(ar 23) refrd. 97 CLR 535.

refrd to 74 WN 400.
refrd to 74 WN 549.
575R.

[HIGH COURT OF AUSTRALIA.]

LAUMETS . . . . . APPELLANT;

AND

COMMISSIONER FOR RAILWAYS (N.S.W.). RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

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SYDNEY, *Nov.* 27, 30; *Dec.* 3.

Dixon C.J., Webb and Kitto JJ.

Workers' Compensation—Railway worker—Labourer—Injury in performance of duties—Permanent partial incapacity—Employed on "selective duties"—Full wages of labourer paid therefor—Retirement from railway service—Claim for compensation—Lump sum—Entitlement—Amendment of statute—Workers' Compensation Act 1926-1948 (*N.S.W.*) (*No.* 15 *of* 1926—*No.* 40 *of* 1948), *ss.* 16, 47, 53—*Government Railways Act* 1912-1945 (*N.S.W.*) (*No.* 30 *of* 1912—*No.* 8 *of* 1946), *ss.* 100B, 100D.

L. was an officer in the employ of the Commissioner for Railways (N.S.W.). On 24th April 1949, while working as a labourer, he received an injury to his head arising out of and in the course of his employment. He suffered deafness, total and later partial, from the date of the injury until 17th June 1949, and from 23rd June 1949 to 29th June 1949, during which periods he received full pay under s. 100B of the *Government Railways Act* 1912-1945 (N.S.W.). L. was retired from or left the employment of the respondent commissioner on 30th December 1949. By an application dated 31st May 1951, he claimed lump sum compensation in terms of s. 16 of the *Workers' Compensation Act* 1926-1948 (*N.S.W.*). The Commission held that the decision in *Commissioner for Railways* (*N.S.W.*) v. *London* (1951) 85 C.L.R. 95 did not bind it to hold that s. 47 of that Act, as it stood before 27th June 1951, was a complete bar to the claim, and, under s. 16, awarded L. £380 in respect of an almost complete loss of the hearing of one ear.

Held that s. 47 of the *Workers' Compensation Act* 1926-1948 operates to debar a worker who has taken compensatory benefits under s. 100B of the *Government Railways Act* 1912 (N.S.W.), as amended, from claiming also to be entitled to benefits, including a lump sum payment under the *Workers' Compensation Act* 1926-1948, in respect of the same incapacitating injury.

Decision of the Supreme Court of New South Wales (Full Court): *Laumets* v. *Commissioner for Railways* (1952) 26 W.C.R. 138, affirmed.

Commissioner for Railways (*N.S.W.*) v. *London* (1951) 85 C.L.R. 95, at pp. 102-103, referred to.

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APPEAL from the Supreme Court of New South Wales.

In an application for determination dated 31st May 1951, the applicant, Rein Laumets, of John Street, Cabramatta, claimed compensation from the respondent, the Commissioner for Railways (N.S.W.), in terms of s. 16 of the *Workers' Compensation Act* 1926-1948 (N.S.W.) for partial deafness in both ears, the amount claimed as compensation being £320 in respect of the left ear, and £250 in respect of the right ear, which later, at the hearing, was amended to a claim for £380 only, being 95 per cent of the amount for complete deafness in one ear. The appellant stated that on 24th April 1949, at Eveleigh workshops, when, as a labourer employed by the respondent commissioner, he was unloading coal from a truck a wooden beam being used as a lever sprang into the air and hit him on the head, he sustaining thereby a fractured skull, an injured left ear and partial deafness in both ears.

By its answer, dated 2nd July 1951, the respondent denied its liability to pay compensation on the grounds that (i) even if the applicant received injury as alleged he was not as a result thereof suffering from partial deafness in both or either ears, and (ii) even if as a result of the alleged injury the applicant had partial deafness in both ears, as the applicant had received payment under s. 100B of the *Government Railways Act* 1912-1945 (N.S.W.), in respect of the periods of incapacity he was not entitled to receive payment under s. 16 of the *Workers' Compensation Act* 1926, as amended.

It was not disputed that the applicant received an injury on 24th April 1949 which arose out of and in the course of his employment, and the issues were :—(a) whether the applicant was suffering from partial deafness in both ears, it being undisputed that any deafness in the left ear flowed from the injury ; and (b) whether, even if the applicant was suffering from partial deafness in either or both ears, he was disentitled by the provisions of s. 47 (1) of the *Workers' Compensation Act* 1926-1948 from receiving compensation under s. 16 of that Act, because during his periods of incapacity while in the employ of the respondent and arising out of his abovementioned injury he had received payments under s. 100B of the *Government Railways Act* 1912, as amended.

The following facts, *inter alia*, were proved or admitted at the hearing :—(i) that the applicant was on 24th April 1949 an officer in the employ of the respondent ; (ii) that on that date, whilst working as a labourer he received injury to his head arising out of and in the course of his employment whereby he was incapacitated ; (iii) that he was so incapacitated from the date of the injury until 17th June 1949 and from 23rd June 1949 to 29th June 1949 during

which periods he received full pay under s. 100B of the *Government Railways Act* 1912, as amended; and (iv) that the applicant retired from the employ of the respondent on 30th December 1949.

The Commission held on 17th September 1951, (a) that the benefit which the applicant received under s. 100B of the *Government Railways Act* 1912, as amended, arising out of the injury which befell him on 24th April 1949 in the course of his employment with the respondent was of a kind different from that provided under s. 16 of the *Workers' Compensation Act* 1926-1948, and (b) that s. 47 (1) of that Act did not debar the applicant's claim to lump sum compensation under s. 16 of that Act in respect of the injury. The commissioner said that in his view the decision in *Commissioner for Railways (N.S.W.)* v. *London* (1) did not bind him to hold that s. 47, as it stood before 27th June 1951, was a complete bar to this claim. An award was made in favour of the applicant for lump sum compensation under s. 16 in the sum of £380 in respect of the 95 per cent permanent loss of hearing he suffered in his left ear resulting from the injury.

At the request of the respondent, the commissioner, in pursuance of s. 37 (4) of the *Workers' Compensation Act* 1926-1951, stated a case in which he referred for the decision of the Supreme Court the following questions of law which arose in the proceedings before him between the applicant and the respondent: (i) On the facts proved or admitted, should the commissioner have held that s. 47 (1) of the *Workers' Compensation Act* (in the form in which it stood on 24th April 1949) debarred the applicant worker from receiving a lump sum under s. 16 of the said Act for the injury sustained by him on the said date? (ii) On the facts proved or admitted should the commissioner have made an award for the respondent employer?

Upon the case stated coming on to be heard before the Full Court of the Supreme Court that Court referred it back to the Workers' Compensation Commission for answers to the following questions: (1) Was the worker's incapacity to perform the work which he was doing at the date of the injury, namely, 24th April 1949, and in respect of which he received any payments under s. 100B of the *Government Railways Act*, due wholly or partially to deafness resulting from that injury? and (2) Did the worker's deafness result in total incapacity and, if so, when did this incapacity arise?

After evidence by a medical witness and other evidence relating to the classification of the applicant, dates upon which he was absent from work and that he was paid under the provisions of the *Government Railways Act* 1912, as amended, had been tendered

(1) (1951) 85 C.L.R. 95.

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to the commissioner, and representations had been made by counsel for the parties, the commissioner made the following answers to the questions asked by the Supreme Court :—

(1) The worker's incapacity to perform the work which he was doing at the date of the injury, namely, 24th April 1949, and in respect of which he received payments under s. 100B of the *Government Railways Act*, was not due wholly to deafness resulting from that injury ; that incapacity was due partially to deafness resulting from that injury and that deafness was the principal cause of that partial incapacity as from 11th July 1949 ; and (2) The worker's deafness, combined with his other injuries, resulted in total incapacity for the two periods stated, from 24th April 1949 to 17th June 1949 and from 23rd June 1949 to 29th June 1949, that is, two periods when he was absent from work following the accident. In respect of the period 17th June to 22nd June and 30th June to 11th January 1950, the commissioner found that the worker's deafness was the principal cause of his partial incapacity and was so regarded by him. The commissioner also found that it was regarded as the principal cause by the respondent in respect of the period from 11th July 1949 to 11th January 1950.

The Full Court of the Supreme Court (*Street* C.J., *Owen* and *Herron* JJ.) answered both questions in the affirmative.

From that decision the applicant, Laumets, appealed to the High Court.

E. S. Miller Q.C. (with him *M. E. Pile* Q.C. and *K. Coleman*), for the appellant. The payments made under s. 100B of the *Government Railways Act* 1912-1945 (N.S.W.), were payments referable to the injury which was compensable. The whole consequence of the injury was not limited to deafness. The appellant also suffered a fractured skull and an injury to an ear. The Court below wrongly interpreted and applied the decision in *Commissioner for Railways (N.S.W.)* v. *London* (1). That case did not decide that " payments under s. 100B were wholly or in part similar in kind to lump sum payments under s. 16 " of the *Workers' Compensation Act* 1926-1948 (N.S.W.). It does not follow from that case that s. 47 of that Act operates to bar the appellant from payments under that Act. It is erroneous to assume that the same subject matter is being dealt with. When the appellant retired from the service of the respondent he still suffered from an injury, namely, deafness. The statutory provision was intended to prevent more than one compensation for the same injury. It was not intended to operate so

(1) (1951) 85 C.L.R. 95.

as to prevent any compensation at all for a continuing injury. The appellant was otherwise injured, consequently he has not had compensation under s. 100B for the same injury he claims compensation for under s. 16 of the *Workers' Compensation Act* (*Frost* v. *Mark Foys Ltd.* (1)). In the circumstances present in this case s. 47 cannot deny the appellant a payment under s. 16. He is not seeking to get a double payment. Section 16 gives to him the right to compensation for deafness to the extent of 95 per cent. Section 47 does not repeal or abrogate that right (*Sandry* v. *Commissioner for Railways* (*N.S.W.*) (2) ; *Commissioner for Railways* (*N.S.W.*) v. *London* (3) ; *Clark* v. *Commissioner for Railways* (*N.S.W.*) (4)). The appellant is claiming a lump sum payment for the physical injury, and, therefore, clearly comes within the Act. In its unamended form s. 47 cannot be read down to exclude him. The application was filed before, and the answer was filed after, the amending Act came into force on 27th June 1951 : see *Troy* v. *Sydney Municipal Council* (5). Upon the facts s. 47 (1), in the form in which it was at the relevant time did not destroy the appellant's right nor deny his claim to receive the lump sum payment indicated by s. 16.

[DIXON C.J. referred to *Kraljevich* v. *Lake View & Star Ltd.* (6).]

The effect of the alteration of s. 47 does not cut across anything said in that case. The appellant is not seeking to obtain any different benefit, but merely contends that the bar which was formerly there has been removed. True, it is the removal of an impediment rather than the conferring of a benefit upon the worker. The bar having been removed there is now nothing to prevent the enjoyment of the right. The answer to both questions should have been in the negative.

G. Wallace Q.C. (with him *P. L. Head*), for the respondent. The point as to the amending of s. 47 of the *Workers' Compensation Act* 1926-1948 (N.S.W.) was not taken before the Supreme Court nor before the Commission. Had it been so taken the appellant would have had a much stronger case. Benefits under s. 100B of the *Government Railways Act* 1912-1945 (N.S.W.) have been held to be of a compensatory nature, and a like meaning has been given to benefits under s. 47. As there is a veto in s. 47 the claim

(1) (1951) 52 S.R. (N.S.W.) 95, at p. 97 ; 69 W.N. 18, at p. 19.
(2) (1935) 52 W.N. (N.S.W.) 203 ; 10 A.L.J. 76, at p. 77.
(3) (1951) 85 C.L.R. 95.
(4) (1936) 53 W.N. (N.S.W.) 196 ; 10 W.C.R. 55.
(5) (1926) 26 S.R. (N.S.W.) 507, at p. 509 ; 43 W.N. 163 ; (1927) A.C. 706.
(6) (1945) 70 C.L.R. 647, at p. 650.

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is complete. On a fair interpretation s. 47 is vetoed and had it been raised in *Commissioner for Railways (N.S.W.)* v. *London* (1) it is more than likely that the decision now sought would have been given then. The commissioner only dealt with s. 16. The retroactive effect of the 1951 amendment to s. 47 was not argued. The judgment of the commissioner shows that in the Commission s. 47 in its unamended form was treated as the relevant provision. In any event it has been consistently held that the relevant date for considering what are the rights and liabilities of the employer and the employee is the date of the injury and therefore having regard to s. 8 of the *Interpretation Act* 1897-1942 (N.S.W.) and also the general rule that an amending or repealing section should not be deemed to interfere with accrued rights and liabilities unless it expressly or by necessary intendment indicates to the contrary, is applicable. The decisions in *Stevens* v. *Railways Commissioners for N.S.W.* (2); *British Broken Hill Pty. Co. Ltd.* v. *Simmons* (3); *Clement* v. *D. Davis & Sons Ltd.* (4); *Thomas* v. *Australian Commonwealth Shipping Board* (5); *Armstrong* v. *J. & A. Brown & Abermain Seaham Collieries Ltd.* (6); *Swinbourne* v. *Australasian Transport & Shipping Agency Co. Pty. Ltd.* (7) and *Victoria Insurance Co. Ltd.* v. *Junction North Broken Hill Mine* (8) show that rights and liabilities under the *Workers' Compensation Act* accrue at the dates of injury and not otherwise. Sections 4 and 5 of Act No. 20 of 1951 did not either expressly or by implication reveal any retroactive intendment (*Kraljevich* v. *Lake View & Star Ltd.* (9)). *Sydney Municipal Council* v. *Troy* (10) is distinguishable because there the section dealing with increased rates of interest was held to apply to all acquisitions relating to interest regardless of the date of acquisition and the general rule regarding retrospective application of Acts was held to be irrelevant. The general scheme of the *Workers' Compensation Act* 1926-1941, was pointed out by the Court in *London's Case* (11). On the substantive point the wording of s. 47 is decisive. Conceding that the word " benefits " must be read down the authorities show that it means benefits analogous or of a similar kind to those given under the *Workers' Compensation Act*: see *Williams* v. *Nott* (*No.* 2) (12);

(1) (1951) 85 C.L.R. 95.
(2) (1931) 31 S.R. (N.S.W.) 138, at pp. 140, 142, 143, 144; 48 W.N. 69.
(3) (1921) 30 C.L.R. 102, at pp. 107-109.
(4) (1927) 19 B.W.C.C. 416, at pp. 422, 423.
(5) (1934) W.C.R. 42.
(6) (1937) W.C.R. 253.
(7) (1945) W.C.R. 168.
(8) (1925) A.C. 354, at pp. 356-357.
(9) (1945) 70 C.L.R. 647.
(10) (1927) A.C., at p. 710.
(11) (1951) 85 C.L.R., at p. 101.
(12) (1939) 39 S.R. (N.S.W.) 364, at pp. 371, 372; 66 W.N. 172, at p. 175.

Sandry's Case (1) and *Kirkwood* v. *Commissioner for Road Transport and Tramways* (2).

[DIXON C.J. referred to *Thompson* v. *Armstrong & Royse Pty. Ltd.* (3).]

It is important to note that *Clark* v. *Commissioner for Railways* (4), *Sandry's Case* (5) and *Maher* v. *Railway Commissioners* (*N.S.W.*) (6) were decisions on s. 100B, in its old form, of the *Government Railways Act* 1912, as amended. The reasoning in *London's Case* (7) strongly supports the view that s. 47 precludes a Government employee obtaining benefits under s. 100B of the *Government Railways Act* in its relevant form and also under s. 16 of the *Workers' Compensation Act*. The object of the legislature in enacting the amendments was to prevent double payments for the same injury. Lump sum payments under s. 16 are benefits analogous to those given under s. 100B. Section 100D of the *Government Railways Act* 1912, as amended, is also relied upon. Section 16 is a commutation of weekly payment benefits both past and future. The deduction provisions of s. 16 confirm that view. Dicta in *Horlock* v. *North Coast Steamship Navigation Co.* (8) to the contrary are wrong, and *Frost* v. *Mark Foys Ltd.* (9) was wrongly decided. The respondent should succeed if *Kirkwood* v. *Commissioner for Road Transport and Tramways* (2) was correctly decided.

M. E. Pile Q.C., in reply.

THE COURT delivered the following written judgment :— Dec. 3.

This is an appeal from an order of the Supreme Court of New South Wales made upon a case stated by the Workers' Compensation Commission. The case was stated at the instance of the respondent to this appeal, the Commissioner for Railways, against whom an award had been made by the Commission.

The question raised for decision depends on s. 47 (1) of the *Workers' Compensation Act* 1926-1948 (N.S.W.) as that sub-section stood before the amendments made by Act No. 20 of 1951. The provision was as follows :—This Act shall apply to workers employed by or under the Crown or any Government department to whom this Act would apply if the employer were a private person ; but any such worker shall not, save to the extent indicated in sub-section two of this section, be entitled to receive compensation or

(1) (1935) 10 A.L.J., at p. 77.
(2) (1936) 53 W.N. (N.S.W.) 39.
(3) (1950) 81 C.L.R. 585.
(4) (1936) 53 W.N. (N.S.W.) 196.
(5) (1935) 52 W.N. (N.S.W.) 203.
(6) (1931) 31 S.R. (N.S.W.) 371 ; 48 W.N. 100.
(7) (1951) 85 C.L.R. 95.
(8) (1927) 27 S.R. (N.S.W.) 236 ; 44 W.N. 68.
(9) (1951) 52 S.R. (N.S.W.) 95 ; 69 W.N. 18.

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benefits under this Act as well as benefits under any other Act. Sub-section (2) spoke of the worker electing to make his claim "under this Act", and, in the event of death or disablement, it conferred certain rights to a refund of contributions made to a statutory superannuation account. Sub-section (3) then saved rights under the *Family Endowment Act* 1927-1938 (N.S.W.) or the *Widows' Pension Act* 1925-1942 (N.S.W.) . After the date of the injury sustained by the present appellant but before he took proceedings before the Workers' Compensation Commission in respect of the injury, Act No. 20 of 1951 was passed repealing the words in sub-s. (1) "but any such worker shall not, save to the extent indicated in subsection two of that section, be entitled to receive compensation or benefits under this Act as well as benefits under any other Act". Sub-sections (2) and (3) were also repealed.

The appellant was an officer in the employ of the Commissioner for Railways. On 24th April 1949 while working as a labourer he received an injury to his head by which he was incapacitated. It was an injury arising out of and in the course of his employment. For some weeks he was unable to work and, when otherwise he had recovered, he continued to suffer from partial deafness in both ears. He then did "selective duties" as an officer of the commissioner. The deafness was the result of the injury and operated as one substantial cause in producing the condition of incapacity to which his absence from work was due, as well as a lasting partial incapacity. By reason of s. 100B (1) of the *Government Railways Act* 1912-1945 (N.S.W.), the appellant received the full pay of a labourer while he remained an officer of the commissioner. He was so paid for the period when owing to his incapacity he was absent from work as well as for the period when he performed selective duties. Section 100B (1) is as follows:—"Where an officer has been incapacitated by injury arising out of and in the course of his employment so as to be unable to perform the duties of the classification to which at the date of the injury he had been appointed, he shall, except where such injury was caused by his own serious and wilful misconduct, be paid, during such incapacity, not less than the salary for the time being payable to officers with the same classification and with the same length of service therein as such officer had at the date he received the injury, but such salary shall cease to be payable when such officer is retired from or otherwise leaves the railway service".

The appellant was retired from or left the railway service on 30th December 1949. On 31st May 1951 he filed an application to the Workers' Compensation Commission for the determination of

the liability of the respondent Commissioner of Railways to him for lump sum compensation, and for determination of the amount thereof, under s. 16 of the *Workers' Compensation Act* 1926 as amended and the table to that section giving the tariff of lump sum compensation for loss of member or faculty. The Commission awarded the appellant £380 in respect of an almost complete loss of the hearing of one ear. Before the Commission the respondent Commissioner of Railways resisted the claim on the ground that s. 47 (1) of the *Workers' Compensation Act* operated to disentitle the appellant because he had received benefits under another Act, that is to say he had received the benefits conferred in such a case as his by s. 100B (1) of the *Government Railways Act* 1912, as amended. No point was made of any non-compliance with s. 53 of the *Workers' Compensation Act* and none was made upon s. 100D of the *Government Railways Act*.

The Supreme Court decided that the contention of the commissioner that the claim was barred by s. 47 (1) of the *Workers' Compensation Act* was correct. In some degree the conclusion of the Supreme Court was based upon the reasons given in this Court in *Commissioner for Railways (N.S.W.)* v. *London* (1), where the nature and operation of s. 100B were considered. It was necessary to consider in that case the application of s. 16 (2) of the *Workers' Compensation Act* to the benefits enjoyed under s. 100B (1) and it was for that purpose that the character of s. 100B (1) was examined. There is no need to go again over ground covered in the judgment. It is enough to repeat the conclusion that was there expressed. The passage begins by stating that the true view appears to be that s. 100B (1) has a double aspect. "In so far as it results in an excess payment being made over that which the officer would earn by the work he does and in so far as it confers upon him a right to salary for periods of disablement and the like, it should be characterized as a provision compensatory for injury, that is as a provision giving a payment, allowance, benefit, salary or wage in respect of the incapacity occasioned by the injury. In its other aspect it does not fall within s. 16 (2), par. (ii.)" (2). This passage fixes the characterization of s. 100B (1). What remains is to decide whether so characterized it falls within the scope of s. 47 (1), that is, before the sub-section was amended by Act No. 20 of 1951. That question must depend on the words, "as well as benefits under any other Act". Literally these words are capable of applying to any benefit under any Act. If that is what they mean, it is enough that s. 100B (1) confers a benefit and occurs in another

(1) (1951) 85 C.L.R. 95.

(2) (1951) 85 C.L.R., at p. 109.

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Act. But no one has supposed that they could be read literally. Their application must be restrained to benefits that present some analogy to those conferred by the *Workers' Compensation Act*.

In *Commissioner for Railways (N.S.W.)* v. *London* (1) this Court referred to s. 47 (1) and made some observation upon the generality of the words in question which it is better to quote: "But s. 47 is expressed in wide terms which, like those of s. 13, have by construction been restricted in their application. In *Ex parte Brennan; Re Garside* (2), *Jordan* C.J., in delivering the judgment of the Full Court, said of s. 47: 'Obviously, it must be read subject to some limitation, or else a Crown worker who became entitled to receive any benefit of any kind under any Act, although completely unrelated to any injury or incapacity on his part, would stand outside the *Workers' Compensation Act*. It is impossible to suppose that the legislature meant this. I think that the object and effect of the sub-section is to prevent a Crown worker from obtaining workers' compensation in respect of an incapacitating injury if there is some other legislation which entitles him to benefits in respect of that injury. It prevents a Crown worker who becomes entitled under some Act to receive during a period benefits on account of a personal injury arising out of and in the course of his employment which incapacitates him for work, from being entitled to receive workers' compensation for the same period and the same injury'. In one of the passages cited by *Fullagar* J. in *Thompson's Case* (3), from the decisions of Judge *Perdriau* the necessity that there must be a connecting link between the injury and the benefits is ascribed to s. 47. The application of such a restriction to the benefits given by the old form of s. 100B was dealt with in *Sandry's Case* (4) (affirmed (5)), where *Jordan* C.J. said: 'Obviously "benefits" means benefits analogous to the compensation or benefits which are recoverable under the Act'. This opinion was accepted in this Court, where the object of s. 47 (1) was said to be to disallow claims which would give for a second time the same kind of benefit as had already been obtained. The benefits to which it referred were those that alleviate or avert the loss which follow incapacity from injury and perhaps the analogous loss which would be suffered by dependants" (1).

It seems impossible to impose upon the words "benefits under any other Act" any greater limitation than is involved in the expression

(1) (1951) 85 C.L.R., at pp. 102-103.
(2) (1936) 36 S.R. (N.S.W.) 110, at p. 115; 53 W.N. 59, at p. 60.
(3) (1950) 81 C.L.R. 585, at p. 619.
(4) (1935) 52 W.N. (N.S.W.) 203, at pp. 204, 205.
(5) (1936) 10 A.L.J. 76.

" benefits that alleviate or avert the loss which follows incapacity from injury ".

But s. 100B (1) conferred upon the appellant wages for the period or periods of his disablement for work. It did so as a provision compensatory for his injury. That is the character fixed upon it. It seems to follow unavoidably that, within the meaning of s. 47 (1), the appellant received a benefit to which he was entitled under another Act, namely, the *Government Railways Act*.

There is no way of escaping the conclusion that he is excluded from recovering the compensation awarded except by adopting the view put for the appellant that the repeal by Act No. 20 of 1951 of the concluding words of s. 47 (1) operated to relieve from the bar they impose all workers who before the repeal had suffered injury in respect of which they had accepted benefits under another Act, provided their cases had not been determined by award. But to give the repeal this effect would be to alter the rights and liabilities retrospectively. It would give to Act No. 20 of 1951 an operation of which it is incapable.

For the foregoing reasons, which do not differ from those given by the Supreme Court, the appeal should be dismissed.

Appeal dismissed with costs.

Solicitors for the appellant, *Sullivan Brothers*.
Solicitor for the respondent, *S. Burke*, Solicitor for Railways.

J. B.