of revocation will arise in proceedings under the compulsory licensing sections, and that the question to be determined is, firstly, whether or not a compulsory licence should be issued, and secondly, the quantum of royalty and the terms thereof, one appeal to the Supreme Court should be sufficient. It is not a case in which property rights are finally determined or destroyed, and although it is conceivable that in certain cases serious harm might be done by a compulsory licence being wrongfully granted, it is thought that the harm is not as great as at present may, for example, result in Great Britain where an applicant for a patent has only one appeal and that is to the Patents Appeal Tribunal, after which, if a patent is there refused, he has no further redress. In the latter case valuable property rights may be lost in the event of the decision being erroneous.

150. If provisions to the foregoing effect are introduced, they should in the vast majority of cases afford sufficient protection not only to an applicant for a compulsory licence but also to a patentee who justifiably seeks to resist such an application.

151. During the course of our sittings many witnesses suggested in somewhat vague terms the setting up of a special Tribunal to hear cases under the " working " and other provisions of the Patents Act. This matter is one that is more relevant to that part of our report dealing with legal proceedings, but we may here state that in our opinion the Commissioner of Patents should for this purpose be an efficient Tribunal of first instance. For many years the Legislature has been content to entrust to the Commissioner the power, subject to appeal to the Court, to determine the quantum of royalty, and if, as has been suggested, possible validity or invalidity of the patents is an issue to be considered in conjunction with that of royalty, it is clear, we think, that there is no other officer or individual likely to be more fitted by experience than the Commissioner of Patents to consider the whole of the questions which will require determination upon such applications.

152. Finally, before leaving this particular branch of our inquiry, it is necessary to consider applications for compulsory licences before the Commissioner in their proper perspective. A great deal of evidence was adduced before us which, however germane it may be in a complicated issue which might arise in the case where a compulsory licence is sought in respect of a large number of patents held by different patentees, has little relevance in an ordinary application for a compulsory licence before the Commissioner in respect of one patent. The difficulties of applying the compulsory licence provisions of the Patents Act where a multiplicity of patents is involved have already been considered in this report. The procedure laid down in the Act for the case when only one patent is involved is so simple and so little subject to delay that we can scarcely conceive of any less expensive or more direct method of securing the desired object with due regard to legal and equitable principles.

153. An alternative suggestion is referred to in paragraph 164 hereof, where we discuss the rights of the Crown to use an invention as provided in the present section 30 of the Patents, Designs, and Trade-marks Act, 1921–22.

154. There remains for consideration, on this aspect of our report, section 43 of the Patents, Designs, and Trade-marks Act, 1921–22, already referred to in paragraphs 109 and 110 of this report. This section has its partial equivalent in sections 57 and 58 of the British Act of 1949 which, with modifications, replace section 38 of the Patents Act, 1907. Subsection (2) of section 57 of the British Act makes important improvements upon the corresponding subsection (5) of section 43 of the New Zealand Act in two respects—

(*a*) It will no longer be possible, after a contract offending against the section has been terminated, for the patentee to recover damages for infringements committed while the offending contract was in force ; and

(*b*) It expressly provides that an offending contract made with the consent of the patentee, equally with one made by the patentee himself, will disable him from recovering damages for infringement.