[PRIVY COUNCIL.] **1920.**

*Present:* Viscount Cave, Lord Dunedin, Lord Moulton, and Lord Phillimore.

DIAS *v.* THE ATTORNEY-GENERAL.

*408—D. C. Colombo, 46,162.*

*Martial law—Motor cars commandeered by the Military—Action for compensation.*

The Governor, in consequence of serious rioting, proclaimed martial law, and committed to the Brigadier-General the maintenance of order and the defence of life and property. Two cars belonging to the plaintiff were commandeered by the Military authorities during the period of martial law. The plaintiff sued the Crown for compensation for the use of the cars.

*Held,* that the plaintiff had a right to go before a Board appointed under the Order in Council of October 28, 1896, and there to get compensation assessed.

THE judgment of the Supreme Court is reported in Vol. XX., page 193.

October 26, 1920. Delivered by VISCOUNT CAVE :—

Since the Supreme Court gave its judgment in this case the position has been materially affected by the decision of the House of Lords in the case of *The Attorney-General v. De Keyser's Royal Hotel, Limited.*[1] In view of that decision, it is not really disputed to-day that the plaintiff, whose cars were requisitioned, had and has the right to go before a Board appointed under the Order in Council of October 28, 1896, and there to get compensation assessed. That point being settled, the parties have, very sensibly, agreed that the compensation shall be fixed at the amount at which the District Judge, Mr. Justice Maartensz, was disposed to assess it. The amount which he would have awarded, if he had been satisfied that any compensation was payable, is set out in his judgment at page 31 of the record. There should, therefore, be judgment for the plaintiff for that amount, and nothing remains except the question of costs. As to that, their Lordships think that both parties have been in error throughout. The plaintiff was wrong in claiming to have the amount of compensation fixed by the Court, and not by a Board appointed under the Order in Council; the defendant was wrong in denying that any compensation whatever was payable. In substance that attitude has been

[1] *(1920) A. C. 508.*

maintained by the parties throughout and, in the circumstances of the case, it appears to their Lordships that neither party should have costs during any part of the proceedings, in the Courts below or of this appeal. The result is that the judgment of the Supreme Court should be set aside, and an order in accordance with what has been stated above substituted for it. Their Lordships will humbly advise His Majesty accordingly.

*Set aside.*