Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Heslop v. *The Minister of Mines for New Zealand, from the Court of Appeal of New Zealand; delivered the 5th August* 1904.

Present at the Hearing:
LORD MACNAGHTEN.
LORD DAVEY.
LORD ROBERTSON.
LORD LINDLEY.
SIR ARTHUR WILSON.

[*Delivered by Lord Lindley.*]

The question raised by this Appeal turns on the construction of some sections of the New Zealand Mining Act, 1898, which incorporates Part 3 of the New Zealand Public Works Act, 1894, and the second and third schedules thereto. The Appellant, Mr. Heslop, claimed compensation under the Mining Act for lands injuriously affected, and having, as he says, had no notice that his claim was not admitted, he treated it as undisputed, and obtained Judgment for the sum claimed, viz., 392*l.*, under the provisions of the Public Works Act. The Government contend that notice was given him that his claim was not admitted and that it ought to have been adjudicated upon as provided by the Mining Act and that the Judgment obtained ought to be set aside. Stout, C.J., has decided in favour of Mr. Heslop, but the Court of Appeal have taken a different view. Hence the present Appeal.

One difficulty in the case arises from the fact that the Public Works Act is adapted to a

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procedure somewhat different from that prescribed by the Mining Act. Only one claim is contemplated by the Public Works Act, whilst the Mining Act requires one, and by incorporating the Public Works Act suggests another; and the practice is to send in two. When two are sent in, the question arises whether the first or the second is the one to which the Public Works Act applies. Both Courts in the Colony agree that two claims are necessary under the Mining Act, and although their Lordships are much impressed with the argument addressed to them to the effect that under the Mining Act only one claim, viz., the first, is really necessary, they are not prepared to say that the view taken in the Colony on this point is erroneous. If one claim, viz., the first, is the only one which is to be regarded, then the course taken by Mr. Heslop was clearly wrong, for he had notice that his first claim was disputed. Their Lordships, however, will assume that two are not improper, and that if two are necessary the second is to be the one to be regarded.

The Mining Act, 1898 (Sections 108 and 109) in effect enacts that before any proclamation is made declaring that a river is one into which mining *débris* and waste water from mines may be turned, an application for such proclamation must be made to the Governor, and be publicly notified. The notice requires all persons who object to the proclamation being made to send in full particulars of such objection " and also a " claim in the prescribed form setting forth full " particulars of all compensation that will be " claimed by him in the event of such pro" clamation being made," and no one who omits to send in a claim as thus required will be entitled to compensation.

On the 13th August 1900 a notice was published that application had been made for a

proclamation that mining *débris* and waste water from mines might be discharged into the river known as the Inangahua River, and stating that objections were to be sent in within 90 days.

On the 6th November 1900 Mr. Heslop sent in his claim and full particulars, and stated that in the event of such proclamation being made he should claim 392*l*. in respect of some building allotments which he specified. This will hereafter be referred to as his first claim.

On the 13th November 1900 he was informed that his claim was declined.

On the 1st August 1901 the Proclamation was issued. On the 21st of the same month Mr. Heslop wrote to the Under Secretary of the Mines Department declining an offer of 70*l*. which had been made to him and asking that his claim might be reconsidered. On the 10th September he received an answer that more would not be given him. He wrote another letter on the 19th, and on the 4th October he was referred to the answer of the 10th September.

Nothing more was done until the 2nd June 1902 when Mr. Heslop sent in another claim (his second) for the same sum as before, viz., 392*l*., in respect of land and buildings. The land here mentioned omitted some of the allotments specified in the first claim, and the mention of buildings was new. This claim was made long after the expiration of the 90 days mentioned in the notice of the 13th August 1900.

On the 7th July 1902 the Under Secretary sent to the solicitors of Mr. Heslop and a number of other claimants a letter acknowledging the receipt of the claims they had sent in and which had been personally handed to the Minister on the 4th July.

No further notice was taken of these claims; but the solicitors of the Minister having been informed that it was intended to treat them as

undisputed and to file them and enter up judgment upon them, wrote to Mr. Heslop's solicitors on the 13th October 1902 remonstrating, and pointed out that they had all been declined shortly after their receipt. The claims were nevertheless filed as undisputed, and judgments were entered up for the full amounts claimed. The question is whether this was right.

The Mining Act deals specially with claims arising from the authorised pollution of rivers, and Section 112 provides for compensation for such cases, and the claim which is referred to in that section is evidently the claim referred to in Section 109, and required to be sent in before the Proclamation is made. Section 113 puts a limit on the total amount payable in respect of such claim. Section 114 contains another special provision, and Section 115 says in effect that, subject to the foregoing provisions, all claims for compensation against the Crown arising from the Proclamation shall be "assessed and disposed "of" as provided by Part 7. Part 7 is headed "Compensation," and begins with Section 232. Sections 232 and 233 are as follows:—

Section 232:—"(1) Subject to the provisions "herein-before contained, all claims against Her "Majesty for compensation in respect of any "matter for which such compensation is ex- "pressly provided by this Act, whether for the "value of improvements, the taking of land, the "injury to land, or to riparian rights or other- "wise, shall be made in the manner provided in "Part III. of 'The Public Works Act, 1894,' "and the Second and Third Schedules thereto, "as modified by this Act, which said Part III. "and the said Schedules shall be deemed to be "incorporated with this Act, but for the pur- "poses of such incorporation shall be read and "construed subject to the provisions of this Act. "(2) The word 'Minister' in the said Part III.

" shall for the purposes of this Act mean the " Minister of Mines, and not the Minister for " Public Works."

Section 233 :—" (1) If any such claim for com- " pensation is not settled by agreement between " the Claimant and the Minister, the same shall " be heard and determined by a Judge of the " Supreme Court if it exceeds 250*l*., and by the " Magistrate exercising jurisdiction in the locality " where the claim arose if it does not exceed " 250*l*.: Provided that, on application in this " behalf by either of the parties, the functions " by this sub-section conferred upon the Judge " of the Supreme Court, may by him be dele- " gated to a Judge of the District Court. (2) " Subject to the provisions of the said Part III. " relating to Assessors, the Judge or Magistrate, " as the case may be, shall be deemed to be a " Compensation Court thereunder. (3) In every " such claim the Minister shall be the Respon- " dent."

Section 234 enacts (*inter alia*) as follows:— " Every claim for compensation shall be made " in writing, addressed to the Minister, and " except when by this Act otherwise provided, " shall be served on him within the period of " twelve months from the date when the same " arose, or within such extended period as a " Judge of the Supreme Court by order may " allow"; and Section 235, that "No claim " for compensation shall be allowed unless it is " made and served in the manner and within the " period or extended period prescribed by this " Act."

Their Lordships are of opinion that, having regard to the clear and distinct enactment contained in Section 233, every claim for compensation in respect of a Proclamation made under Section 109 must, if not settled by agreement, be determined by a Judge or Magistrate

as directed by Section 233, and cannot be treated as undisputed under Section 44 of the Public Works Act, even if no notice disputing it is served. The incorporation by Section 232 of the machinery of the Public Works Act is controlled by being expressly made subject to all the provisions of the Mining Act. The words at the end of the Section show this, although the words at the beginning are limited to the preceding Sections.

The claims for compensation referred to in Sections 232 and 233, when made in respect of Proclamations authorising the pollution of rivers, are the claims specially required to be made by the Mining Act, and not those claims which are only required to be made by the Public Works Act; and even if both are necessary the summary procedure authorised by Section 44 of that Act is quite inconsistent with Section 233 of the Mining Act. Their Lordships cannot think that this Section merely alters the Court which under Sections 49–54 of the Public Works Act is to decide disputed claims. The language of Section 233 is too wide and explicit to be so limited.

Their Lordships will therefore humbly advise His Majesty to dismiss this Appeal, and the Appellant must pay the costs.