

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeals of The Mayor Councillors and Citizens of the City of Wellington v. Johnston and another and The Mayor Councillors and Citizens of the City of Wellington v. Lloyd and another, from the Court of Appeal of New Zealand; delivered the 18th April 1902.*

Present at the Hearing:

LORD MACNAGHTEN.

LORD DAVEY.

LORD ROBERTSON.

LORD LINDLEY.

[*Delivered by Lord Macnaghten.*]

These two appeals were heard together. They raise one and the same question:—Can a local authority having taken land under the Public Works Act 1894 having received a claim for compensation from the late proprietor and having omitted to challenge the amount of the claim within the period prescribed by the Act obtain relief in a court of law against the statutory consequences of such omission?

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 Sub-section 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*l.* 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 sub-section 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 60 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 "60 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 which a hard worked official in the pressure of business might be excused for making; after all no injustice would be done if claims which his clients on sworn testimony regarded as extravagant were referred to the Court specially constituted to take cognizance of such questions. So far their Lordships are not concerned to differ from the view presented to them and it may be taken for granted that the Respondents' claims whether they are or are not so extravagant as the Appellants represent them to be are probably in excess of any amount which could be established on reference to arbitration. An evicted proprietor demanding compensation from a wealthy corporation may be trusted to make the most of his claim. But this is not the question. The question is has any Court the right to deprive the Respondents of the advantage which the law of the land gives them. The scheme of the Act is not unreasonable. The local authority initiate the proceedings. They dispossess the person whose land they want. They dispossess him without paying down or securing anything in the shape of compensation. They leave him to make his claim. Is the period of 60 days too short a time to enable the local authority to make up their minds whether they will admit his claim or not? If they do not admit it they have nothing to do but to say so. It was said that Parliament has overlooked the possibility of a slip. It has certainly made no provision for a slip in the case of a local authority

setting the Act in motion. It has made provision for a slip in the case of a claimant who has received notice that his claim is not admitted failing to make the next move in due time. But that is a different case altogether. It is not unreasonable to require that Public Bodies putting in force an Act of Parliament for their own purposes should attend to its provisions. It would be contrary to natural justice to deprive a claimant whose land has been taken from him of all compensation because he makes a slip which cannot prejudice the other side. But even in that case the claimant is not allowed to prosecute his claim except with the leave of the Compensation Court and upon such terms and conditions as that Court thinks fit. This special provision in the case of a claimant tells against rather than for the Appellants' contention.

Then it was asked suppose the claimant has been guilty of fraud—Would there be no remedy in that case? Certainly there would be a remedy. Courts of Justice have an original and inherent jurisdiction to relieve against every species of fraud but it may be that the relief would have to be sought in an independent action. It was admitted by Sir Robert Reid that the slip which occurred in this case was not a mistake against which relief could be obtained in a Court of Equity. His argument was that when the claim was filed in the Supreme Court it came under the control of the Court and that just as Courts of Law and Equity before the days of Statutory Rules and Orders could deal with their own procedure and enlarge the time for taking any step in an action and set aside on such terms as they thought fit a judgment obtained by default so the Supreme Court in such a case as this ought to set aside the award and enlarge the time and by some process which

was not clearly explained remit the case to a Compensation Court. Their Lordships however cannot find in the Act any authority for such a course. The rights of the claimants were fixed by statute before the Supreme Court had anything to do with the matter. The only function of the Supreme Court was to enforce the claim as an award and see that the money reached the proper hands. The circumstance that an award made by a Compensation Court seems to be only provisional for the space of a month under Section 76 Sub-section 2 does not assist the argument or afford any analogy for the course suggested on behalf of the Appellants. In that case the Court to deal with the award during the month of grace is not the Supreme Court but the Compensation Court.

Failing the principal ground of appeal two other points were put forward on behalf of the Appellants. In one of the cases it was said that the claim was not made as directed by the Act. The claimants were absent. Two powers of attorney were produced one of which it was argued did not on its true construction authorise the attorney to make the claim while the other it was suggested was too late. But in fact no power of attorney was required. The claim was made by an agent in the name and avowedly on behalf of the Respondents and they have ratified the action of their agent. The other objection was not more substantial. It was said that the receipt filed on behalf of the claimants was not given by the officer for the time being in charge of the office but by an assistant or subordinate. It appears that it was in fact signed by an assistant in the office for the officer in charge and by his direction. Their Lordships are of opinion that this was a sufficient compliance with the Act. But if it

was not the Respondents are now entitled to demand a proper receipt in conformity with the Act.

Their Lordships are of opinion that the Appeals fail and they will humbly advise His Majesty that they ought to be dismissed.

The Appellants will pay the costs of the Appeals.

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