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One hundred and thirty-seven indirect damage claims filed so far are for the removal of the former railroad stations and the destruction of the former villages, the owners of farms claiming that the value of their farms has been diminished by increasing the distances to the railroad stations and diminishing local facilities for trade. Claims so far filed are over an area of 90 square miles extending from 6 miles south of the reservoir as far as the town of Hunter in Greene County. The trial of these claims began during the current year. Other claimants are awaiting the result of the first trials. I estimate that there will be about 500 more of these claims filed.

The total acreage taken by The City of New York for the Ashokan reservoir in Ulster County was 15,220 acres, divided originally into 936 parcels, which number was increased by several hundred through later subdivisions, especially in cemeteries. For this land, excluding the seven parcels not finally disposed of, awards have been confirmed amounting to $3,435,000, of which the sum of $1,888,000 was for the 243 farms taken in whole or in part, the remaining parcels being village residences, stores, blacksmith shops, cemeteries, etc.

The number of claims under section 42 by reason of the Ashokan reservoir has already exceeded in number the amount of the awards for all kinds of real property taken. Based on the area covered by the indirect and consequential damage claims already submitted, and the diversion area, I estimate the total of claims under section 42 in Ulster County, at about 2,000, and the aggregate of the claims at $8.-000,000.

The enormity, both in dollars and numbers, of these claims, and the absurd exaggeration and preposterous testimony in many of them has fortunately tended to defeat the claimants' desires. Instead of dividing these claims among numerous Commissions, as was done with the real estate claims appointing 18 Commissions on 936 original parcels, the City succeeded with the co-operation of the Supreme Court, in instituting a new system and having two business damage Commissions appointed, which sat like two trial terms of a court. In no case did the City ask an adjournment for delay. Every claimant whose attorney really desired a trial could have his claim tried within a month.

Before these two Commissions there have been presented for trial 308 claims, of which all except 6 have been placed on the trial calendar. The total amount of the 302 claims as filed with the Board of Water Supply is $1,494,510. The total amount recovered so far on these claims, that is, the total amount of awards confirmed, is $73,762.

Business Damage Commission No. 1 has made 17 reports on 129 claims, of which 20 were dismissed, 1 withdrawn, and 108 received awards. The total of the 108 awards is $85,020.66, of which 8 awards amounting to $22.399.46 were set aside, and under the decisions of Special Term and the Appellate Division on the 8 set aside, other awards amounting to $15,509.20 have not been confirmed.

Business Damage Commission No. 2 finally acted on 126 claims, of which awards were made in 75, amounting to $28,175, 31 were dismissed and 20 withdrawn. Two of these awards, amounting to $1,525, have not been confirmed.

The total of $73,762 does not include the business and indirect damage awards of $10,519.17 to the executors of John C. Hoornbeek in connection with the award for the fees of parcels 479, 480, 481, 482 and 511, which were retried. The awards on these parcels at the first trial, exclusive of business and indirect damage, were $92,271. These awards were set aside on the City's motion. The awards at the second trial were $74,094.17, of which $63,575 was for the same items included in the awards on the first trial of $92,271, with $10,519.17 additional for business and indirect damage. These awards are still before the court.

Exaggerated or False Claims.

During the current year the majority in the amount of the business damage awards have been set aside by the decisions of Supreme Court at Special Term, and the Appellate Division. Of the awards made during the current year for business damages, only $8,425 has been finally confirmed by the courts. This is due in part to the exaggerated claims and the absurd theories on which the claimants have proceeded. For instance, an undertaker testified that he had buried 5,800 people out of one village in the watershed, although the total population within the whole reservoir, including some 6 villages, was less than 2,000, and the Town Clerk s records showed that the annual burials in the whole town were between 10 and 20. One claimant testified that he made $5,000 a year painting barns with no other aid than his own labor. Another painter testified that he began learning his trade at the age of five, that he was a full fledged journeyman painter at the age of eight, and that he had an important bridge painting contract at the age of twelve. Claimants came before the Commission with books which they testified were books of original entry extending back for 10 years and more. Cross-examination and later proof showed that the books had been written up for the purpose of the trial only a few weeks or months before. On another claim the City produced the notary to a bill of sale, and proved its alteration as to date. One claimant asserted on the witness stand that he regarded it as the conscientious duty of every citizen of Ulster County to get as much money from New York City as he could.

The result of such practices on the part of claimants has been to ensure dismissals in many cases, and to present a stenographic record which discredits their claims in court. Unfortunately it also adds to the cost of the trials. The City must pay the Stenographers' bills and Commissioners' fees, and the more padded the claim the more necessary is it for the City to go into an extensive cross-examination and to make a full record.

Standard Oil Company Claim.

One of the most important cases on trial is the claim of the Standard Oil Company. The Standard Oil Company had a branch station and tank wagon in the reservoir district. It claims the capitalized profits on its sales of kerosene and gasoline in the territory which the City turned from villages and farms into a reservoir. This is the first of many similar claims to be tried. Wholesalers, commission men and others doing business in the reservoir territory have filed and are filing claims for the loss of their customers there, and for the capitalized value of the profits which they claim to have made from these customers. No decision has been reached in the Standard Oil Company claim. If such a claim is tenable it would seem that every wholesale grocer, every manufacturer of agricultural machinery, every hardware dealer, and every boot and shoe manufacturer whose products were sold to the 2,000 people within the taking line, would have a similar claim. Several hundred thousand dollars of such claims are included in those already filed; many more are awaiting the decision in the Standard Oil Company case.

Decisions by the Courts.

During the current year there have been several important decisions in the City's favor.

The Supreme Court of the United States decided in the McGovern case (229 U. S., 363), against the theory of hypothetical reservoir availability which the speculative syndicate that bought up a number of Ashokan farms had urged in the courts. This decision affirmed the Court of Appeals, and disposes in the City's favor of some forty pending appeals taken by the syndicate's representatives.

The Court of Appeals decided in the City's favor in the mater of Van Kleeck (208 N. Y., 594), and determined that Commissioners of Appraisal were not agents of The City of New York and could not incur liabilities for which a third party could recover from The City of New York.

The Court of Appeals also decided in the City's favor (209 N. Y., 66), that claimants under section 42 are not entitled to a 5 per cent. allowance to counsel, or to expert witness fees. The employment of so-called expert witnesses had especially grown to be an abuse, which this decision lessens. In 208 N. Y., 69, the Court of Appeals reversed the Appellate Division and limited the claimants' counsel allowance in fee cases to $2,000.

The Appellate Division decided in the City's favor the Bishop case, which was selected by both parties as a test of whether the keepers of boarding houses on farms within the territory taken, were entitled to damages for taking New York and Brooklyn boarders during the summer in addition to awards for the fees of the farms, and without deductions for the value of the farm and farm products and their personal services. The result of this decision is to set aside the major amount of the awards during the current year.

Equal in importance was the decision of the Appellate Division in the 1912 Ulster County certiorari proceedings where the Towns of Gardiner and Shawangunk had assessed the aqueduct structure, taking into consideration the cost of reconstruction. The City of New York has paid for the Ashokan reservoir and aqueducts in

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Ulster County, a sum larger than the whole assessed value of the City of Kingston, and almost as great as the assessed valuation of Ulster County. Local assessors have assessed New York City's property as high as $600 and $700 an acre, while assessing adjacent farms at $10 to $25 an acre. If they could legally do this it would make New York City pay half the taxes of Ulster County. The decision of the Appellate Division was to strike the assessments from the rolls as illegal. There are seven other Ulster County certiorari proceedings before Referees.

The City of New York was also made liable by the Water Supply Act for the necessary cost of criminal proceedings against employees of either New York City or its contractors. For these criminal expenses between November, 1908, and October, 1909, the County of Ulster sued the City for $11,269.32. A trial before a Referee resulted in reducing this claim to $2,625.11, of which only $72.56 is the final liability of The City of New York, the remainder being chargeable against the contractors. The County of Ulster has failed to file any claims for criminal expenses for the years since October 31, 1909, although these bills have been prepared and were to have been tried before the same Referee. The contractors are liable to The City of New York, under their contracts, for the criminal expenses chargeable against their employees. The City must retain in cash or obtain a sufficient bond to cover this liability. The County of Ulster, instead of filing these bills with the Comptroller, has been holding them over the contractors, and in effect, compelling private settlements with the contractors at whatever amount the County's representatives fix, since the extent of the contractors' liability cannot be known to The City of New York until the claims are presented and an investigation of their validity made. There should be some way to compel the County authorities to file these bills and proceed to have the amount due legally ascertained, instead of their present practice, which is an abuse of the provisions of the statute.

The Commission System.

I would respectfully repeat the statement in my prior reports, that to the Commission system, as it has been administered, are due excessive cost and unnecessary delay in condemnation proceedings.

Since the Catskill proceedings began in 1907, there have been 200 different men acting as Commissioners of Appraisal in connection with New York City's water supply. A dozen different Justices of the Supreme Court have appointed these Commissioners. Very few of them, when they were appointed, had any familiarity with the water supply proceedings, or with the various acts relating thereto. It is doubtful that half a dozen of the 200 have ever read all the water supply acts and their many amendments, and it is unlikely that any one of them has read all the decisions construing these acts and their amendments.

One result has been disproportionate awards and conflicting views of the law. An inevitable consequence is increased cost and delay. Every Commission after its appointment began getting some kind of acquaintance with what work it had to do and how it was to be done. He would be an able, alert man giving all his time and thought to his task, who could learn within a year the water supply acts, the decisions thereon and the facts. It would be bad enough to have appointed 60 or 70 Commissions to do the work that 3 or 4 Commissions could have done better, if the Commissioners gave their whole time to it. This, none of them does or is expected to do. Every appointee has a business or profession of his own, which naturally continues to take his time and thought.

The compensation of these Commissioners has been taxed by Justices of the Supreme Court at about $50 per day, and expenses. This is higher than the compensation of the Justices of the Supreme Court in every Department in the State, outside of the First and Second. It is as high as the compensation of Judges of the Court of Appeals. Naturally, most Commissioners desired to hold on to such lucrative employment, which in few cases interfered with their other means of income. It hence followed that no matter how little work a Commission may have had, the time for doing it extended long. A Commission appointed to retry the value of one farm sat a year without finishing that one trial, while a business Commission which had hundreds of cases to try, disposed of as many as 15 and 20 in a week.

The old system in effect put a premium on delay, because the more hearings the Commissioners could procure, the larger were their fees on a per diem basis. This naturally affected claimants' attorneys, who realized that where the Commission was paid on a per diem basis, the way to get a large award was to make many sessions.

While the majority were reasonably conscientious and faithful, out of the 200 Commissioners, a few were unfit or incompetent, and some were inclined to pad their compensation and expense bills. The most unpleasant part of the work of counsel to the City was these Commissioners' compensations. The practice was for the Commissioners to make an application to the court, and for counsel to the City to appear thereon. In several cases Commissioners have made affidavits that they attended sessions when they were not physically present. In many cases Commissioners made affidavits as to longer sessions than were the fact, and in exaggeration of the amount of business transacted. Expense bills have also been padded. When one Commissioner succeeds in obtaining excessive compensation and taxing a padded expense bill, other Commissioners who, with stricter treatment by the court, would act otherwise, are prone to follow the profitable example.

One Commission taking testimony alternate weeks and spending the intervening time in considering the questions of fact and law, and in writing opinions and making awards, could handle all the trial work in Ulster County. The Commissioners there now frequently have to adjourn for lack of business. Claimants wait on one another's appeals, and claimants' attorneys would rather take advantage of settled law than to undertake the work of settling the construction of the special Ulster County provisions regarding business, indirect and consequential damage claims. By having one Commission there would be a uniformity in treatment of the cases and the avoidance of arguing the same questions and putting in the same formal and descriptive testimony over again.

It would also be a great saving in money and time both to the claimants and The City of New York. The cost of trying claims depends, of course, in part, on the nature of the claims, but fully as much, if not more, on the experience of the Commission and the manner of handling the matters before it.

The economy of fewer commissions is apparent by comparing the tables of costs as given above. With more than forty commissions it cost 59 cents to make an award of $1. With a few number of commissions and a different handling of the work, it cost less than 24 cents to make an award of $1, including in the 24 cents several hundred thousand dollars of bills for services performed prior to 1910, and including also the cost of trying the claims which were dismissed. The reduction in the cost of awarding a dollar was not due to an increase in the size of the awards, because the average award to a claimant in 1907-8-9 was $3,250, while the average award to a claimant in 1910-11-12-13 was $2,508. The Commissioners' fees were but 10 per cent. more for 2,515 parcels and claims than for 1,207 parcels. The claimants' costs were a little less for the greater number. The Corporation Counsel's expenses were only two-fifths as much for more than twice the volume of business.

It is obvious that by an experienced commission cases can be tried with a shorter record and more expeditiously. Descriptive, formal and technical testimony in one case can be read into other cases without repetition on the part of witnesses and Stenographers. Many commissions mean many duplications of work.

Claims involving questions of business, indirect, consequential and riparian damages necessarily make a longer, more involved and more legally technical record than the ordinary condemnation proceeding for taking the fee to real property. Notwithstanding this, the cost of the proceedings has been materially reduced by reducing the number of commissions, and by handling the trials more like a court, instead of the old way of sporadic sessions, lack of continuity and such delays that additional time had to be spent in rereading the Stenographers' minutes.

May I be permitted to express the obligation of The City of New York to those Judges whose discretionary decisions have enabled the reduction in the number of commissions and the systematic handling of the cases before them. One Judge by the simple method of consolidating several proceedings and fixing his commission's compensation in advance, reduced greatly the cost and procured prompt decisions, to the gratification of both the City and the claimants. The most effective and the only controlling power over the Commissioners and their conduct is the Judges who appoint them, who pass on their work and who fix their compensation. The evils of the commission system are due more to the manner of its administration than to the statutes. Respectfully submitted,

WILLIAM McM. SPEER, Special Counsel.