[HIGH COURT OF AUSTRALIA.]

KRALJEVICH . . . . . APELLANT;
APPLICANT,

AND

LAKE VIEW AND STAR LIMITED . . RESPONDENT.
RESPONDENT,

ON APPEAL FROM THE SUPREME COURT OF WESTERN AUSTRALIA.

H. C. OF A. 1945.

MELBOURNE, *Oct.* 18.

SYDNEY, *Nov.* 16.

Latham C.J., Starke and Dixon JJ.

Workers' Compensation (W.A.)—Statute—Retrospective operation—Redemption of weekly payments—Application for redemption made before, but heard after, amending Act altering basis of assessment of lump sum—Workers' Compensation Act 1912-1941 (*W.A.*) (*No.* 69 *of* 1912—*No.* 36 *of* 1941), *s.* 6, *First Schedule, clauses* 17, 18—*Workers' Compensation Act Amendment Act* 1944 (*W.A.*) (*No.* 42 *of* 1944), *s.* 4 (*g*).

The First Schedule to the *Workers' Compensation Act* 1912-1941 (W.A.) provided, by clause 17, for the redemption of weekly payments by payment of a lump sum and, by clause 18, for the assessment of the lump sum in accordance with an actuarial calculation. An amending Act altered the method of assessment so as to increase the lump sum to which a worker was entitled by way of redemption.

Held that the amendment did not apply to a case in which the accident in respect of which weekly payments were being made had occurred before, but an application for redemption was heard after, the date of the amendment.

Decision of the Supreme Court of Western Australia (Full Court) affirmed.

APPEAL from the Supreme Court of Western Australia.

On 8th June 1943, the applicant worker suffered injury by accident, within the meaning of the *Workers' Compensation Act* 1912-1941 (W.A.), which resulted in permanent incapacity. The employer admitted liability and made weekly payments accordingly. The worker lodged an application with the Local Court at Perth on 15th December 1944 for redemption of the weekly payments, but the

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application did not come on for hearing until 1st March 1945. In the meantime, on 11th January 1945, the *Workers' Compensation Act* 1912-1941 (W.A.) had been amended by Act No. 42 of 1944. By the amending Act, clause 18 of the First Schedule, which provided for the assessment of a lump sum in accordance with an actuarial calculation, was repealed and re-enacted in such a form that the lump sum assessed in accordance with the new clause would be larger than that under the repealed clause. The worker contended that the new clause applied to the facts of his case, but the magistrate of the Local Court rejected this contention, and, on appeal by the worker to the Supreme Court of Western Australia, the Full Court affirmed the magistrate's decision.

From the decision of the Supreme Court, the worker appealed, by special leave, to the High Court.

J. Dunphy, for the appellant. The appellant is entitled to have the lump sum by way of redemption assessed in accordance with the new clause 18. That clause deals with the procedure of the court which makes the order for redemption. It is, therefore, within the rule that a statute relating to procedure applies to proceedings which are pending when it comes into force: See *Coleman* v. *Shell Co. of Australia Ltd.* (1). Section 16 of the *Acts Interpretation Act* 1918 (W.A.) does not affect the matter. It is true that it saves "any . . . liability . . . incurred prior to" the repeal of an enactment which imposes liability; but the "liability" in this case is the liability of the employer to have an order made against him for redemption under clause 17 of the First Schedule to the *Workers' Compensation Act*, which has not been repealed or amended. Clause 18 does not establish liability; it merely prescribes the procedure for assessing the quantum. Therefore s. 16 of the *Acts Interpretation Act* has no effect in the present case.

Hatfield, for the respondent. The worker's primary right is a right to apply for compensation. He cannot be said to have a "right to receive compensation" which is independent of the terms of the Act as at the time of the accident: See *Stevens* v. *Railway Commissioners for N.S.W.* (2). The time when the worker applies for redemption cannot have any bearing on the position of the employer. [He referred to *British Broken Hill Pty. Co. Ltd.* v. *Simmons* (3); *Clement* v. *D. Davis and Sons Ltd.* (4); *United Collieries Ltd.* v. *Simpson* (5);

(1) (1945) 45 S.R. (N.S.W.) 27, at p. 31; 62 W.N. 21.
(2) (1931) 31 S.R. (N.S.W.) 138, at p. 140.
(3) (1921) 30 C.L.R. 102.
(4) (1927) A.C. 126, at pp. 131-133, 135.
(5) (1909) A.C. 383.

Moakes v. *Blackwell Colliery Co. Ltd.* (1).] The amending Act cannot affect rights already vested (*Maxwell* on *The Interpretation of Statutes*, 8th ed. (1937), p. 198 ; *Craies* on *Statute Law*, 4th ed. (1936), p. 337). Section 16 of the *Acts Interpretation Act* must determine the matter in the respondent's favour. At the time of the accident, the respondent incurred the liability defined by the *Workers' Compensation Act* as it then stood, and that liability is continued by s. 16.

Cur. adv. vult.

Nov. 16.

The following written judgments were delivered :—

LATHAM C.J. The appellant, J. Kraljevich, on 8th June 1943 suffered injury by an accident within the meaning of the Western Australian *Workers' Compensation Act* 1912-1941 while he was employed by the respondent company. The company admitted liability and paid a weekly sum up to 30th December 1944. On 15th December 1944, the appellant duly made an application under the Act for redemption of the weekly payments payable to him by the payment of a lump sum. The respondent company is willing to pay a lump sum by way of redemption calculated under the legislation which was in operation at the time when the accident happened, and when the application for redemption was made. But, on 11th January 1945, assent was given to the *Workers' Compensation Act Amendment Act* 1944, and under the amended provisions workers to whom that Act applies became entitled to a larger amount by way of redemption. The worker's application was heard in March 1945, when the magistrate of the Local Court fixed the amount of redemption in accordance with the Act of 1912-1941 and not in accordance with the amending Act of 1944. An appeal to the Full Court of the Supreme Court failed, and the worker now appeals by special leave to this Court.

The principal Act provides in s. 6 that employers shall, subject to the Act, be liable to pay compensation in accordance with the First Schedule. Clause 17 of the First Schedule provided for redemption upon application by or on behalf of the employer or the workman of the weekly payments by payment of a lump sum. Clause 18 of the Schedule provided for a calculation of the present value of future payments and the assessment of the lump sum by way of redemption accordingly.

The Act of 1944 provided that the First Schedule to the Act was amended by deleting clause 18 in the Schedule and substituting a new clause. The new clause provided, so far as relevant, as follows :—

(1) (1925) 2 K.B. 64.

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"18. When the Court orders redemption as provided for in clause 17 of this Schedule—

(i) In the case of permanent incapacity whether total or partial the lump sum shall be the sum ascertained by deducting the total amount received by the worker as weekly payments from the maximum sum of seven hundred and fifty pounds."

"It is a general rule that where a statute is passed altering the law, unless the language is expressly to the contrary, it is to be taken as intended to apply to a state of facts coming into existence after the Act" (per *Cockburn* C.J. in *R.* v. *Ipswich Union* (1)). In the present case, there is no language "expressly to the contrary," and therefore prima facie the amending Act applies only in the case of accidents which happen after the Act. On this ground, it should be held that the new Act does not apply to the accident or anything arising out of the accident of which Kraljevich was the victim. If the new Act had merely altered procedure, the case would have been different, but it is impossible to regard that Act as merely affecting procedure.

The rights of the worker and the liabilities of the employer under the 1912-1941 Act are, however, preserved by reason of the rule of interpretation which in Western Australia has been given statutory form in the *Acts Interpretation Act* 1918, s. 16, which provides as follows:—"Where any Act repeals . . . a former Act or any provision or words thereof . . . then, unless the contrary intention appears, such repeal . . . shall not . . . (*c*) affect any right . . . created, acquired, accrued, established, or exercisable . . . prior to such repeal . . . or (*d*) affect any duty, obligation, liability . . . imposed, created, or incurred prior to such repeal." A mere right to take advantage of a statutory enactment is not an accrued right within the meaning of this provision (*Abbott* v. *Minister for Lands* (2)). But, in the present case, the right is a right to obtain an order for a sum of money calculated in a particular way, not merely a right to redemption *in abstracto*. The right of the worker who suffers from an accident for which compensation is payable under a *Workers' Compensation Act* accrues immediately on the happening of the injury (*Stevens* v. *Railway Commissioners for New South Wales* (3)). See also *Clement* v. *D. Davis & Sons Ltd.* (4). The new Act applies only to accidents happening after the Act came into operation and the former provisions continue to apply to rights and liabilities in respect of accidents happening before that

(1) (1877) 2 Q.B.D. 269, at p. 270.
(2) (1895) A.C. 425.
(3) (1931) 31 S.R. (N.S.W.) 138; 48 W.N. 69.
(4) (1927) A.C. 126.

time (*Moakes* v. *Blackwell Colliery Co. Ltd.* (1)). These authorities show that the alteration of the rights and liabilities of persons made by the amending Act must be regarded as relating only to the future, and that the rights of the worker and the liabilities of the employer are preserved as they were before the amending Act was passed.

In my opinion, the decision of the Full Court was right and the appeal should be dismissed.

STARKE J. Appeal from the Supreme Court of Western Australia.

Clause 17 of the First Schedule to the *Workers' Compensation Act* 1912-1941 (W.A.) provides :—" Where any weekly payment has been continued for not less than six months, the liability therefor may, on application by or on behalf of the employer or worker, be redeemed by the payment of a lump sum." The lump sum in default of agreement was to be settled by the Local Court, but clause 18 provided that, when the court ordered redemption, the lump sum was to be assessed upon a calculation by a Government actuary of the present value of the balance of compensation still payable or likely to be payable under the Act by way of weekly payments. No deduction of any nature or kind could be made by the court from such actuarial valuation for any reason whatever. But the *Workers' Compensation Act Amendment Act* 1944 (1944 No. 42), assented to on 11th January 1945, provided (s. 4 (*g*)) that, when the court ordered redemption in case of permanent incapacity whether total or partial, the lump sum should be the sum ascertained by deducting the total amount received by the worker as weekly payments from the maximum sum of £750. The appellant met with an accident in June 1943 which involved permanent incapacity. He received weekly payments pursuant to the Act for more than six months, when he applied for redemption. The application was lodged on 15th December 1944, the amending Act was assented to on 11th January 1945, the application for redemption was heard on 1st March 1945. The appellant contended that he was entitled to redemption under the provision of the Act passed on 11th January 1945, but the Local Court rejected his contention, and its decision was affirmed on appeal to the Supreme Court.

" Perhaps no rule of construction is more firmly established than this—that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment " (*In re Athlumney* ; *Ex parte Wilson* (2)).

(1) (1925) 2 K.B. 64.

(2) (1898) 2 Q.B. 547, at pp. 551, 552.

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Clearly the Act of 1945 was not a procedural Act; it increased the lump sum to which a worker was entitled on redemption of the weekly payments and the obligation of the employer, and there is no provision in the Act which expressly or by necessary implication makes s. 4 sub-s. *g* of the Act retrospective in operation.

The decision of the Supreme Court was right, and this appeal should be dismissed.

DIXON J. As the request for a hearing of the appellant's application for redemption had been filed before Act No. 42 of 1944 came into operation, this case might be dealt with on the limited question whether the amendment effected by s. 4 (*g*) of that statute in clause 18 of the First Schedule of the *Workers' Compensation Act* 1912-1941 applied to pending proceedings. But it is more satisfactory to decide the wider question whether the amendment applies to cases in which the injury by accident was caused to the worker before the amending Act came into force. The presumptive rule of construction is against reading a statute in such a way as to change accrued rights the title to which consists in transactions passed and closed or in facts or events that have already occurred. In other words, liabilities that are fixed, or rights that have been obtained, by the operation of the law upon facts or events for, or perhaps it should be said against, which the existing law provided are not to be disturbed by a general law governing future rights and liabilities unless the law so intends, appears with reasonable certainty. But, when the alteration in the law relates to the mode in which rights and liabilities are to be enforced or realized, there is no reason to presume that it was not intended to apply to rights and liabilities already existing and its application in reference to them will depend rather upon its particular character and the substantial effect that such an operation would produce.

In the present case, we have an example of a provision which at first sight looks to be expressed in terms more appropriate to procedure, but one, in substance, measuring liability. For to prescribe the basis of calculating redemption is in reality to express the measure of liability. But, when the statute is examined in detail, the form also of the amended clause is seen less as a statement about proceedings for the realization of rights than as a delimitation of their measure. For s. 6 (1) of the principal Act provides that upon personal injury being caused in conditions involving liability the worker's " employer shall be liable to pay compensation in accordance with the First Schedule."

The existing First Schedule, therefore, state the extent and limits of the liability and how to ascertain it. In *In re Hale's Patent* (1), *Sargent* J. refers to the special case, midway between procedure and substantive law, when an alteration in the law is made dealing with rights and procedure together, and he treats it as fairly clear that it is within the operation of the presumption against an application of the new law to existing cases.

Both the structure and the substance of the enactments consisting of s. 6 (1) and First Schedule, clause 18, in the unamended and in the amended form, appear to me to bring the case within the rule of construction, and, in my opinion, there are no indications at all of a contrary intention.

I am of opinion, therefore, that s. 4 (*g*) of Act No. 42 of 1944 does not apply to the present case.

Section 16 of the *Acts Interpretation Act* keeps the old provisions of clause 18 alive for the purpose of assessing the amount of the appellant's redemption payment: See per *Scrutton* L.J. in *Moakes* v. *Blackwell Colliery Co. Ltd.* (2).

In my opinion, the appeal should be dismissed.

Appeal dismissed with costs.

Solicitors for the appellant, *Dwyer, Durack & Dunphy*, Perth.

Solicitor for the respondent, *E. A. Dunphy*, Crown Solicitor for Western Australia.

E. F. H.

(1) (1920) 2 Ch. 377, at pp. 386, 387.

(2) (1925) 2 K.B. 64, at p. 70.