

In New Zealand, under "The Public Works Act, 1894," the expropriation of lands required by a local authority for public works is rather a summary process. A survey is made and a plan prepared and deposited, and then notices are gazetted calling "upon all persons affected" to set forth in writing any "well-grounded objections" to the taking of the lands. An "objection to the amount or payment of compensation" is not to be deemed a well-grounded objection.

If no objection is made within the prescribed time, or if after due consideration of all objections the local authority is of opinion that it is expedient that the proposed works should be executed, the land is to be taken in the manner set forth in section 18. That section authorises the Governor, after the preliminary requirements of the Act have been complied with, to declare by Proclamation that the lands (a list of which is to be contained in or annexed to the Proclamation) are taken for the public work therein mentioned. And then, from and after a day named in the Proclamation, the land becomes absolutely vested in the local authority, "discharged from all mortgages, charges, claims, estates, or interests of what kind soever for the public use named in the Proclamation."

Part III. of the Act, beginning with section 34, deals with the subject of compensation. Any person claiming compensation (in the Act styled "the claimant") is to serve upon the local authority (styled "the respondent") a claim in writing, in one of the forms in the Second Schedule to the Act, stating, among other things, the total amount claimed and the name and address of the claimant. It is provided (section 42, subsection 2) that the claim shall be served by being left at the office of the local authority, or sent by registered letter to its office, and that "the claimant shall be entitled to receive" from the officer for the time being in charge of "any such office a receipt stating the day on which such claim was delivered or received."

Section 44, on which the question at issue in this case depends, is in the following words: "If the respondent does not, within sixty days after receiving such claim, give notice in writing to the claimant that he does not admit it, the claimant may file a copy of his claim, together with the receipt for the service thereof, in the Supreme Court; and such claim, when so filed, shall be deemed to be and shall have the effect of an award filed in the Supreme Court, and may be enforced in the manner provided in section seventy-six."

If the respondent gives notice in writing within the said sixty days that he does not admit the claim, or if the claimant does not accept the respondent's offer, assuming that an offer is made by the respondent, provision is made for having the question determined by a Court styled "the Compensation Court." Where the claim exceeds £250, the Compensation Court consists of two Assessors, one named by each party, and a Judge of the High Court as President.

Then follow provisions as to the hearing of the case and the making of the award. Section 76, which is referred to in section 44, is in the following terms: "76. (1.) The Court shall make its award in writing, which shall be drawn up and signed by the President as soon as conveniently may be after the making thereof; and the President shall deliver or transmit the same to the Registrar of the Supreme Court, to be by him filed in the said Court. (2.) The Court may, within one month after making the award, reverse, alter, or modify the same; and may hear such evidence and make such order as to costs or otherwise as the Court may deem best. (3.) Such award shall be final as regards the amount awarded, but shall not be deemed to be final as regards the right or title of the claimant or any other person to receive the same or any part thereof. (4.) But if the sum awarded be not paid into the Public Trust Office under subsection one of section twenty-seven within sixty days after the filing of the award in the Supreme Court, the award so made and filed shall have the effect of a judgment of the Supreme Court, and may be enforced accordingly, subject, however, to the provisions of this Act."

The facts in both the cases under appeal are very simple, and not in dispute. Certain lands belonging to the respondents were required by the Corporation of the City of Wellington for public improvements. They were taken under Act of 1894, and the respondents were dispossessed. In due course they sent in a claim in accordance with Schedule 2 of the Act, stating, amongst other things, the total amounts of their respective claims. The period of sixty days mentioned in section 44 of the Act expired without notice being given by or on behalf of the Corporation that they did not admit the claim. In due course the respondents filed copies of their claims, together with receipts for the service thereof, in the Supreme Court. Thirty-one days in the one case and fifteen days in the other, after the expiration of the statutory period, the Town Clerk discovered that he had allowed the time prescribed by the Act to elapse. He applied to the solicitors of the respondents, stating that the failure of the Council to give notice that the claim was not admitted was due to an omission on his part, and begging them to ask their clients to withdraw the claim and allow the matter to go to the Compensation Court. This proposition was declined. Thereupon the Council gave notices of motion in the Supreme Court, asking in each case for an order to set aside the claim "so that the same might become void and of no effect as an award within the meaning of the Act of 1894, notwithstanding the provisions of section 44 of the Act." The first and principal ground alleged in each case was "that the Corporation did not admit the said claim, and that the omission of the Corporation to give notice to that effect to the claimants within sixty days after the receipt of such claim was accidental and entirely due to inadvertence." The motions were by consent removed into the Court of Appeal. That Court (*dissentiente* Edwards, J.), discharged both motions, with costs.

The case was argued before this Board on behalf of the appellants with great ability and earnestness; but, notwithstanding the opinion of the learned Judge, who differed from his colleagues, the question appears to their Lordships to be too plain for argument. Edwards, J., described the conduct of the respondents, who did no more than what the Act of Parliament authorised and directed them to do, as "an attempt to snatch a judgment," and "an abuse of the process of the Court." The learned counsel for the appellants did not use language so inappropriate. Everybody, he said, was liable to make a mistake; the slip in the present case was one