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been a mistake to decide the case upon so extreme a view, and his Honour did not proceed to do so. It may be that the range of matters relevant to be considered has come to be more completely recognized than it once was, and no doubt there has been some change of emphasis; but the discretion has lost none of its reality or of its importance, and it must be exercised now, no less than in earlier times, with a profound concern for the vital interest which society has in maintaining high respect for the institution of marriage and in insisting upon the observance of established standards of conduct on the part of those who approach the courts for divorce.

In the nature of things it is to be expected that from time to time courts of appeal will differ from primary judges as to the way in which a discretion to grant or withhold a divorce should be exercised in particular circumstances. It cannot be too clearly affirmed, however, that appellate courts do not override the views of primary judges on matters of discretion whenever they consider that they would themselves have exercised the discretion differently. They interfere only to give effect to a clear conclusion that an error has occurred which has resulted in a failure to exercise the discretion properly. That this has been the consistent doctrine of this Court may be seen from the cases referred to in *Mace* v. *Murray* (1). The case of *Zarnke* v. *Zarnke* (2) illustrates the application of the principle in relation to delay as a discretionary bar to divorce.

In the present case there is nothing to suggest that the decision of *Abbott* J. to refuse a divorce by reason of the appellant's delay was vitiated by any error. He did not proceed upon any misapprehension either of fact or of law and we see no reason to suppose that he omitted to give proper weight to any relevant matter, or took into account any extraneous consideration, or failed in any other respect in a due exercise of the discretion he possessed. It follows that his decision must be affirmed.

In these circumstances there is no need to consider the third question to which his Honour adverted, namely whether want of bona fides in the plaintiff provided a separate ground on which the relief sought should be refused.

The appeal must be dismissed with costs.

Appeal dismissed.

Solicitor for the appellant, *F. G. Hicks*.

B. H.

(1) (1955) 92 C.L.R. 370.

(2) (1950) 81 C.L.R. 572.

[HIGH COURT OF AUSTRALIA.]

WATTLE GULLY MINES . . . . . APPELLANT;
RESPONDENT,

AND

CLEMENTI . . . . . RESPONDENT.
APPLICANT,

MINERALS (VICTORIA) PROPRIETARY LIMITED . . . . . } APPELLANT;
RESPONDENT,

AND

STUART . . . . . RESPONDENT.
APPLICANT,

DEAN AND RUNGE . . . . . APPELLANTS;
RESPONDENTS,

AND

THOMSON . . . . . RESPONDENT.
APPLICANT,

ON APPEAL FROM THE SUPREME COURT OF VICTORIA.

Workers' Compensation (Vict.)—Statute—Interpretation—Injured worker—Provisions of Act "so far as they relate to rates or amounts of compensation" to apply with respect to every payment of compensation after commencement of Act irrespective of date of injury—Provision increasing upward limit on employer's liability to pay compensation—Applicability—Workers' Compensation Act 1951 (*No.* 5601) (*Vict.*)—*Workers' Compensation Act* 1953 (*No.* 5676) (*Vict.*), *s.* 15—*Workers' Compensation (Amendment) Act* 1953 (*No.* 5715) (*Vict.*), *s.* 8.

Section 15 of the *Workers' Compensation Act* 1953 (Vict.) provides as follows: "15. Notwithstanding anything to the contrary in any rule of law or construction, the provisions of the Principal Act as amended by the foregoing provisions of this Act, so far as they relate to rates or amounts

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MELBOURNE, *Feb.* 15, 16;

SYDNEY, *April* 13.

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of compensation, shall apply with respect to every payment of compensation after the commencement of this Act irrespective of the date of occurrence or origin of the injury or disease giving rise to the right to compensation and notwithstanding that an award for a lesser rate or amount may have been made by the board before the commencement of this Act . . . ".

Held, that the section entitles a worker to compensation up to the maximum limit of £2,800 (introduced into the *Workers' Compensation Act* 1951 by Act No. 5676 of 1953) irrespective of the date of occurrence or origin of the injury or disease giving rise to the right to compensation, provided only that the payment of compensation moneys under that right had not ceased before the date when the *Workers' Compensation Act* 1953 (No. 5676) (Vict.) took effect.

Decision of the Supreme Court of Victoria (Full Court), affirmed.

APPEALS from the Supreme Court of Victoria.

Wattle Gully Mines v. *Clementi.*

John Clementi on 6th January 1955 applied to the Workers' Compensation Board for weekly payments of compensation under the provisions of the *Workers' Compensation Acts* 1951-1953 (Vict.) from 9th December 1954. The respondent to the application was Wattle Gully Mines. On 13th September 1955 the Workers' Compensation Board stated a case for the opinion of the Full Court of the Supreme Court of Victoria substantially as follows :—3. Upon the basis of admissions made by counsel on behalf of each party and documents tendered the following facts were found by the board :—(a) The applicant J. Clementi was employed by the respondent at all material times prior to 5th May 1949 and was a " worker " within the meaning of the *Workers' Compensation Acts.* (b) The applicant was totally incapacitated by a disease due to the nature of the employment namely silicosis and was thereby disabled from earning full wages at the work at which he was employed. The date of disablement was 5th May 1949. (c) Liability was admitted by the respondent and weekly payments were paid to the applicant from 5th May 1949 until 23rd November 1954. The total amount of compensation paid to the worker was £1,776 6s. 0d. (d) No award of such weekly payments was made by the board. (e) By letter dated 9th December 1954 notice of termination of payments was given by the respondent to the applicant in the following terms :—" With reference to your claim in respect of silicosis for which you have been receiving compensation payments in regard to incapacity which commenced on 5th May 1949, I would advise that the Workers' Compensation Board in a recent judgment decided that the maximum liability of an employer was not affected by the 1953 amendment of the *Workers' Compensation Acts*, even

though the rate of compensation payable after 1st June 1953, was at a higher scale. Applying this decision to your case I find that the maximum amount to which you were entitled was £1,250, and, as I have already made payments totalling £1,776 6s. 0d. I regret that I am unable to make any further weekly payments to you". (f) The applicant was on 9th December 1954 and at all times material totally incapacitated for work by reason of the said disease. (g) No payments of compensation have been made by the respondent to the applicant since 23rd November 1954. (h) On 5th May 1949 the average weekly earnings of the applicant were £7 17s. 3d. per week. On 1st June 1953 and at all material times thereafter the average weekly amount which the applicant would have been earning but for the incapacity would have been not less than £8 16s. 0d. per week. (i) The parties agreed that the proceedings before the board were to be taken to include a review of weekly payments under the provisions of cl. 6 of the clauses appended to s. 9 of the principal Act. 4. Counsel for the respondent submitted that on these facts the reasoning applied by the board in *Miller* v. *J. W. Handley Pty. Ltd.* (1) applied and the board should dismiss the application. Counsel for the applicant submitted that the reasoning of *Miller* v. *J. W. Handley Pty. Ltd.* (1) should not be followed. The board found that the reasons given in *Miller* v. *J. W. Handley Pty. Ltd.* (1) covered this application and considered that that decision should be followed. Accordingly, the application was dismissed, costs being reserved pending the determination of a case to be stated to the Full Court of the Supreme Court. 5. The questions of law submitted for the opinion of the Full Court upon the board's finding of fact are:—1. Was the applicant entitled to receive weekly payments until a total amount of £2,800 had been paid to him by way of weekly payments subject to the variation redemption or termination of such weekly payments or further order by the board pursuant to the provisions of the *Workers' Compensation Acts*? 2. If yea to (1) was the weekly payment to which he was entitled subsequent to 1st June 1953 whilst totally incapacitated for work (a) £8 16s. 0d per week; (b) £7 17s. 3d. per week?

Minerals (Victoria) Pty. Ltd. v. *Stuart.*

Gordon Stuart, on 6th January 1955, applied to the Workers' Compensation Board for weekly payments of compensation under the provisions of the *Workers' Compensation Acts* 1951-1953 (Vict.) from 9th December 1954. The respondent to the application was Minerals (Victoria) Pty. Ltd. On 13th September 1955 the Workers'

(1) (Decision of the Workers' Compensation Board, 18th November 1954, unreported.)

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Compensation Board stated a case for the opinion of a Full Court of the Supreme Court of Victoria. The case stated was, save for variations in the date of disablement, amount of compensation paid and the average weekly amount which but for the incapacity, the applicant would have been earning, in terms substantially similar to that in *Wattle Gully Mines* v. *Clementi*. The question of law submitted for the opinion of the Full Court upon the board's findings of fact was :—Was the applicant entitled to receive weekly payments until a total amount of £2,800 had been paid to him by way of weekly payments subject to the variation redemption or termination of such weekly payments pursuant to the provisions of the *Workers' Compensation Acts*.

Dean and Runge v. *Thomson*.

Robert Victor Thomson on 22nd December 1954 applied to the Workers' Compensation Board for weekly payments of compensation under the provisions of the *Workers' Compensation Act* 1951-1953 (Vict.) from 9th December 1954. The respondents to the application were Messrs. Dean and Runge. On 11th August 1955 the Workers' Compensation Board stated a case for the opinion of a Full Court of the Supreme Court of Victoria. The case stated was, save for variations in the nature of the injury, the date of disablement, amount of compensation paid and the average weekly amount which but for the incapacity the applicant would have been earning, in terms substantially similar in the other two cases. The question of law submitted for the opinion of the board's findings of fact was in terms identical with that submitted in *Minerals (Victoria) Pty. Ltd.* v. *Stuart*.

The three cases stated were heard together before a Full Court of the Supreme Court of Victoria (*Lowe, Gavan Duffy* and *Dean* JJ.) which on 15th November 1955 ordered that the questions be answered as follows—in *Wattle Gully Mines* v. *Clementi*—question (a) yes ; question (b) yes, £8 16s. 0d. per week ; in *Stuart* v. *Minerals (Victoria) Pty. Ltd.*—yes ; in *Dean and Runge* v. *Thomson*—yes.

From these decisions the respondent employers by special leave appealed to the High Court.

D. I. Menzies Q.C. (with him *C. W. Harris*), for the appellants in each case. A statute is not to be construed as operating retrospectively unless its language is such as plainly to require such a construction. [He referred to *Lauri* v. *Renad* (1).] Prima facie a workers' compensation statute only applies, in the absence of express provision to the contrary, in relation to compensation payable in

(1) (1892) 3 Ch. 402, at p. 421.

respect of injuries occurring after the date of the statute. [He referred to *Kraljevich* v. *Lake View & Star Ltd.* (1).] The crucial words of s. 15 of the *Workers' Compensation Act* 1953 are " . . . so far as they relate to rates or amounts of compensation, shall apply with respect to every payment of compensation after the commencement of this Act . . . ". There is no new obligation to make a payment but when a payment has to be made by virtue of some previous law then the provisions of the Act relating to rates and amounts of compensation shall apply with respect to that payment. The section does not expressly provide that the limits provided by the 1953 Act should be substituted for the previously existing limits and it does not impose any liability to make additional payments. The higher limits could not be reached in any particular case without the imposition of liability to make additional payments. The section treats the " amount " as something which has to be paid and in this context the word could not cover a limitation on an amount. The word " rates " is applicable to describe a weekly payment of so much. [He referred to *Grinter* v. *Mooroopna and District Base Hospital* (2).]

A. D. G. Adam Q.C. (with him *E. A. H. Laurie*), for the respondent in each case. The workers' compensation legislation is remedial and should be construed beneficially to the worker. [He referred to *Bist* v. *London & South Western Railway* (3); *McDermott* v. *Owners of S.S. Tintoretto* (4); *George Hudson Ltd.* v. *Australian Timber Workers' Union* (5).] The words in s. 15 of the *Workers' Compensation Act* 1953 " provisions . . . so far as they relate to rates or amounts . . . " cover all those matters which concern the amount of compensation whether it is payable weekly or as a lump sum and in the case of weekly payments the upward limit. The upward limit is an essential ingredient in the liability. In cl. 1 of the clauses under s. 9 of the *Workers' Compensation Act* 1951 appear the words " the amount of compensation shall be ascertained as follows ". What follows includes (*b*) dealing with the weekly payments and (*b*) (iii) which prescribes the upper limit. The words in s. 15 of the *Workers' Compensation Act* 1953 " . . . every payment of compensation . . . " are not referring to physical payment but broadly to compensation which is payable after the commencement of the Act.

D. I. Menzies Q.C., in reply.

Cur. adv. vult.

(1) (1945) 70 C.L.R. 647, at pp. 650, 651.
(2) (1956) V.L.R. 21.
(3) (1907) A.C. 209, at p. 211.
(4) (1911) A.C. 35.
(5) (1923) 32 C.L.R. 413, at pp. 436, 437.

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THE COURT delivered the following written judgment :—

These appeals are from orders of the Supreme Court of Victoria (Full Court), and are brought by special leave. The order which is attacked in each case gives answers to certain questions which had been submitted to the Supreme Court by means of a case stated by the Workers' Compensation Board upon the hearing of an application by a worker against his employer for a determination of a claim for compensation under the provisions of the *Workers' Compensation Acts* 1951-1953 (Vict.).

In each instance the case stated contains certain findings of the board. It is found that at all material times the party who is the respondent here was employed by the party who is now the appellant, that the employee was a "worker" within the meaning of the *Workers' Compensation Acts*, and that he was totally incapacitated for work (in the first two cases) by a disease due to the nature of the employment, namely silicosis and (in the third case) by personal injury arising out of or in the course of the employment. There was also in each case a finding that the worker was disabled by his incapacity from earning full wages at the work at which he was employed, and that the employer had admitted liability for compensation and had made certain weekly payments to the worker without any award of the board having been made. In each case, however, the weekly payments had ceased, and the employer had denied liability to make any further payments, contending that the payments already made had not only reached but exceeded the amount fixed by the applicable statutory provisions as the maximum amount of his liability. The worker had then sought from the board a decision that he was entitled to further payments. In the disputes thus raised there was no controversy as to the total of the amounts which had been paid to the respective workers ; the only question was whether, on the true construction of the Acts, the amount of the employer's maximum liability was below or above the aggregate of the amounts paid.

In Clementi's case the disablement occurred on 5th May 1949 and in Stuart's case it occurred on 10th November 1950. The workers' compensation legislation in force in Victoria at each of those dates was contained in the *Workers' Compensation Act* 1928 (No. 3806) as amended by Acts up to and including the *Workers' Compensation Act* 1946 (No. 5128). Under these Acts Clementi and Stuart were entitled to compensation ascertained in accordance with the second schedule to the 1928 Act as inserted by way of substitution by the 1946 Act. Clause 1 (1) (*b*) (i) of the schedule prescribed certain weekly payments, the sum payable in respect

of the worker himself, as distinct from dependants, being four pounds. This was qualified, however, by a provision, in cl. 1 (1) (*b*) (iii), that the total liability of the employer should not in any one case exceed £1,250.

In Thomson's case the disablement occurred on 7th February 1951. By that date there had come into force (on 1st February 1951) a further amending Act, the *Workers' Compensation (Amendment) Act* 1950 (No. 5522), which had amended the relevant provisions of the second schedule by increasing the amounts of the weekly payments (the sum in respect of the worker himself becoming £5 10s. 0d.), and by raising the maximum amount of the total liability of the employer to £1,750, except in the case of a worker whose injury, in the judgment of the board, should result in his permanent and total disablement for work or his permanent and partial disablement for work, the partial disablement being established by the worker to be of a major degree, in either of which cases the board was empowered in its discretion to make such determination with respect to the total liability of the employer as it should think proper in the circumstances.

The Act of 1950 contained no provision extending the benefit of the amendments thus made in the second schedule to workers whose right to be paid compensation had accrued before the Act commenced. Accordingly Clementi and Stuart continued to be entitled to weekly payments at the old rate, and the provision limiting the employer's liability to £1,250 continued to apply in their cases. This was so because there was nothing to displace the presumptive rule of construction, which was applied by this Court in relation to workers' compensation Acts in *Kraljevich* v. *Lake View & Star Ltd.* (1) against reading a statute as intending to alter accrued rights.

On 19th December 1951 there came into operation an amending and consolidating Act, the *Workers' Compensation Act* 1951 (No. 5601). This Act repealed all the Acts above-mentioned, but the repeal did not affect any right acquired by a worker or any liability incurred by an employer under the repealed Acts: see s. 2 of the 1951 Act and s. 6 (2) (*c*) of the *Acts Interpretation Act* 1928 (No. 3630). So far as material, the provisions of the 1951 Act were similar to those of the 1928 Act after its amendment by the 1950 Act. The clauses prescribing the mode of ascertaining the amount of compensation payable, instead of being relegated to a schedule, were appended to a section (s. 9) which provided that the compensation,

(1) (1945) 70 C.L.R. 647.

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where the worker's total or partial incapacity for work resulted from the injury, should be a weekly payment during the incapacity in accordance with the provisions of the clauses. These provisions, like those of the amending Act of 1950, must be construed as applying of their own force to those cases only in which the event giving rise to the liability to pay compensation occurred after the commencement of the 1951 Act.

In 1953 two more amending Acts were passed. One, No. 5676, came into operation on 1st June 1953, and the other, No. 5715, though not assented to until 25th November 1953, provided that it should be deemed to have come into operation on 1st June 1953 : s. 1 (2). The former Act amended the clauses appended to s. 9 of the 1951 Act by (*inter alia*) substituting £8 16s. 0d. for £5 10s. 0d. as the weekly payment to be made during the incapacity in respect of the worker himself (s. 7 (*b*) (i)), and by substituting £2,800 for £1,750 in the provision limiting the total liability of an employer. If no other material provision had been made, the three respondents in the present cases would have been unaffected by the amendments so made. And in the Act No. 5676, in the form in which it was passed, there was nothing to give the amendments any effect upon a case where the right to compensation had arisen under an Act earlier than the 1951 Act. True, there was a s. 15, which provided : "Notwithstanding anything to the contrary in any rule of law or construction, the amendments of the Principal Act made by this Act, so far as they affect rates or amounts of compensation, shall apply with respect to every payment of compensation after the commencement of this Act notwithstanding that the injury or disease giving rise to the right of compensation may have occurred or originated before such commencement, and every policy of accident insurance or indemnity in force under the *Workers' Compensation Acts* at the said commencement shall, notwithstanding anything to the contrary therein, be read and construed as fully insuring or indemnifying the employer against the increased liability accordingly ". But the Principal Act there mentioned is the Act of 1951 (No. 5601) and the payments of compensation referred to would seem clearly to have been confined to payments of compensation the right to which accrued under that Act. This is the construction which most naturally fits the words " notwithstanding that the injury or disease giving rise to the right of compensation may have occurred or originated before such commencement ", i.e., before the commencement of the 1953 Act (No. 5676). No intention is disclosed to apply the amended rates and amounts of compensation to cases to which the Principal Act itself did not apply.

The legislature quickly showed that s. 15 in this form did not go far enough for its purpose. A new s. 15 was substituted by s. 8 of the second Act of 1953 (No. 5715), and was substituted as from the commencement of the Act No. 5676. It provides as follows: "Notwithstanding anything to the contrary in any rule of law or construction, the provisions of the Principal Act as amended by the foregoing provisions of this Act, so far as they relate to rates or amounts of compensation, shall apply with respect to every payment of compensation after the commencement of this Act irrespective of the date of occurrence or origin of the injury or disease giving rise to the right to compensation and notwithstanding that an award for a lesser rate or amount may have been made by the board before the commencement of this Act, and every policy of accident insurance or indemnity in force under the *Workers' Compensation Acts* at the said commencement shall, notwithstanding anything to the contrary therein, be read and construed as fully insuring or indemnifying the employer against the increased liability accordingly".

It will be seen that the chief differences between the new s. 15 and the old are, first, that the concern of the new section is with the application of the amended provisions of the Principal Act (the Act of 1951), whereas the concern of the old section had been only with the application of the amendments made by the first 1953 Act; and, secondly, that in the new section the words making clear the intention that cases of accrued rights are covered do not refer, as did the corresponding words in the former section, to the occurrence or origination of injury or disease before the commencement of the first 1953 Act, but, with complete generality, make the amended provisions apply "irrespective of the date of occurrence or origin of the injury or disease giving rise to the right to compensation". The changes thus made, and particularly the latter, would have been pointless if the intention had not been to apply the new scale of compensation to every case in which compensation moneys had still to become payable by virtue of a right acquired, whether it had been acquired before the commencement of "this Act" or even before the commencement of "the Principal Act".

In all this the parties agree. At the commencement of the first 1953 Act (No. 5676), none of the respondents had received or become entitled to receive sums amounting in the aggregate to the maximum placed upon his employer's liability by the Act which was in force when his right to compensation arose; and the appellants do not deny that by reason of the operation of s. 15 in its substituted form each respondent must be considered to have been entitled, since

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the commencement of Act No. 5676, to receive weekly payments at the increased rate, that is to say, in respect of himself only, £8 16s. 0d. a week. But the contention which the appellants advance and the respondents dispute is that s. 15 on its true construction has no operation with respect to the upward limit of an employer's liability, and that accordingly an employer is not liable to make any payment to a worker beyond the maximum amount fixed by the Act which was in force at the time when the liability to pay compensation arose in the particular case. Hence, it is said, the compensation to which the respondents were entitled after 1st June 1953, though of increased weekly amount, would cease to be payable when the total amount paid reached, in the cases of Clementi and Stuart, £1,250, and in the case of Thomson, £1,750. These respective total amounts have in fact been reached since that date, and accordingly all further liability is repudiated by the appellants. The respondents, on the other hand, contend that the effect of the substituted s. 15 was to make £2,800 the limit in all cases in which, after the commencement of the Act No. 5676, any compensation should become payable, even though the entitling injury or disease occurred or began before such commencement and therefore at a time when the limit was lower than £2,800.

The argument submitted for the appellants is based upon the expressions in the section which describe, first, the provisions of the Principal Act as amended which are to receive an extended application and, secondly, the matters with respect to which, by force of the section, those provisions are to apply. As to the first it is pointed out that the section deals with the amended provisions of the Principal Act so far only as they relate to " rates or amounts of compensation " ; and it is said that, at least in the context here found, these words should not be understood as including the maximum total amount of an employer's liability. But reliance is chiefly placed upon the fact that s. 15 makes the amended provisions apply with respect only to " every payment of compensation ". The effect is said to be that before those provisions can be given a particular application by virtue of the section you must find a " payment of compensation " to which to apply them. That means, it is said, that you must find either an instalment or a lump sum which would be presently payable if, the amended provisions of the 1951 Act not applying, the worker could rely only upon the Act which was in force when his right to compensation arose. That, of course, you are unable to do when weekly payments made before 1st June 1953 at the old rate together with payments made after that date at the increased rate have reached in the aggregate

the amount of the employer's maximum liability under the Act originally applying to the case.

This argument gives too narrow a meaning to the phrase "rates or amounts of compensation". It may be, as the appellants submit, that the word "amounts" refers, in this context, to lump sum payments of compensation and does not include the aggregate amounts of weekly payments; though it may be pointed out in passing that in cl. 1 (1) of the clauses appended to s. 9 of the 1951 Act the expression "the amount of compensation" is used in relation to cases in which weekly payments are provided for as well as to those in which the compensation takes the form of a lump sum payment. But however this may be, the provisions of the Principal Act which relate to "rates" of compensation must comprise the whole of the provisions of that Act which, in a case for which weekly payments are provided, regulate the extent of the employer's liability to make such payments. The rate of payments in such a case is not fully or accurately described by saying that it is so much a week; it is so much a week subject to the statutory limit upon the total amount to be paid.

But the argument also takes too narrow a view when it treats the words "every payment of compensation" as referring, in cases like the present, to every individual weekly instalment of compensation. The section evidently had a twofold purpose: to displace the principle of *Kraljevich's Case* (1) so far as it would confine the application of the new scale to cases in which the right to compensation arose on or after 1st June 1953, and at the same time to ensure that the application of the new scale to cases in which the right to compensation arose before that date is prospective only. The first part of the purpose was accomplished by making irrelevant the date of occurrence or origin of the injury or disease. The second part required that instalments or lump sums which had already become payable before 1st June 1953—and which for the most part would already have been paid—should not be retrospectively increased. That, at least, the language of the section achieved. But it did so by using language which, instead of providing negatively that payments for which the due date had already passed should not be affected, provided affirmatively that the application of the new scale should be with respect to every payment of compensation in the future; and the difficulty created by this language is to know whether any more is intended than an exclusion of rights which had become absolute before the new dispensation began. To hold that more is intended—that the principle of

(1) (1945) 70 C.L.R. 647.

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Kraljevich's Case (1) is meant to have a residual application, so that the limit of liability under an old scale shall survive to control the application of the new—would be to wring too much out of a phrase which, after all, is a natural enough form of words to use for the more limited purpose. The general sense of the section is that the new scale is to be resorted to for the purpose of determining every question as to rate or amount in ascertaining an employer's liability to make future payments. Notwithstanding the ambiguity which has provided the appellants with a foothold for their argument, the more natural meaning of the provision is that which makes the new scale the exclusive source of information as to the compensation to be paid in every case in which there was still any compensation to become payable at the date when that scale took effect.

It was objected on behalf of the appellants that to take this view is to read s. 15 as drawing a line which is wholly arbitrary, for a worker who received on 31st May 1953 an instalment which brought his total receipts up to the limit prescribed by his original scale would derive no benefit from the section, while a worker whose final instalment fell due one day later not only would have that instalment increased but would be given a new right to such further instalments, each of the increased amount, as might be necessary to bring his total payments up to the amended limit of £2,800. This objection is sufficiently answered by what has been said already. The line drawn, far from being arbitrary, places upon a provision, which sets itself to increase vested rights and liabilities to some extent, a limitation which saves those rights and liabilities from alteration in so far as they have become absolute in the sense that they have given rise to debts actually payable. Thus it serves the perfectly rational purpose of ensuring that an employer is not retrospectively placed in default, or in default to an increased extent; it is, of course, an existing obligation which is altered, but the alteration is to take effect so far only as the obligation, when altered, requires payments to be made on future occasions. Obversely, a worker is not given a right to arrears by a retrospective increase in the amounts of payments which have already accrued to him; he is simply placed for the future on the same scale as that which applies to his fellow-worker who is injured or becomes diseased after 1st June 1953, but with credit being given for payments to which he has become entitled in the past.

It is the opposite construction which would produce an arbitrary result. To read the section as sending one back in each case to the

(1) (1945) 70 C.L.R. 647.

superseded scale which was in force when the right to compensation arose, in order to ascertain in accordance with that scale what payments were still to become due after 1st June 1953 and on what dates they were to become due, and as then fastening upon and increasing in amount each such payment as it falls due to be met so long as the limit of the employer's liability under the original scale is not exceeded, would be to find in the section the very odd intention of giving the worker nothing but the doubtful advantage of having larger but fewer payments and no increase at all in the aggregate amount of his compensation. The improbability of such an intention is apparent. No less obvious is the fact that there would be a plain contradiction in saying in one breath that "every payment" which under the old scale has yet to fall due is to be increased in amount, and saying, in the next breath, that some of those payments, namely those which, if increased in amount, would cause the original limit of liability to be exceeded, are not to become payable at all.

One argument submitted for the appellants was based upon the fact that in the Act of 1950, as in the Act of 1951, the provision which qualified the limitation of the employer's liability by empowering the board in its discretion in certain cases to determine the total liability as it should think proper in the circumstances was expressly made subject to this, that in exercising its discretion (given elsewhere in the Act) to award a lump sum in redemption of the employer's liability for future weekly payments, the board should not take into account any amount which might have become payable beyond £1,750 if the worker had continued to receive compensation by weekly payments throughout his incapacity. It was pointed out that the figure of £1,750 in this provision of the 1950 Act has not been amended, although the first of the Acts of 1953 altered that figure to £2,800 in the corresponding provision of the Act of 1951; and the contention was advanced that there would be a manifest inconsistency if, in a case in which the right to compensation arose under the 1950 Act, the limit of liability were to be treated as £1,750 for the purposes of redemption proceedings but £2,800 for all other purposes. The answer, however, is that s. 15 of the Act No. 5676, as inserted by the Act No. 5715, is itself wide enough in its true meaning to make £2,800 the figure to be accepted as the limit in such a case for all purposes, including those of redemption proceedings. This is so because the provision which, in the 1951 Act as amended by the Act No. 5676, fixed the limit at £2,800 for redemption proceedings (i.e., cl. 1 (1) (*b*) (iii) of the 1951 Act as amended by s. 7 (c) of the Act No. 5676), is one of the