. There was no intention to give new rights. The proper meaning of sec. 72 is that a railway employé was only to be entitled to compensation or retiring allowance if he fulfilled those conditions which a public servant under Act No. 160 would have to fulfil in order to be entitled to compensation or retiring allowance. The words "as if" Act No. 767 "had not been passed" govern the words "shall be entitled to compensation or retiring allowance" as well as the words "to have his rights and immunities saved to him." The section is merely to preserve such rights as existed before the Act was passed, and at that time a railway employé had no right to compensation. The words "to be computed under the provisions of Act No. 160" have a wider meaning than mere arithmetical calculation; they are intended to import the various conditions imposed by Act No. 160. That was so held by the Full Court in *Mills* v. *The Queen* (1) as to the same words in sec. 99 of the *Public Service Act* 1883 (No. 773), which was passed on the same day as Act No. 767. If that meaning is given to the words, then the plaintiff must fail. This is an action against the Commissioners, and it was not intended to give them any control over compensation. The words of sec. 99 of Act No. 773 are "superannuation or retiring allowance compensation or gratuity," and those identical words are used in the *Discipline Act* 1883 (No. 777), which was also passed on the same day as Act No. 767 and Act No. 773. The words must be given the same meaning in each of the three Acts. "Gratuity" must mean gratuity as defined by Act No. 160, and "compensation" must be compensation as defined by that Act. It is defined in sec. 16 of Act No. 160 as being for loss of office caused by a change in the Department. The mere fact that the Commissioners dismiss a man is not a change in the Department within the

(1) 14 V.L.R., 940; 10 A.L.T., 148.

H. C. OF A. 1905.

VICTORIAN RAILWAYS COMMISSIONERS v. BROWN.

meaning of that section. If "compensation" in sec. 72 of Act No. 767 has not the meaning given in sec. 16 of Act No. 160, then sec. 72 only intended to preserve a right to compensation or allowance on retirement, that is a right which arises when an officer reaches the age fixed as that at which he must retire. Employés of the Railways Commissioners hold office during pleasure, and there is nothing to prevent the Commissioners from getting rid of an employé at any time if they desire to do so. The construction of sec. 72 contended for by the respondent would have the effect of repealing the *Pensions Abolition Act* 1881 (No. 710), as to those employés who were appointed between the date of the passing of that Act and that of the passing of the Act No. 767.

[Counsel also referred to *Mattingley* v. *The Queen* (1); *Titterton* v. *Railway Commissioners* (2); *Browne* v. *The Queen* (3); *Reynolds* v. *The Victorian Railways Commissioner* (4); *Williames* v. *Victorian Railways Commissioners* (5); *Administration of Justice Act* 1885 (No. 844), sec. 5; *Audit Act* 1885 (No. 870), sec. 1; *Public Service Act* 1889 (No. 1024), sec. 37; *Melbourne and Metropolitan Board of Works Act* 1890 (No. 1197), sec. 71; *Public Service Act* 1893 (No. 1324), sec. 20; *Victorian Railways Commissioners Act* 1903 (No. 1825), sec. 9.]

Higgins K.C. and *Moule*, for the respondent. Sec. 72 of Act No. 767 was intended to grant a right to persons who had been in the Railway Department before 1883. The various conditions imposed by Act No. 160 cannot be fulfilled by railway employés, and no right at all would be granted by sec. 72 of Act No. 767 if those conditions were held to apply. By sec. 27 of Act No. 160 the methods by which the services of a member of the Public Service may be dispensed with are prescribed, and they could not be dispensed with at pleasure. By sec. 16 of Act No. 767 it is expressly provided that an employé in the railway service shall hold office during pleasure, and therefore his services may be dispensed with at pleasure. Sec. 72 of Act No. 767 is intended to give to a railway employé whose services are so dispensed with

(1) 22 V.L.R., 80; 16 A.L.T., 171.
(2) 16 N.S.W. L.R., 235.
(3) 12 V.L.R., 397; 8 A.L.T., 28.
(4) 24 A.L.T., 169.
(5) 29 V.L.R., 566; 25 A.L.T., 167.

a right to get compensation. Although in *Mills* v. *The Queen* (1), a meaning was put on the words "to be computed under the provisions of Act No. 160," which carried all the conditions prescribed by that Act, that case dealt with the *Public Service Act* 1883 which contained no provisions for giving effect to the right which was conferred without having resort to the conditions imposed by Act No. 160. Further, that decision is *obiter* on the question raised by the present case, because the plaintiff asserted a right to retire at his own will, and the Court held he could not give himself a right to a retiring allowance by sending in his resignation. Act No. 767 itself contains all the conditions necessary to give effect to the provision that a railway employé shall be entitled to compensation. The Commissioners may remove an employé at their pleasure, they may discontinue an office, and they can fix an age of compulsory retirement. As to a retiring allowance, by Act No. 160 certain conditions are prescribed which require the interposition of the Governor in Council. By Act No. 767 the Railways Commissioners are constituted a corporate body, and the Governor in Council can only interfere in specified instances. The railway service is cut away from political influence, and officers cannot apply to the Governor in Council for leave to retire. Compensation is intended to be given to a railway employé for deprivation of his office without any fault on his part.

Cussen in reply.

Cur. adv. vult.

Nov. 25.

GRIFFITH C.J. In this case the Court is called upon to construe sec. 72 of Act No. 767, which was passed on 1st November, 1883, and is intituled "An Act to make better provision for the construction maintenance and management of the State Railways." That section is as follows:—"Every officer and employé holding office in the Railway Department at the time of the passing of this Act shall be entitled to compensation or retiring allowance to be computed under the provisions of the Act No. 160 and have his rights privileges and immunities saved to him as if this Act

(1) 14 V.L.R., 940; 10 A.L.T., 148.

H. C. OF A. 1905.

VICTORIAN RAILWAYS COMMISSIONERS v. BROWN.

Griffith C.J.

had not been passed, but shall for the purposes of this Act be deemed to have been appointed by the Commissioners without any other or further appointment." Before going further it will be convenient to refer briefly to the state of the law existing at that time. The Railway Department was not considered a branch of the Public Service, which was regulated by Act No. 160, nor to be under the provisions of that Act, except perhaps as to a few superior officers. All officers and employés held office during pleasure, and were not entitled to compensation upon being deprived of their office. On the other hand, officers of the civil service, except a certain number of them to whom I shall afterwards refer, and who were appointed after a particular date, were entitled to compensation upon having their services dispensed with under certain circumstances, and were, under certain other circumstances, entitled to a retiring allowance, and were also entitled to apply to the Governor in Council under certain other circumstances for favourable consideration of their case for what was called a gratuity, which might be allowed by the Governor in Council, and thereupon became payable without a special vote by Parliament. The plaintiff in this case was an employé holding office in the Railway Department at the time of the passing of Act No. 767. He therefore comes within the introductory words of sec. 72. So much for the introduction. The concluding paragraph of the section is :—" but shall for the purposes of this Act be deemed to have been appointed by the Commissioners without any other or further appointment." The reference there is to sec. 16 of the Act which provides that all persons appointed by the Commissioners shall hold office during pleasure only. The result, therefore, of the passing of this Act was that the plaintiff became entitled to the rights given by sec. 72, whatever they are, but was liable to have his office determined at the pleasure of the Commissioners. The first question which arises upon the construction of that section is primarily a grammatical one. It is whether the words " as if this Act had not been passed" qualify the whole of the preceding part of the section, or qualify only the words " have his rights privileges and immunities saved to him." The words are open to either construction, but on reference to the *Public Service Act* 1883, passed on the same day, the difficulty is,

I think, at once solved. Sec. 99 of that Act provides that :—"All persons classified or unclassified holding offices in any department of the public service at the time of the passing of this Act," except certain persons mentioned, "shall be entitled to superannuation or retiring allowance compensation or gratuity to be computed under the provisions of Act No. 160,"—those are the very words of sec. 72 of Act No. 767—"but save as aforesaid nothing in this Act shall in any way affect alter or vary the first-mentioned Act so as to give any person appointed hereunder any claim to any pension superannuation or other allowance." Two days later, on the 3rd November, 1883, the legislature passed another Act, the *Discipline Act* 1883 (No. 777), by sec. 11 of which it was provided that :—"All persons permanently engaged to serve in the naval or military forces of Victoria at the time of the passing of an Act intituled '*An Act to abolish the payment of Pensions and Superannuation or other Allowances in the case of persons hereafter entering the Public Service*' shall be entitled to superannuation or retiring allowance compensation or gratuity to be computed under the provisions of Act No. 160." It is perfectly obvious to my mind that the legislature, in passing those Acts dealing with different branches of the Public Service on or about the same day, intended by the same words to convey the same ideas. I think it follows that the words in sec. 72 of Act No. 767 "as if this Act had not been passed" refer to the member of the sentence to which they are attached, viz., "have his rights privileges and immunities saved to him," and do not qualify the previous words of the section.

There is another reason for coming to that conclusion. If the first member of the sentence is qualified by the concluding words it has no operation at all, for the persons concerned had then no right to compensation or retiring allowance, and to say that they shall have such right as if the Act had not been passed would mean nothing. It is true that it is very difficult to say what positive rights, privileges and immunities these officers had at the time of the passing of Act No. 767. So far as they have been brought to our notice, they had none. But it was apparently thought desirable to preserve any that they might be able to establish. It is, in my opinion, unnecessary to decide whether

H. C. OF A. 1905.

VICTORIAN RAILWAYS COMMISSIONERS v. BROWN.

Griffith C.J.

they had or had not. Those words do not, in my opinion, qualify the first words of the section.

What then is the meaning of the provision "every officer and employé holding office in the Railway Department at the time of the passing of this Act shall be entitled to compensation or retiring allowance to be computed under the provisions of the Act No. 160?" Those words are in themselves incomplete; they do not explain themselves. Reference must be made to Act No. 160 both for the purpose of determining what is the meaning of "compensation," and in order to discover the provisions under which it is to be computed. Act No. 160 was passed in 1862. It divided the Public Service into classified and unclassified persons. Sec. 16 provided that:—"When the services of any officer are dispensed with in consequence of any change in any Department and not for any fault on the part of such officer, if he has been employed at the time of the passing of this Act in any office for which a salary has been provided by the *Appropriation Act* 1861, or if at any future time he held in his own behalf and not as acting for any other person any office within the meaning of this Act, every such officer shall as compensation receive for each year of service one month's salary according to the rate of salary paid to him during the year One thousand eight hundred and sixty-one or at the time when his services shall be so dispensed with as aforesaid, and a proportionate sum for any additional time less than a year." The term "compensation" is also used in that Act in reference to another matter and subject to another mode of calculation, but it is quite clear, and it is not, indeed, disputed, that the reference in sec. 72 of Act No. 767 is to sec. 16 which I have just read. For the plaintiff it is contended that, being an employé in the Railway Department, and his services having been dispensed with, he is entitled to compensation to be computed according to the rules for calculation and computation laid down in sec. 16 of Act No. 160. On the other hand it is contended for the defendants that the plaintiff is only entitled to that compensation if his services were dispensed with under circumstances similar to those which would have given an officer under Act No. 160 a right to compensation, that is to say, if his

services were dispensed with in consequence of a change in a Department, and not for any fault on the part of the plaintiff.

First, as to the meaning of "compensation" in sec. 72 of Act No. 767: It is clear that that word is used to signify an indemnity given to an officer who loses his appointment not by reason of any fault of his own. It is, to apply the analogy of compensation for injuries caused by the exercise of Statutory powers, compensation given for an act which causes damage, and would be unlawful but for its having been legalized by Statute. That is the meaning of "compensation." To whom is it to be given? It is given in terms to every employé holding office at the time of the passing of Act No. 767, and it is to be computed in a particular way. For the purpose of making the computation you must have certain data, viz., those prescribed by sec. 16 of Act No. 160. You have to ascertain how many years of service the officer has, his monthly salary at a certain time, and, multiplying one figure by the other, the computation is complete.

But another condition is sought to be imported, viz., that compensation is only to be given to persons whose services have been dispensed with in consequence of a change in a Department. *Primâ facie* I can see no reason for the introduction of that limitation on the grant. It is, perhaps, possible to construe the section in that way, but, applying the ordinary rules of interpretation, let us see whether the question is solved by the application of those rules.

I refer again to two sections of the Acts contemporaneous with Act No. 767, viz., sec. 99 of Act No. 773, and sec. 11 of Act No. 777. I have already pointed out that the provisions of those two sections are in identical terms with the provisions of sec. 72 of Act 767, so far as compensation and retiring allowance are concerned, and I think it is impossible to hold that the legislature meant to give different rights under provisions passed at the same time and expressed in the same words. If therefore we can discover what those words mean in any one of those three sections, we have the key to what they mean in the others.

I turn first to sec. 11 of Act No. 777. [His Honor read the section and continued]. If the right given by that section to those persons

H. C. OF A. 1905.

VICTORIAN RAILWAYS COMMISSIONERS v. BROWN.

Griffith C.J.

was limited by the condition of their services having been dispensed with in consequence of a change in the Department and not for any fault on their part, the right would be absolutely nugatory, unless a change in the Department and dispensation with their services were held to be synonymous terms. The argument from sec. 99 of Act No. 773 is stronger. By sec. 27 of Act No. 160, it was provided that:—"After the passing of this Act no officer of the civil service shall be dismissed therefrom, or suffer any other penalty in respect thereof, except for the causes and in the manner set forth in this Act; but nothing herein contained shall be taken to prevent the Governor in Council, if it be expedient to reduce the number of officers in any department or to amalgamate two or more departments, from dispensing with the services of any officers in consequence of any such alteration." Therefore, there was no power under that Act to dispense with the services of an officer except in the two cases mentioned, and in those cases the officer whose services were dispensed with was entitled under sec. 16 to compensation. By Act 773 first of all Act No. 160 is repealed, but sec. 2 which repeals it, does so "save and except as to all matters and things done under and to all the privileges and rights now existing or hereafter accruing of all persons now subject to the provisions of that Act." Therefore the right to compensation on having services dispensed with under the circumstances mentioned in secs. 16 and 27 of Act No. 160 was preserved, and no other enactment was required to preserve that right. Those sections applied to classified officers only. Then it is provided by sec. 99 that:—"All persons classified or unclassified holding offices in any department of the public service at the time of the passing of this Act . . . shall be entitled to superannuation or retiring allowance compensation or gratuity to be computed under the provisions of Act No. 160." The rights of all persons (*i.e.*, classified officers) who had any under Act No. 160 were preserved by sec. 2 of Act No. 773, and some right is in terms conferred, not only upon those persons, but also upon unclassified officers who held office at the passing of the Act. How is it possible, applying the ordinary rules of interpretation, to construe sec. 99 as meaning anything else than a conferring of a new right? Otherwise, the section would, in respect both of

classified and unclassified persons, be entirely nugatory. The former had the right without that section and the latter had none. Turning now to sec. 72 of Act No. 767, we find that precisely the same right is conferred in the same language. It is a right of every officer and employé to receive compensation or retiring allowance to be computed under the provisions of Act No. 160. I think it is manifest, applying the ordinary rules of interpretation, that the intention of the legislature is clearly expressed to confer a new right—to put the two branches of the service on the same footing, and to say that all officers shall be entitled to compensation to be computed under the provisions of Act No. 160, that is, to indemnity on being deprived of office. Act No. 773 allowed the services of officers to be dispensed with under certain circumstances. Sec. 76 of that Act enlarged the cases in which the Governor in Council might dispense with the services of officers. That power was no longer limited to the cases of dispensing with services in consequence of the reduction of the number of officers in any Department or in consequence of the amalgamation of two or more Departments, as provided by sec. 27 of Act No. 160. But by sec. 76 it was provided that:—"After the passing of this Act no officer in the public service shall be dismissed therefrom or suffer any other penalty in respect thereof except for the causes and in the manner set forth in this Act; but nothing herein contained shall be taken to prevent the Board with the consent of the Governor in Council reducing the number of officers in any department or dispensing with the services of any officers or amalgamating two or more departments." So that under Act No. 773, first of all, all rights of officers are preserved by sec. 2, then power is given by sec. 76 to dispense with the services of any officers, and then there is a general provision in sec. 99 that all officers shall be entitled to compensation. It appears to me that the legislature uses the term "compensation" as synonymous with "allowance in the event of services being dispensed with otherwise than by the officer's own fault." It seems to me it is perfectly irrelevant to introduce into the computation of compensation for services being dispensed with, the reason for those services being dispensed with. The motive for a man making a certain calculation has

H. C. OF A. 1905.

VICTORIAN RAILWAYS COMMISSIONERS v. BROWN.

Griffith C.J.

nothing to do with the principles of arithmetic by which that calculation is made.

I think therefore that the plaintiff's services were liable to be dispensed with, and that the services of other persons are hereafter liable to be dispensed with, at the pleasure of the Commissioners, but only subject to the liability to make compensation. I think therefore that the decision of the Supreme Court is right.

BARTON J. This is a case arising under the *Victorian Railways Commissioners Act* 1883 (No. 767), and raising a question whether an employé in the Railway Service who was in that Service at the time of the passing of that Act, 1st November, 1883, is entitled under the provisions of sec. 72 of that Act to compensation under these circumstances:—The plaintiff was employed in the Railway Department or Service—I shall not make any distinction between those two terms—from 1866. He had passed through various grades of that Service at the time Act No. 767 was passed. Up to that time there was no law under which the plaintiff could be entitled to any retiring allowance or compensation in the event of the Governor in Council terminating his employment, or of his retiring from the service. In July, 1903, the Commissioners informed the plaintiff in writing that they had, "under the provisions of the Railways Acts, determined his employment and removed him from their service," and this intimation is accepted on both sides as having deprived him of his office or employment. It is not asserted that he was dismissed for any misconduct. No charge of any such kind or of breach of the regulations was made against him, nor were his services dispensed with in consequence of any change in the Department or of any reduction in the number of officers in the Department. For the purposes of this case, it must be taken that the plaintiff was put out of his employment without any fault of his own, and merely because the Commissioners, in the exercise of their judgment, thought fit to dispense with his services.

Among the several Acts referred to in argument are two Public Service Acts to which reference is necessary at this point, viz., Act No. 160 and Act No. 773. Act No. 160 was passed in 1862 for the purpose of classifying the Civil Service, regulating the

salaries of officers according to their classification, and the mode of their appointment, promotion and dismissal, granting furlough to officers, and, the preamble adds, providing retiring allowances for officers in certain cases, although the Act went beyond that in providing for something more than retiring allowances. It was provided by sec. 1 that the Act should not apply to (among others) "any officer who is now or hereafter shall be in any Department which the Governor in Council shall declare temporary." Later in the same year the Railway Department was declared by the Governor in Council to be temporary, and thereafter no railway servant could have the advantage of Act No. 160. There was then no other Act by which a right to retiring allowance or compensation was given, so that railway servants were dependent upon the bounty of Parliament in that respect until the passing of Act No. 767 now in question. Sec. 16 of Act No. 160 will have to be considered in connection with sec. 72 of Act No. 767. Sec. 16 provides that:—[His Honor read the section and continued.] It will now be convenient to read sec. 72 of Act No. 767 because of its close connection in argument with sec. 16 of Act No. 160. Sec. 72 provides that:—[His Honor read the section and continued.] The question that arises is shortly this. The plaintiff's services having been dispensed with in the manner I have stated, is he entitled to compensation or retiring allowance to be computed under the provisions of Act No. 160?

It will be seen that in sec. 16 of Act No. 160 there are certain conditions as well as a certain provision for compensation. No doubt, while that Act lasted, many persons claimed compensation under it, none of whom could be at that time railway servants, and they had to show that their services were dispensed with in consequence of some change in a department and not for any fault of their own. Of course the words "not for any fault on the part of such officer" go without saying. One does not conceive of compensation being paid to a person whose services are dispensed with for some fault on his part. He is dismissed from the service, and the idea of compensation for such dismissal does not enter into one's mind. An officer claiming compensation under sec. 16 of Act No. 160 was, while that Act lasted, and as long as his rights under it existed, bound to show that his services were

H. C. OF A. 1905.

VICTORIAN RAILWAYS COMMISSIONERS v. BROWN.

Barton J.

dispensed with in consequence of a change in a Department. Now, when sec. 72 of Act No. 767 was passed, it is contended that a railway servant, whose compensation was to be computed under Act No. 160, was not entitled to that compensation unless he came within the prior part of the section, that is to say, unless his services were dispensed with in consequence of a change in the Department. I cannot adopt that construction. I see no reason for giving to the word "computed" a wider sense than that which it ordinarily bears. I shall presently have something to say on the question whether there is not something in this Act which shows that, where the words "to be computed" are used without qualification, they import nothing but the calculation which the provision in Act No. 160, imported by sec. 72, provides for. It is enough to say this, before I pass on to consider other matters, that you cannot have wider words for the purpose of conferring a right than those in sec. 72, "every officer and employé holding office in the Railway Department at the time of the passing of this Act shall be entitled to compensation or retiring allowance," nor can you have more closely definite words for the purpose of confining the expression to a single purpose, than you have in the words "to be computed" under the provisions of Act No. 160. I find, in the first place, that, in giving the right to compensation, Act No. 767 uses sweeping words, not restricting the benefits of the provision so as to exclude any officer or employé of the Railway Department whose services were dispensed with without fault of his own, or who retired from the service. But it is said that the words in sec. 72 "as if this Act had not been passed," apply to both branches of the section so as to confine the class of persons who were to be entitled to compensation or retiring allowance to persons who, at the time of the passing of the Act, were entitled to compensation or retiring allowance—that no greater right was given than existed previously to the enactment. If that were so we should have to impute to Parliament an intention which would not be creditable or reasonable—we should be asked under those circumstances to adopt a construction which would signify that Parliament held out Dead Sea fruit to these railway servants. I cannot adopt that construction. It is equally, indeed more grammatical and infinitely more reasonable to apply

the words "as if this Act had not been passed" to the branch of the sentence to which they naturally apply, that is, the immediately antecedent words, "and have his rights privileges and immunities saved to him." It may be conceded that there is no particular evidence to show what rights, privileges and immunities these railway servants had before Act No. 767 was passed. There may have been some which had been gained under the practice or regulations of the Department, and which Parliament thought were worth saving. However that may be, I come to the conclusion upon the mere words of the section, first, that a grant of a new right was made to railway servants—a right to compensation or retiring allowance—and secondly, that that compensation is to be computed, that is to say, reckoned, according to Act No. 160. If that is so, since the plaintiff was removed from the service for no fault of his own, and, we are informed, before having reached an age at which he might retire, he is entitled to compensation to be computed at the rate of one month's salary for each year of service, if we are satisfied of one thing, viz., that compensation means payment for loss of office.

As the provisions of sec. 16 of Act No. 160 have been imported into sec. 72 of Act No. 767 for the purpose of computation of compensation, in ascertaining the meaning of "compensation" in sec. 72 we may look at the meaning it has in sec. 16. There can be no question that, from the context, although "compensation" is used in sec. 16 by itself, it means compensation for loss of office, because it has to be computed at the rate of one month's salary for each year of service. It is scarcely conceivable that compensation to be given to a person whose services have been dispensed with at the rate of one month's salary for each year of service, is not compensation for deprivation of his office. It is not necessary to toil through the other sections of the Act to trace a definition of "compensation," because we have in that section a sufficiently clear indication of what it is.

Then it may be said that there is another matter to look to, that is, the right to retiring allowance, and that it must be shown that there are provisions under which the plaintiff, if he had reached a lawfully specified age of retiring, would have been justified in claiming retiring allowance. There is a provision in Act No. 160

H. C. OF A. 1905.

VICTORIAN RAILWAYS COMMISSIONERS v. BROWN.

Barton J.

with reference to retiring allowance and superannuation, namely, sec. 44 which fixes the annual allowance to every superannuated officer, in these words :—"Every superannuated officer (except as hereinbefore expressly provided) whether his remuneration be computed by day pay weekly wages or annual salary shall receive in respect of such superannuation the following annual allowance (that is to say) :—After ten years' service and under eleven years' ten-sixtieths of the average annual salary received by him during three years preceding his superannuation;" with an additional one-sixtieth for each additional ten years or less of service until he has served forty years, "but the total amount of any superannuation allowance shall in no case exceed forty-sixtieths of the salary on which the allowance is computed." I mention that merely to show that there is provision for retiring allowance in Act No. 160. It is true that the section uses the words "except as hereinbefore expressly provided." Those words appear to refer to sec. 40, which is limited as to the time of its effectiveness to a period of ten years which expired in 1872. It provides that "any officer who at the time of the passing of this Act has attained, or within ten years thereafter shall have attained the age of sixty years, if or as soon as he shall have been ten years in the Civil Service of Victoria or of the district of Port Phillip or of both, and if he has not received any other compensation or retiring allowance in respect of such service, shall retire from active service on an annual allowance of half of the average annual salary received by him during the two years preceding his superannuation." We need not be troubled about that section any further as it ceased to govern new cases after 1872. There is now therefore a complete scale of retiring allowances in sec. 44. As I have pointed out, there is provision in sec. 16 of Act No. 160 sufficient for the computation of compensation, and I see therefore no bar to the judicial affirmance of the right which is claimed under sec. 72 of Act No. 767.

There are many other provisions which have been referred to, but I shall not make any long reference to them; there are, however, some observations I have to make as to one or two of the enactments. In 1883 the *Public Service Act* of that year, Act No. 773, was passed. Sec. 2 of that Act repealed Act No. 160, "save and except as to all matters and things done under and to all the

privileges and rights now existing or hereafter accruing to all persons now subject to that Act." Whatever rights these public servants, as distinct from railway servants, had gained under Act No. 160 were preserved to them by sec. 2 of Act No. 773. Sec. 99 of the same Act makes provision for both classified and unclassified servants, because it appears that, notwithstanding the provisions in Act No. 160 for classification, a number of persons had obtained employment in the public service who had never been classified, and for whom it appeared necessary to provide. Further, pensions had been abolished by Act No. 710, and it was deemed necessary to make provisions by the Act No. 773 for public servants in view of that abolition. Sec. 99 provides that:— [His Honor read the section and continued.] The effect of the saving clause at the end is to confine the section to persons who, at the time of the passing of the Act, held office in any part of the public service, with the exception of those appointed after the Act for the abolition of pensions. With respect to those persons to whom the section applies, provision is made in the same way as in Act No. 767, except that, instead of the new right being confined to compensation and retiring allowance, it includes "superannuation or retiring allowance compensation or gratuity," and such persons are to be entitled to those rights "to be computed under the provisions of Act No. 160," using the same phrase as is used in the corresponding section of Act No. 767. Now, as sec. 2 of Act No. 773 saves all privileges and rights gained by public servants before that time, how can it be contended that sec. 99 does not give a new right? If all the rights which existed under the previous law were saved by sec. 2, it is clear that the words in sec. 99 giving to persons classified or unclassified a certain right, must import a larger right than any that had existed under the previous law. If the right were one already existing and preserved by sec. 2, viz., such a right as classified officers had to compensation under sec. 16 of Act No. 160, then sec. 99 of Act No. 773 would be quite nugatory as to those officers. It is plain that that section gives a right to unclassified officers in the very fullest terms. It would be a strained construction to hold that the section was creative in respect of unclassified officers and only confirmatory in respect of classified officers, when the two descrip-

H. C. OF A. 1905.

VICTORIAN RAILWAYS COMMISSIONERS v. BROWN.

Barton J.

tions of officers are dealt with in one and the same provision. That is a construction I cannot adopt in the absence of a plainer context to support it. It follows that the right given by sec. 99 is something in addition to that preserved by sec. 2, and, as it is a right to compensation, it must include every case in which services are dispensed with as distinguished from dismissals from the service. I find myself quite unable to assign any other meaning to sec. 99.

What then is the meaning of sections in other Acts which Parliament passed at the same time and in the same terms? I refer first to the *Discipline Act* 1883, (No. 777), which was passed two days after Act No. 767, and provides by sec. 11 that:—[His Honor read the section and continued.]—Here is an Act which provides for, among other things, compensation in equally unrestricted terms with those of Act No. 767, for members of the public service who, like those within Act No. 767, were not within Act No. 773, and this Act uses the same term: "to be computed under the terms of Act No. 160." Sec. 11 of Act No. 777 is in the same terms as sec. 72 of Act No. 767 as to the new rights except that it includes superannuation allowance and gratuity in addition to retiring allowance and compensation, and is, as to those new rights, in the same terms as sec. 99 of Act No. 777 on which so much depends. Are we then to conclude that terms such as these mean the same thing in two Acts and a totally different thing in a third, all three Acts having been passed by the legislature, so to say, *uno flatu*? In two Acts, passed almost consecutively, Parliament used almost identical language in dealing with two classes of persons so as unquestionably to grant new rights to each class. Almost in the same moment it passed a third Act, dealing with a third class, in terms differing scarcely a jot, if at all, from those it had employed in granting rights to the two other classes. Would it not be a strained construction to impute to Parliament that in the third Act it intended to deal with the third class so differently that the grant must be taken to be restricted to those who fulfilled certain conditions? And would not the construction be still more forced if it appeared that these conditions were contained in an Act which had been repealed except as to its method of computing certain payments, and which had not been revived as to any part by any intervening legislation in respect of any of the classes of persons to whom the three con-

current Acts had granted rights? I cannot find an expression in this legislation to lead me to draw a distinction which, to my mind, would be startling.

But there is a distinction of another character to be found in sec. 70 of Act No. 773, which provides that:—"Any officer employed in the Education Department or teacher in any State school who at the time of the Act No. 710 coming into operation held the respective positions of officer or teacher in such Department shall be entitled to a retiring allowance under the conditions of the Act No. 447 and to be computed under the provisions of the Act No. 160." I refer to that section, which is relevant to the construction of sec. 72 of Act No. 767, to draw attention to the fact that, when Parliament intended to annex to the grant of a right of this kind conditions of past legislation, it took pains to say so. In respect of the provisions of sec. 11 of Act No. 777, sec. 99 of Act No. 773, and sec. 72 of Act No. 767, Parliament has annexed no such condition to its grant. That, therefore, affords a strong inference that the grant in sec. 72 of Act No. 767 was made without any condition except that the compensation should be computed according to the scale in the repealed Act No. 160, that portion only of which was revived for the purpose. Holding this opinion, I agree with the learned Chief Justice that the appeal should be dismissed.

O'CONNOR J. (dissenting) read the following judgment:—The material facts in this case are within a small compass. In July, 1903, the plaintiff was an engine-driver employed as "driver in charge" by the defendants. He had been in the Victorian Railway Service 39 years. On the 14th of that month the defendants informed him by notice in writing that they had no longer any use for his services, and that they had under the provisions of the Railways Acts determined his employment and removed him from the service. There appears to have been no fault charged against him, and it must be taken that he had been guilty of no fault or misconduct. On the other hand, his services were not dispensed with in consequence of any change in the Railway Department. It was a case apparently in which the Railway Commissioners exercised their undoubted right of dispensing with the services of one of their officers, simply because it was not their wish to employ him any longer. The plaintiff

H. C. OF A. 1905.

VICTORIAN RAILWAYS COMMISSIONERS v. BROWN.

O'Connor J.

claims that under these circumstances the *Victorian Railways Commissioners Act* 1883, sec. 72 has given him a right to compensation in an amount to be computed under the *Public Service Act* 1862. The defendants, on the other hand, deny the right claimed, on the ground that no officer of the railway service is entitled to compensation, unless he comes within the conditions laid down in sec. 16 of Act No. 160 (the *Public Service Act* 1862), that is to say, unless his services have been dispensed with on account of a change in the Department, in other words, on account of the abolition of his office. The plaintiff's rights depend upon sec. 72 of the *Railways Act* 1883. There is no doubt that that section gives a new right to the railway officers and employés; the difference between the parties in this case is as to the extent of that right, and the question for our determination is what is the extent of that right according to the proper interpretation of that section. I agree that the words in the latter part, "and have his rights privileges and immunities saved to him as if this Act had not been passed," must be taken to refer to rights, privileges, and immunities which railway officers had then under existing laws, such, for instance, as the rights given them under the *Public Works Act* 1865, on transfer to other Departments of the service.

To interpret the words as affecting any right given under sec. 72 would be to entirely neutralize the section. The real difficulty is in the interpretation of the first portion of the section, and as to that I have the misfortune to differ from the majority of the Court. The words are as follows:—"Every officer and employé holding office in the Railway Department at the time of the passing of this Act shall be entitled to compensation or retiring allowance to be computed under the provisions of the Act No. 160." The difficulty arises in the use of the word "computed." Is the section to be read as meaning that the compensation or retiring allowance is to be "in accordance with the provisions of the Act No. 160," or "to be ascertained under the provisions of the Act No. 160," as the defendants contend, or is the plaintiff right in his view that the use of the word "compute" indicates that the Act No. 160 is to be resorted to only for the purpose of an arithmetical calculation, and that the right of compensation, with its conditions and limitations, if any, is to be found entirely within the four corners of the section itself? It is this ambiguity

which makes it necessary to consider the condition of the law at the time the *Railways Act* 1883 was passed, and concurrent legislation on other branches of the Public Service, in order to ascertain, if possible, with what intention and meaning the legislature used in the section under consideration the words, "to be computed under the provisions of the Act No. 160."

Before the passing of the *Railways Act* 1883 railway servants had no rights under Act No. 160. The Railway Department had many years before been declared "temporary" within the meaning of the first section of the Act No. 160, and so removed from the benefits of the Act. There was no Statute in existence, save Act No. 160, which gave pension, compensation, or gratuity to civil servants, so that up to the time of the passing of the *Railways Act* 1883 the railway servant had no rights of compensation or retiring allowance. Civil servants who came under the Act No. 160 could not be dismissed at pleasure. Sec. 27 of that Act protected them from dismissal except for misconduct, and then only after inquiry. But the railway officers' position was that of the civil servant unprotected by Statute. He held office during the pleasure of the Government. He was liable to have his services dispensed with at any time without complaint against him, without inquiry, without compensation.

Before returning to the *Railways Act* 1883 it will be convenient now to refer shortly to the history of the Statutes relating to the Government service generally which were passed in the same month as the *Railways Act* 1883, and which, as Statutes enacted contemporaneously, and dealing with the same subject-matter, may usefully be looked at for guidance. At the end of 1881 a short Act, the *Pensions Abolition Act* 1881, was passed abolishing pensions, declaring that no person joining the service after that date should be paid any pension, retiring allowance, compensation, or gratuity. It is instructive in passing to note the collocation of words in the operative part of sec. 1: "Notwitstanding anything contained in the Acts numbered 160 . . . . . no pension or superannuation or retiring allowance compensation or gratuity for loss of office or on death or on reduction of salary or other like payment shall be paid either directly or indirectly," &c., &c. The grounds for compensation or gratuity are thus set out specifically

H. C. OF A. 1905.

VICTORIAN RAILWAYS COMMISSIONERS v. BROWN.

O'Connor J.

—loss of office, death, and reduction of salary. No civil servant was at that time entitled to compensation or gratuity on any other grounds than those there mentioned.

In November, 1883, three Acts were passed relating to the organization of the three great branches of the Public Service, the *Discipline Act* 1883, dealing with the military and naval service, the *Public Service Act* 1883, dealing with the civil service generally, and the *Railways Commissioners Act* 1883, dealing with the railway service. The *Discipline Act* 1883 gave a new and special right to compensation, pension, or gratuity, in respect of bodily injuries received in the discharge of duty, but by sec. 11 it preserved to persons permanently engaged in the service at the time of the passing of the *Pensions Abolition Act* 1881 their rights under the Act No. 160 in the following words: "All persons permanently engaged to serve in the naval or military forces . . . at the time of the passing . . . shall be entitled to superannuation or retiring allowance compensation or gratuity to be computed under the provisions of Act No. 160." The *Public Service Act* 1883 established the Public Service Board, and gave greater certainty to the public servant in regard to promotion, remuneration, and classification of his position; on the other hand, it restored the power to the Government to dispense with his services at will, in that respect putting him on the same footing as the railway officer. But we are concerned only with the parts of the Act which deal with rights of compensation and retiring allowance. Sec. 2 repeals Act No. 160—"Save and except as to all matters and things done under and to all the privileges and rights now existing or hereafter accruing of all persons now subject to the provisions of that Act." That was sufficient to preserve existing rights of civil servants who came under the Act No. 160, but there were a large body of civil servants designated as "unclassified," who had no rights under that Act. They are dealt with in a later section. Before, however, passing to that, it is well to note the use of the word "compensation" in two sections of the *Public Service Act* 1883. Sec. 27 gives a right to "compensation" for reduction of salary in consequence of "classification" under certain circumstances. (A similar use of the word occurs in sec. 15 of the Act No. 160.)

Sec. 83 enables an officer to obtain "compensation" in cases where he is removed from the service on account of unfitness or incapacity, if the Board are satisfied that the unfitness or incapacity arose from injuries sustained in the discharge of duty.

I come now to sec. 99, which not only preserves existing rights under the Act No. 160, but gives rights to a new class of persons —unclassified officers. Leaving out immaterial words, it is as follows:—"All persons classified or unclassified holding offices in any department of the Public Service at the time of the passing of this Act except persons appointed since the passing of an Act intituled . . . *Pensions Abolition Act* 1881 shall be entitled to superannuation or retiring allowance compensation or gratuity to be computed under the provisions of Act. No. 160," &c. The words are identical with those of sec. 11 of the *Discipline Act* 1883. The legislature thus expressed the intention of placing its naval and military servants, and its ordinary civil servants, on the same footing as regards rights under the Act No. 160. I think it must be taken that the words, "to be computed under the provisions of Act No. 160," have been used in the same sense in these three Acts of November, 1883. Having regard to the mode in which the legislature has dealt with these three great branches of the service at the same time in contemporaneous enactments, it may be assumed, in the absence of express words to the contrary, that the legislature intended to confer no larger rights of compensation or retiring allowance on railway servants than it was at the same time preserving to military and naval employés, and to classified civil servants, and no larger rights than it was then, for the first time, bestowing on unclassified civil servants. It becomes, therefore, important to consider the language of the section in order to ascertain the rights conferred on the public servants coming under its provisions. The right of compensation which a civil servant had under Act No. 160 was compensation under sec. 16 for loss of office, or, as it is put in that section, where his services have been dispensed with "in consequence of any change in the Department." If the plaintiff's contention is to be upheld, sec. 99 not only preserved this right, but gave a new right, namely, a right to compensation, if the officer's services were dispensed with without his default, although his office was not abolished, but

H. C. OF A. 1905.

VICTORIAN RAILWAYS COMMISSIONERS v. BROWN.

O'Connor J.

remained to be filled, as before, by a successor. I am unable to see any words in the section which confer this additional right. It is urged that the new right is implied in the word "compensation." But compensation is a word of general meaning. It has at least two different special meanings in this Act—compensation for what? for what loss or deprivation, and under what circumstances, are the questions that naturally arise in dealing with such a contention. Until it is made definite under which conditions and circumstances the right arises, no right is conferred. That cannot be made definite without recourse to other sections, or to the Act No. 160. If it is compensation for reduced salary on classification, the conditions which give the right are to be found in sec. 27. If for loss of employment on account of injuries received in the discharge of duty, the conditions are to be found in sec. 83, and if for loss of office by reason of a change in the Department, the conditions are to be found in sec. 16 of the Act No. 160. Similarly, the word "gratuity" does not of itself indicate the conditions or circumstances which entitle an officer to apply for a gratuity. He must go to secs. 45 and 46 of the Act No. 160 to find out the circumstances under which he becomes entitled. Similarly, the words "retiring allowance" convey in themselves no definite conditions or set of circumstances under which the right is to accrue. At what age does the right accrue? After how many years' service? Is it to be on account of ill-health, or after the attainment of a certain age, and the completion of certain years of service? Under the Act No. 160, the two latter cases are separately provided. It is only by reference to that Act that such questions can be determined. A consideration of these matters has satisfied me that it is impossible to give any effect to the provisions of sec. 99 without using the Act of 1862 for the purpose of ascertaining the conditions and circumstances under which the various rights of compensation, gratuity, and retiring allowances become available to officers included within its provisions.

It has been urged against this construction that all the rights under Act No. 160 are already preserved to officers under sec. 2, and therefore, if full meaning is to be given to sec. 99, it must be construed as giving some further right. That argument can only apply to the classified, not to the unclassified, officers, who get

their rights under Act No. 160 for the first time under sec. 99. But assuming the argument applied to the whole section, the repetition of a provision, especially for the preservation of rights, is not uncommon in Acts of Parliament. *Hardcastle on Statutes*, 3rd ed., at p. 116, collects some expressions of judicial opinions which are very apposite to the question now under consideration: "'A statute' said Lord *Brougham*, in *Auchterarder Presbytery* v. *Lord Kinnoull* (1), 'is always allowed the privilege of using words not absolutely necessary.' And in *Commissioners of Income Tax* v. *Pemsel* (2), Lord *Macnaghten* pointed out that 'it is not so very uncommon in an Act of Parliament to find special exemptions which are already covered by a general exemption.' And Lord *Herschell* pointed out, at p. 574, that 'such specific exemptions are often introduced *ex majori cautelâ* to quiet the fears of those whose interests are engaged or sympathies aroused in favour of some particular institution, and who are apprehensive that it may not be held to fall within a general exemption.'" These observations are, I think, especially applicable to a section which preserves the existing rights of the large number of persons to whom the section applies. For these reasons I see no escape from the conclusion that the words in sec. 99 "to be computed under the provisions of Act No. 160," cannot be read as merely importing the basis of an arithmetical calculation, but must be taken to embody also the conditions and circumstances in accordance with which officers under that Act were entitled to these benefits. In other words, the expression "to be computed under the provisions of Act No. 160," must be taken to mean "to be ascertained in accordance with the provisions of Act No. 160." That being so, the right of compensation preserved or conferred on civil servants under sec. 99 is the same, no more and no less, than that set out in sec. 16 of Act No. 160; that is to say, a compensation for loss of office when the services of the officer have been dispensed with in consequence of any change in any Department. There is no direct authority on this point. Two cases have been cited, which, although not decisions on the question of interpretation to be decided here, throw considerable light upon it. In *Mills* v. *The Queen* (3),

(1) 6 Cl. & F., 646, at p. 686. (2) (1891) A.C., 531, at p. 589.
(3) 14 V.L.R., 940; 10 A.L.T., 148.

H. C. OF A. 1905.

VICTORIAN RAILWAYS COMMISSIONERS v. BROWN.

O'Connor J.

the question of a retiring allowance to an officer of the Education Department was under consideration, and the case turned upon the proper interpretation to be placed on sec. 70 of the *Public Service Act* 1883. The words there were, "shall be entitled to a retiring allowance under the conditions of the Act No. 447 and to be computed under the provisions of the Act No. 160," the latter expression being identical with that in the series of Acts under consideration. The Court held that "to be computed" did not merely refer to the arithmetical calculation, or, as *Higinbotham* C.J. said (1):—"They must be held to include not merely the calculation of the amount, but the circumstances under which the retiring allowance would become payable, the time of retirement, the circumstances under which the retirement would be allowed, and the amount to be allowed under the circumstances of each case." In *Reynolds* v. *The Victorian Railways Commissioner* (2), sec. 72 of the *Railways Act* 1883, was under consideration, and although the case was decided eventually on appeal on another ground, *Williams* J. expressed a strong opinion against the narrow interpretation of the words "to be computed," as importing merely the arithmetical calculation of amount from the Act No. 160.

Coming now to sec. 72 of the *Railways Act* 1883, the observations I have made on the interpretation of sec. 99 of the *Public Service Act* 1883, apply equally to this section. It does not contain the word "superannuation" nor the word "gratuity"; otherwise the operative words of the two sections are identical. To read sec. 72 of the *Railways Act* 1883, as giving larger rights of compensation for deprivation of employment to railway servants, then for the first time brought within the benefits of Act No. 160, than were preserved to classified and granted to the unclassified public servant under sec. 99 of the *Public Service Act* 1883, would be an interpretation directly contrary to the intention of the legislature, to be gathered from the scope, purpose, and history of the series of Statutes to which I have referred. The true meaning of sec. 72 is only to be gathered by reading it in connection with Act No. 160 and the Statutes which have dealt with pensions, retiring allowance, and compensation since the passing of that Act. The phrase,

(1) 14 V.L.R., 940, at p. 943. (2) 24 A.L.T., 169.

"compensation and retiring allowance," occurs in sec. 40 of Act No. 160; the same words in similar collocation are to be found all through that Act, and all through the series of Acts to which I have alluded—always with the meaning of definite rights, subject to fixed conditions, as set out in Act No. 160. In my opinion, they were used in the same sense in sec. 72 of the *Railways Act* 1883, and not in some new and vague sense, and that the rights of compensation given by that section are the rights given under sec. 16 of Act No. 160, and no more; that is, the rights to compensation for loss of office occasioned by any change in the Railway Department. It is quite clear that the plaintiff's services were not dispensed with under such circumstances as to bring his case within sec. 16 of Act No. 160. In my opinion, therefore, the main question in the special case should be answered in the negative, and the appeal should be upheld.

Appeal dismissed with costs.

Solicitor, for appellants, *Guinness*, State Crown Solicitor.

Solicitors, for respondent, *Moule, Hamilton & Kiddle.*

B. L.