ORIGINAL CIVIL.

Before Mr. Justice Chandavarkar.

IN THE MATTER OF THE LAND ACQUISITION ACT.

IN THE MATTER OF GOVERNMENT AND NANU KOTHARE AND OTHERS.

1905. *August* 8.

Land Acquisition Act, I of 1894, sections 12 and 18—Notice by the Collector—Reference to Court—Construction of statute—Meaning of word "immediately."

The provisions of the Land Acquisition Act for the compulsory acquirement of private property are made for the public benefit, and, in the case of such Acts, "if upon words or expressions at all ambiguous it would seem that the balance of hardship or inconvenience would be strongly against the public on the one construction or strongly against a private person on another construction, it is consistent with all sound principles to pay regard to that balance of inconvenience."

Dixon's case(1) followed.

The word "notice" as used in clause (*b*) of the proviso to section 18 of the Land Acquisition Act, I of 1894, means notice whether immediate or not. The clause in question prescribes one of two periods of limitation for a party who has not accepted the Collector's award, *viz.*, either six weeks from the date of the receipt of the Collector's notice, whether immediate or not, or six months from the date of the award: *whichever period shall first expire.*

Where a statute or written contract provides that a certain thing shall be done "immediately," regard must be had, in construing that word, to the object of the statute or contract as the case may be, to the position of the parties, and to the purpose for which the Legislature or the parties to the contract intend that it shall be done immediately.

The conditions prescribed by section 18 of the Act are the conditions to which the power of the Collector to make the reference is subject, and these conditions must be fulfilled before the Court can have jurisdiction to entertain the reference.

Dixon v. *Caledonian Railway Co.*(1) referred to, *Christie* v. *Richardson*(2), *Raleigh* v. *Atkinson*(3) and *In re the application of Sheshamma*(4), followed.

REFERENCE from the Collector of Bombay.

The material facts in this case are fully set out in the judgment of the Court.

Raikes (Acting Advocate-General), for Government:—We take a preliminary objection as to limitation. This is a case coming under sub-section (*b*) of section 18 of the Land Acquisition Act,

(1) (1880) 5 App. Cas. p. 827.
(2) (1842) 10 M. & W. 678.
(3) (1840) 6 M. & W. 677.
(4) (1887) 12 Bom. 276.

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I of 1894. We rely upon the letter, dated 23rd September 1904, from the Collector to the claimants' attorneys which was received on Saturday, 24th September 1904, and also the claimants' attorneys' letter, dated 7th October 1904, to the Collector.

The claimants' attorneys expressly state that they will send in their formal request under section 18 in due time. They do so by their letter of 9th November 1904. Section 18 requires that the application should be within six weeks. The six weeks in the present case expired on Saturday, 5th November 1904, and when that time has passed the claimants' rights are gone. This reference, being out of time, is a nullity, and the Court cannot go into the matter.

Young, for the Municipal Corporation of Bombay, supported the contentions of the Acting Advocate-General.

Davar with *Jardine,* for the claimants:—If the case is as stated by Counsel for Government it is hard on the claimants. The award was made on 19th September 1904 but notice was not given to us as contemplated by section 12 (2) of the Land Acquisition Act.

When the award was made we were not present and *immediate* notice should have been given. Four days cannot be considered "immediate." We submit, therefore, that we must have six months' time within which to bring the matter to the notice of the Court. Our letter, dated 7th October 1904, to the Collector should also be considered. Is it not sufficient notice under section 18? That letter clearly states that the claimants do not accept the award, and we submit this amounts to an intimation of our intention to refer the matter to Court. The amount of compensation was the only matter in dispute and the letter of the 7th October 1904 already referred was sufficient notice to satisfy the conditions of section 18 of the Land Acquisition Act. Our notice of the 9th November 1904 is only a more formal expression of our previous intimation. We rely on section 6 of the Limitation Act and time must be deducted that was occupied in obtaining a copy of the award: *Golap Chand* v. *Krishto Chunder*[1], *Guracharya* v. *The President of the Belgaum Town*

(1) (1879) 5 Cal. 314.

Municipalities[1]. The word "immediately" cannot mean 5 days. The Collector cannot plead pressure of work because it is a duty imposed by Legislature. If notice under section 12 is not given then we are entitled to six months, and no such notice, we contend, was given.

Raikes, in reply:—The Court has suggested that the Collector has waived limitation by his letter, dated the 9th November 1904. As to this we say the Collector's act is not a judicial act, he does not exercise judicial functions: *Ezra* v. *Secretary of State for India*[2]. The letter of the 7th October 1904 relied on by the claimants is not the application contemplated by the Act; moreover, they say in that very letter that they will make their application *in due time*. This objection as to limitation is taken by us on behalf of Government and not the Collector. The Collector cannot waive either the right of Government or of the Municipality.

As to the word "immediately," it means as soon as one conveniently can; Stroud's Dictionary. Further, under section 18 of the Land Acquisition Act even if the Collector waits four months his notice will be good. The time in this case runs from the date of the receipt of the Collector's notice: Starling's Limitation Act, 4th Edn., p. 33.

CHANDAVARKAR, J.:—This is a reference, made to this Court by the Collector of Bombay, under section 19 of the Land Acquisition Act, 1894, upon the application of the executors of one Chanda Ramji deceased, hereinafter called the claimants, who complain that the Collector has by his award directed the payment of compensation, which is too low in respect of the compulsory acquisition by Government of certain land, situate at Hamálwádi, Dhobi Taláo, forming part of the deceased's property.

A preliminary objection to the jurisdiction of the Court to hear the reference on the merits has been raised by the learned Advocate-General, Mr. Raikes, on behalf of Government, and by Mr. Young on behalf of the Bombay Municipality, for whom Government have compulsorily acquired the land under the provisions of the Act.

(1) (1884) 8 Bom. 522

(2) (1905) 32 Cal. 605.

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That objection, shortly stated, is that the written application of the claimants requiring the Collector to make a reference to the Court was made after the period of limitation of six weeks prescribed by the first part of clause (*b*) of the proviso to section 18 of the Act.

It is common ground between the parties that the claimants did not appear and were not represented before the Collector when he made his award.

The undisputed facts, upon which this preliminary objection to this reference is based, are as follows :—

The Collector made his award on the 19th of September 1904.

On the 23rd of September 1904 the Collector addressed a letter to Messrs. Nanu Hormusji, attorneys for the claimants, giving notice of his award. That letter was in these terms :—

"With reference to the acquisition of the above land I have the honour to inform you that I have made the following award in this matter :—

AWARD.

1. The true area of the land is 638 sq. yards.

2. The compensation to be paid for this area is Rs. 15,172 together with 15 per cent. on this sum or Rs. 2,275-12-9, in respect of compulsory acquisition, or a total of Rs. 17,447-12-9.

3. The whole of this amount is payable to Bai Sakarbai, widow of the late Chanda Ramji, Mr. Nanu Narayan Kothare, and Mr. Hormusji Muncherji Chichgur, as trustees of the will of the late Chanda Ramji."

This notice purported to be under sub-section (2) of section 12 of the Act.

Messrs. Nanu and Hormusji received the notice on the 24th of September 1904.

On the 7th October 1904 they addressed the following letter to the Collector :—

"Referring to your award L. R. A. 565, dated the 23rd day of September last, in regard to acquisition of the property belonging to the estate of the late Mr. Chanda Ramji, situate at Hamálwádi, Dhobi Talão, we have the honour on behalf of our clients Messrs. Nanu Narayan Kothare and Hormusji Muncherji Chichgur, the surviving executors of the late Mr. Chanda Ramji, to state that they do not accept the said award.

We will send you in due time a formal request to refer the matter for the determination of the High Court of Judicature at Bombay under section 18 of the Land Acquisition Act, 1894. In the meantime we have to request you

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to let us have a copy of the notes of your judgment. We will of course pay the usual copying fee.

One of the executors Bai Sakarbai, widow of the late Mr. Chanda Ramji, died on or about the 2nd day of February 1904, and Messrs. Nanu Narayan Kothare and Hormusji Mancherji Chichgur are the surviving executors and trustees of the will of Mr. Chanda Ramji.

We have to request you therefore to let us know if you have any objection to our clients, the surviving executors and trustees, receiving under protest the compensation awarded."

On the 12th of October 1904 the Collector informed the claimants' attorneys that a copy of his judgment would be granted and that he had no objection to their receiving under protest the award money as attorneys to the executors.

On the 14th October 1904, the attorneys wrote to the Collector that they would attend his office on the 21st of that month to receive the money and that they would receive it "as attorneys to the executors under protest."

On the 9th of November 1904, *i. e.*, after six weeks had expired from the date of the receipt by them of the Collector's notice on the 24th of September, the claimants' attorneys addressed the following letter to him :—

"On behalf of Messrs. Nanu Narayan Khothare and Hormusji Muncherji Chichgur, the surviving executors of the last will of the late Chanda Ramji, we have the honour to request you under section 18 of the Land Acquisition Act that this matter be referred by you for the determination of the High Court, as our clients do not accept your award on the ground that the amount of compensation awarded is very low. They contend that such compensation ought to be Rs. (30,000) thirty thousand and fifteen per cent. on the said sum in consideration of the compulsory nature of the acquisition."

Acting upon this the Collector has made the present reference under section 19 of the Act.

Upon these facts, the learned Advocate-General's contention, in support of his preliminary objection, is that this letter of the 9th of November 1904 requiring the Collector to make the reference having been addressed to him after six weeks had expired from the receipt of his notice on the 24th of September, the reference is *ultra vires*.

The learned Counsel, Mr. D. D. Davar, who has appeared for the claimants in support of the reference, has three answers to the preliminary objection.

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First, he argues that the period of limitation of six weeks prescribed by the first part of clause (*b*) of the proviso to section 18 of the Act cannot apply here, because the notice of his award given by the Collector to the claimants' attorneys was not "immediate notice" as required by sub-section (*2*) of section 12.

After directing in sub-section (*1*) that the Collector's award when made shall be filed in his office, section 12, sub-section (*2*) of the Act proceeds as follows :—

"The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made."

The next section which is material is section 18 of the Act. It gives the party interested, who has not accepted the award, a right to require the Collector to make a reference to the Court, but it provides that the right must be exercised by the party within the period prescribed therein, *viz.*, "within six weeks of the receipt of the notice from the Collector under section 12, sub-section (*2*), or within six months from the date of the Collector's award, whichever period shall first expire."

Now, on Mr. Davar's construction, "the notice from the Collector under section 12, sub-section (*2*)," must mean the "immediate notice" prescribed in that sub-section. That, no doubt, is the natural or literal meaning of the words. It may fairly be argued that there is all the greater reason here why we should adhere to that meaning, because we are construing a section which prescribes a period of limitation within which alone a party can assert a right conferred upon him by the Legislature and it is a canon of construction that statutes of limitation should be construed strictly.

But there are difficulties in the adoption of this literal construction which, I think, are unanswerable.

In the first place, if the word "notice" in clause (*b*) of the proviso to section 18 be restricted to "immediate notice," it must follow that the Collector has no power to give any but immediate notice and that a late notice is bad. And if a late notice is bad and inoperative, what is the result? Does the award of the Collector become void and do all his proceedings become abortive if no "immediate notice" is given by him as

directed in sub-section (2) of section 12? There is no express provision in the Act stating that such shall be the result of a late notice. We have only to infer it.

But before we draw such inference we must see whether the literal construction contended for by Mr. Davar and the effect which under the Act he seeks to impute to a late notice given by the Collector are consistent with the language and tenor of clause (*b*) of the proviso to section 18 and of the rest of the Act.

Now, according to clause (*b*) of the proviso to section 18, every application, requiring the Collector to refer the matter for the determination of the Court, shall be made, in cases where the party interested, who has not accepted the award, was not present or represented before the Collector when the latter made his award, "within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, *whichever period shall first expire.*" I italicize the words "whichever period shall first expire" because they afford the real clue to the interpretation of the clause. The alternative period of "six months from the date of the Collector's award" can expire first, *i. e.*, before the other period of six weeks from the receipt of the Collector's notice, only when that notice has been given four months after the date of the award. A notice given four months after that date can hardly be "immediate notice." Nevertheless, that the clause in question does clearly contemplate the giving of such late notice and provide for the computation of the time of six weeks from its receipt for the purposes of limitation is obvious from the words "whichever period shall first expire." Those words would have to be struck out of the clause to restrict the word "notice" to an immediate notice. Those words obviously point to a late as well as to an immediate notice from the Collector: and that is the only meaning which can be attached to the word "notice," occurring in the clause, consistently with those words.

We have, then, in the language of clause (*b*) of the proviso to section 18 words used by the Legislature which modify or control the language of sub-section (2) of section 12, or, what is

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perhaps more appropriate to say, which make clear the intention of the Legislature that a late notice may be given by the Collector as well as an immediate notice.

Why, then, it may be asked, have the Legislature imposed upon the Collector the duty of giving "immediate notice" by sub-section (*2*) of section 12 of the Act? The answer to that is afforded by the purpose and policy of the Land Acquisition Act.

In construing that sub-section and section 18 it is, I think, a matter of prime importance to bear in mind that the provisions of the Land Acquisition Act for the compulsory acquirement of private property are made for public benefit and in the case of such Acts, as pointed out by Lord Selborne in *Dixon's case*,[1] "if upon words or expressions at all ambiguous it would seem that the balance of hardship or inconvenience would be strongly against the public on the one construction, or strongly against a private person on another construction, it is, I think, consistent with all sound principles to pay regard to that balance of inconvenience."

If, on the part of the Collector, there has been failure to give immediate notice of his award, and if the party interested in the award has suffered prejudice thereby, no doubt that party would be entitled to insist that the notice should have been "immediate." But what prejudice can a claimant suffer from the mere fact that the Collector has given him no immediate notice? Conceivably there can be none. So far as the period of limitation, provided for in clause (*b*) of the proviso to section 18, goes, it is made to run from the date of the receipt of the notice from the Collector, in which case it is six weeks, or from the date of the Collector's award, in which case it is six months, whichever period shall first expire. That means that in any case the proceedings shall be final after six months from the date of the award. This evidently contemplates that a party interested should not sit quiet, waiting for the Collector's notice or plead want of it, but should in any case himself be vigilant. The longer period of six months from the date of the award is given him as an alternative, where the Collector has not been himself prompt. The lateness of the notice cannot, therefore,

(1) (1880) 5 App. Cas. 820 at p. 827

affect the question of limitation, and no prejudice can possibly arise to the claimant in respect thereof.

If this consideration is borne in mind it becomes plain that sub-section (2) of section 12 provides that the Collector "shall give immediate notice" solely in the interests of the public with a view to ensure that the compulsory acquisition shall be in all respects facilitated and completed without delay. When that sub-section directs that the Collector shall give "immediate notice" it does not confer a right upon the person to such notice so as to entitle him to say that a late notice is bad, but it imposes a duty upon the Collector, in the interests of the public, to ensure prompt, vigorous action on his part for the speedy acquisition of the property and a speedy determination of all disputes.

And this construction of the said sub-section is supported by the exact position which the Collector occupies under the Act. As has been held by the Privy Council, adopting the view of the Calcutta High Court, in *Ezra's case*, [1] the Collector, making an award under the Act, is agent of the Government, and acts in his administrative capacity. If that is his position, as agent of the Government who represent the public, the Collector acts for the public. The compulsory acquisition of land being necessary for the public benefit, when the Legislature says that he shall give "immediate notice", it is intended that he shall act without delay and give immediate notice solely with a view to that benefit. If his notice is not immediate, it is the public that is inconvenienced; the hardship is upon them.

From these considerations it follows, in my opinion, that the word "notice" as used in clause (b) of the proviso to section 18 means notice, whether immediate or not. This construction brings all the material provisions into harmony with one another. The clause in question prescribes one of two periods of limitation for a party who has not accepted the Collector's award —either six weeks from the date of the receipt of the Collector's notice, whether immediate or not, or six months from the date of the award; *whichever period shall first expire*. These last words, which I have italicized, show that the element of notice

(1) (1905) 32 Cal. 605; 7 Bom. L. R. 422.

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is an essential ingredient, so to say, of the two alternative periods, and such notice may be "immediate" or not.

Supposing, however, that the construction which the claimants in this case ask me to put on sub-section 2 of section 12 and clause (*b*) of section 18 is correct, and that the Collector was bound to give "immediate notice", the further question is, whether the Collector's notice here was not immediate because it was given five days after the award.

Now, the word "immediate" has been construed by a Full Bench of this Court, consisting of Nanabhai Haridas, Birdwood and Jardine, JJ., in *In re the Application of Sheshamma* (1) to mean "as allowing a reasonable time for doing it." "The test," they say, "is, whether under the circumstances, there was such unreasonable delay as would be inconsistent with what is meant by 'immediate.'" In *The Queen* v. *Justices of Berkshire*(2), Cockburn, C. J., pointed out:—"It is impossible to lay down any hard and fast rule as to what is the meaning of the word 'immediately' in all cases. The words 'forthwith' and 'immediately' have the same meaning. They are stronger than the expression 'within a reasonable time' and imply prompt, vigorous action, without any delay, and whether there has been such action is a question of fact, having regard to the circumstances of the particular case." In *Thompson* v. *Gibson* (3) it was held that the word "immediate" meant "with all convenient speed." In *Page* v. *Pearce*, (4) Lord Abinger said:—"When the Act says only that the Judge shall certify immediately after the trial, and does not more especially define the time, it must mean that it is sufficient if it be done within a reasonable time." And Alderson B. said:—"As it is to be assumed to be a reasonable and proper act *prima facie*, it is for the party who complains of it to show that he took an unreasonable time." The result of these and other authorities (see *Christie* v. *Richardson* (5) and *Raleigh* v. *Atkinson*(6)) is that where a statute or a written contract provides that a certain

(1) (1887) 12 Bom. 276.
(2) (1878) 4 Q. B. D. 469 at p. 471.
(3) (1841) 8 M. & W. 281.
(4) (1841) 8 M. & W. 677 at p. 679.
(5) (1842) 10 M. & W. 688.
(6) (1840) 6 M. & W. 670 at p. 677.

thing shall be done immediately we must, in construing that word, have regard to the object of the statute or contract as the case may be, to the position of the parties, and the purpose for which the Legislature or the parties intend that it shall be done immediately. Applying that test here, what have we? The Collector, as a public functionary, has several duties to discharge: the duty of making awards and taking proceedings under the Land Acquisition Act is only one of them. The exigencies of official business require that he should have some time before he can give notice of his award after he has made it and there is no conceivable reason why a party interested in the Collector's award should have a notice *instanter*. Having regard to these circumstances I must decline to hold that the notice given here five days after the award had been made, was not immediate.

That brings me to the second contention of the claimants, in answer to the preliminary objection raised for the Government and the Municipality. The claimants urge that their attorneys' letter of the 7th of October 1901 sufficiently complied with the requirements of section 18 to bring this reference by the Collector within the period of limitation prescribed in clause (*b*) to the proviso of that section.

Now, section 18 provides that any person interested, who, having not accepted the award, desires to have an adjudication of the claim by the Court, should, within the period of limitation prescribed in the proviso to the section, do certain things. First, he must make a written application to the Collector. Secondly, that written application should require the Collector to refer the matter for the determination of the Court, whether the objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable or the apportionment of the compensation among the persons interested. Thirdly, such application shall state the grounds on which objection to the award is taken.

These are the conditions prescribed by the Act for the right of the party to a reference by the Collector to come into existence. They are the conditions to which the power of the Collector to

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make the reference is subject. They are also the conditions which must be fulfilled before the Court can have jurisdiction to entertain the reference.

Now, as was said by the Judicial Committee of the Privy Council in *Nusserwanjee Pestonjee* v. *Meer Mynoodeen Khan Wullud Meer Sudroodeen Khan Bahadoor*, (1) "wherever jurisdiction is given to a Court by an Act of Parliament, or by a Regulation in India (which has the same effect as an Act of Parliament), and such jurisdiction is only given upon certain specified terms contained in the Regulation itself, it is a universal principle that these terms must be complied with, in order to create and raise the jurisdiction, for if they be not complied with the jurisdiction does not arise." The same case is also authority for the proposition that the compliance need only be substantial so as to be "intelligible and clear."

I turn now to the letter of the claimants' attorneys, dated the 7th October 1904, which is relied upon by them as meeting the requirements of section 18, to see whether its terms substantially comply with the conditions, subject to which alone the Collector had power to make this reference.

In the first place does it require the Collector to refer the matter for the Court's determination? The word "require" implies compulsion. It carries with it the idea that the written application should itself make it incumbent on the Collector to make a reference. What is there in the terms of this letter imposing upon him the duty to refer? It starts by saying that the award is not accepted and then proceeds as follows:—

"We will send you in due time a formal request to refer the matter for the determination of the High Court of Judicature at Bombay under section 18 of the Land Acquisition Act, 1894. In the meantime we have to request you to let us have a copy of the notes of your judgment."

Paraphrased into the plainest language and understood in their natural meaning, these words are only an intimation to the Collector of the claimants' intention or determination to require him thereafter to make the reference. True, they say such subsequent requirement or request will be formal. That, I think,

(1) (1855) 6 Moo. I. A. 134 at p. 155.

means with due regard to the formalities prescribed in section 18. The question is, does this letter by itself require the Collector to make the reference? The test is this: What was the Collector to understand when he received this letter? Was he to understand, when he received it, that he was bound to act upon it and refer or rather that he should not act upon this letter but wait until another letter, written formally, *i. e.*, with due regard to the requirements of section 18, reaches him? The latter is, in my opinion, the plain meaning. Nor can it with any show of reason be urged that what the claimants' attorneys meant by this letter of the 7th of October was that, as the letter to follow was only to be formal, this letter was in substance one which met the requirements of section 18. That section prescribes certain formalities: and none of them, or at any rate not the most important of them, has been observed in this letter of the 7th of October. It is clear from the section that those formalities are matters of substance and their observance is a condition precedent to the Collector's power of reference.

First, there is no intimation in the letter whether the matter to be referred to the Court consists in an objection to the measurement of the land, the amount of the compensation, or the persons to whom it is payable. The Collector is left completely in the dark about it. It may be possible to gather from the terms of the letter, which refer to the death of the executrix and the survival of the two executors and express the willingness of the latter to receive under protest the compensation awarded by the Collector, that there was no dispute as to the persons to whom the compensation was payable. But what about the measurement of the land or the amount of compensation?

But even supposing the letter contained sufficient to enable the Collector to infer that the objection to the award was only that the compensation awarded by him was too low, because the claimants expressed their willingness to receive the award money "under protest," section 18 also requires that "the application shall state the grounds on which objection to the award is taken." Here no grounds are stated for the objection that the compensation awarded is too low.

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I am of opinion, therefore, that there was no substantial compliance by the claimants with the conditions for a reference, prescribed in section 18 of the Act; that the Collector had no power to make the reference and that it is *ultra vires*.

But, lastly, it is urged for the claimants that as the Divali holidays intervened they are entitled, under the provisions of the Indian Limitation Act, to a deduction of the time of those holidays from the six weeks' period of limitation. It is a moot question whether the provisions of the Limitation Act apply to the special period of limitation prescribed in section 18 of the Land Acquisition Act. This latter is a special Act and it would appear from a decision of this Court, in *Guracharya* v. *The President of the Belgaum Town Municipality*,[1] that the provisions of the Limitation Act apply to special Acts. The Madras High Court has taken a different view: see *Veeramma* v. *Abbiah*,[2] *Girija Nath* v. *Patani*,[3] *Nagendro* v. *Mathura*.[4] The decision in *Guracharya* v. *The President of the Belgaum Town Municipality*[1] being a decision of a Division Bench of this Court is binding upon me sitting as a single judge. But even then how do the claimants bring their case within the relief afforded by the Limitation Act? It is undisputed that the Divali holidays in 1904 fell on the 7th and 8th of November. The period of six weeks from the receipt of the Collector's notice expired on Saturday the 5th of November 1904 and on that day the Collector's office was open. Even under the Limitation Act no deduction can be made under these circumstances. Then it was said that the time occupied by the claimants' attorneys in taking a copy of the Collector's judgment ought to be deducted from the six weeks. The answer to this is simple. The Land Acquisition Act mentions no such thing as a judgment of the Collector making an award under the Act. If the claimant objects to the award he ought to know why he objects: the Collector's reasons are not necessary for his objection. Further, section 12 of the Limitation Act, para. 4, which alone can possibly apply, speaks of a copy of the award

(1) (1884) 8 Bom. 529.
(2) (1893) 16 Mad. 99.
(3) (1889) 17 Cal. 263.
(4) (1891) 18 Cal. 368.

—not of the Collector's judgment—and the claimants here had a copy of it in the Collector's notice of the 23rd of September.

There was one point, which in the course of argument at the Bar, suggested itself to me and I thought then that it might be of some weight in support of the validity of the reference. That point was that the Collector, whose position under the Land Acquisition Act, as held by the Privy Council in *Ezra's case*, already referred to, is that of an agent of Government, having made the reference, must be regarded as having waived his right or the right of his principals, the Government, to dispute that the reference was unauthorised and therefore illegal. But I have more carefully weighed the point since and arrived at the conclusion that there is nothing in it. The Collector's authority to make the reference as an agent of Government is restricted by the statutory conditions prescribed in section 18. The claimants cannot plead ignorance of those conditions and the restricted nature of the Collector's authority. He cannot bind Government by stepping outside the limits of the power given by section 18. If he does step outside them, his action is illegal: and no waiver on his part can atone for the failure of the claimant to fulfil the statutory conditions which the law required them to fulfil before their right to require the Collector to make a reference could come into existence.

For all these reasons I am of opinion that the preliminary objection raised by the learned Advocate General, Mr. Raikes, is good and must be allowed. I dismiss the reference. No order as to costs.

Mr. E. F. Nicholson, Government Solicitor, for Government.

Messrs. Nanu & Hormasji, Solicitors for claimants.

Messrs. Crawford, Brown & Co., Solicitors for Municipality.

W. L. W.