" Court will set it aside, since if the award be allowed to stand, the party would be entitled " to judgment, and might issue execution." So in the *Queen* v. *Justices West Riding*, 7 A. & Ell. 588, where it was contended that the order of Sessions being a nullity, therefore the Court would not set it aside. The Court say we were in doubt whether the order was not harmless, but we think, on further consideration, that what has been done is a grievance to the party applying. The effect of allowing these void awards to stand will be, that the Public Trustee may convey estates of very great value away from their owners. The collection of all arrears of rent would also remain indefinitely suspended, while the proprietors were engaged in law suits against the Government to get back their land; the compensation money remaining all the time locked up in the Treasury, of no use to any one. To decline to exercise our jusisdiction in such a case would, in my opinion, be contrary to all law, reason, and justice. I think, therefore, that these awards must be set aside,—first, because they do not show how they decided the several preliminary matters they had to consider before ascertaining the amount of compensation; secondly, for not deciding the question of quit rents, so as to protect the proprietor after being stripped of his land from suits in respect of its liability to those rents; thirdly, for not setting out in their award, or by reference to any particular plans or documents, any certain description of the lands claimed before them by the Commissioner of Public Lands under his notice to the proprietors, and adjudicated by them to be transferred to him, and in not showing for, or in respect of, what particular parcels of land the compensation, mentioned in the several awards, was respectively given. The setting aside of these awards may, I am well aware, cause much disappointment, as well as render useless the large expense attendant on the proceedings. But this, to use the words of Lord Denman, in *The Queen* v. *The Eastern Counties, R. W. C.*, 10 A. Ell, 565, " is a con- " sideration which certainly ought to induce great caution in assuming jurisdiction, but " cannot justify us in declining it where the law has lodged it with the Court. We " have no more right to refuse to any of the Queen's subjects the redress which we are " empowered to administer, than to enforce against them such powers as the constitution " has not confided to us." In Hodges, on R. W. 324, it is remarked that as laymen are frequently selected to be arbitrators and umpires, there cannot be any doubt that they are entitled to avail themselves of professional assistance in conducting the inquiry and preparing the award; and I must say it is very unfortunate that in such an important matter as this the Commissioners should not have been authorised to engage such assistance, at least, in drawing up their awards, a matter with which they could scarcely be supposed to have much acquaintance.

Imperial Act, ultra vires.

The next objection is, that under the provisions of the British North American Act, the Island Legislature had not power to pass this Act.

By the 92d sect. of the Imperial Act, it is enacted that in each Province the Legislature may exclusively make laws in relation to matters coming within the classes of subjects next herein-after mentioned, " and the 13th class mentioned in this section is, property " and civil rights in the Province."

Mr. Hodgson contends that the power of making laws in relation to property, does not give the right of taking away the property of one person for the purpose of giving or selling it to another; that the power is restricted to the taking of private property for public uses only where a public necessity for so doing exists, and that the existence of such public necessity is a condition precedent to the right to exercise it, and that no such necessity existed with regard to the subject matters dealt with by this Act. The Attorney-General, on the other hand, contends that the Legislature are the judges whether such necessity exists, and therefore, have a right to pass any law they please. If the Provincial Legislature is restricted to subjects coming under what American jurists call the right of Eminent Domain, it seems to me that this Act, at least in some of its provisions, would be an excess of Legislative power. So far as the leasehold tenures are concerned, it might be said that when a man parts with his property for 100 or 900 years, reserving a small yearly rent, the transaction really is, that he gives away the land in consideration of a small annuity secured on it, a commutation of which, if *fairly made*, could work no appreciable injury to the lessor; and if from any cause, such tenures were found to operate injuriously to the public welfare, it might, perhaps, be argued that a public necessity existed which required to be met by their abolition. But, as to the necessity of argument regarding the residue, it must in the first place be observed that the preamble of the Act only says that it is desirable that the *leasehold* tenures should be converted into freehold. There is not a word about its being necessary to take property