THE NEW YORK STATE COURT OF CLAIMS:
Its History, Jurisdiction and Reports.[1]

FROM SOVEREIGN IMMUNITY TO THE COURT OF CLAIMS ACT

The State, being sovereign, is not amenable to private claims against it on the part of its people except with its consent. This principle stems from the common and statute laws of England "That the King can do no wrong." This was a necessary and fundamental principle of the English constitution. However, even in England the common law provided methods of obtaining possession or restitution from the crown of either real or personal property by *petition de droit* or petition of right.

The nature of the State's immunity from suit without its consent was stated by Hamilton in *The Federalist*, No. 81:

> "It is inherent in the nature of sovereignty not to be amenable to the suit of an individual without its consent. This is the general sense and the general practice of mankind; and the exemption, as one of the attributes of sovereignty, is now enjoyed by the government of every State in the Union. Unless, therefore, there is a surrender of this immunity in the plan of the Convention, it will remain with the States . . . ."

Sovereign immunity[2] is an outmoded doctrine, an un-American holdover of the "divine right of kings" concept. It has no logical application in the United States. In *Langford v. United States* 101 U.S. 341, 343 (1879), Justice Miller in considering the argument advanced, the maxim of English constitutional law that the king can do no wrong, is one which the courts must apply to the government of the United States, and that, therefore, there can be no tort committed by the government, stated: "We have no king to whom it can be applied . . . . We do not understand that either in reference to the government of the United States, or of the several States, or of any of their officers, the English maxim has an existence in this country."

In the early history of the State, claimants had to rely on the sense of justice of the Legislature. Originally, the Legislature passed upon private claims directly by means of appropriations, but that practice, by an amendment to the Constitution in 1874, was prohibited by a provision forbidding the Legislature to audit or allow any private claim or account against the State:

> "The Legislature shall neither audit nor allow any private claim or account against the State, but may appropriate money to pay such claims as shall have been audited and allowed according to law." (Art. III, Sec. 19).

Prior to 1870, the Legislature passed upon and audited claims against the State, exercising its discretion to allow them or to disallow them as it saw fit.

Under the terms of this section of the Constitution, the Legislature is prohibited from exercising the power of auditing claims itself. But the power of the Legislature to provide by law for the audit and allowance by some appropriate tribunal of claims against the State is continued. The prohibition of this section extends over to claims in behalf of private interests and does not embrace claims of a public character. The section adopted in 1874 has since remained in its present form.

---

[1] This history of the New York State Court of Claims has been excerpted from *New York State Library Bibliography Bulletin 83*, The State Education Department, Albany (1959).

[2] The survival of the immunity rule in this country after the Revolutionary War is attributable, in all likelihood, to the financial instability of the infant American States rather than to the stability of the doctrine's theoretical foundations. See Gellhorn& Schenck, "Tort action against the Federal Government." *Columbia Law Review* 47:722, 1947.

The Constitutional Convention of 1867 approved a report that "The Legislature had been pressed unreasonably to dispose of these claims in a manner not according to the ordinary course of the disposition of claims as between the State and its citizens, but in accordance with the rules which prevail between individual and individual." Accordingly, it recommended the following amendment: "The Legislature shall not audit or allow any private claims or account against the State, or pass any special law in relation thereto, except to appropriate money to pay such claims as shall have been audited and allowed according to law." The purport of the proposed amendment was to make specific provision for the manner in which private claims against the State should be disposed of, independent of any action on the part of the Legislature. While the proposal fell with the rest of the Constitution offered by the convention of 1867 to the people, the Constitutional Commission of 1872 continued consideration of the policy contained in it. The commission proposed the present section, similar to the one favored in 1867, forbidding the Legislature to audit or allow any private claim or account against the State although permitted to appropriate money to pay claims audited or allowed according to law. This was adopted by the people in 1874. The section interposed an obstacle in the path of those asserting unfounded claims against the State. It required their audit or allowance by some officer, tribunal or board designated by law before the Legislature could make an appropriation for their payment.

The prevailing practice of the Legislature was to pass laws which directly and of their own force allowed and fixed the amount of private claims against the State. This practice was open to many abuses since the Legislature was unable in many cases to act intelligently upon claims and in addition was subjected to pernicious influences. As a result, the public treasury was depleted by the passage of many enactments for the benefit of claimants whose claims had little foundation in law or equity.

At the Constitutional Convention of 1867 a section creating a Constitutional Court of Claims with jurisdiction to hear and determine "such claims against the state as the Legislature shall by general law direct" was included in the proposed constitution. It was not, however, contained within the Judiciary Article of the Constitution and, therefore, failed of ratification. Since the Judiciary Article was the only one adopted by the People, the creation of a Constitutional Court of Claims was again urged in the Constitutional Commission of 1872 but was defeated.

It was also proposed by the Constitutional Conventions of 1894 and 1915. The 1915 Convention had proposed that it be made a constitutional court, immune from discontinuance by the Legislature. The Executive Committee of the Judiciary Convention of 1921 in its report to the convention dated November 5, 1921, recommended that the Court of Claims be established as a constitutional court. It outlined the history of the court at length and discussed the merits of giving it constitutional standing.[3] The Attorney General of the State, who was an *ex officio* member of the executive committee, expressed the opinion that there was likely to be at all times ample business to occupy the judges of the court. This committee recommended that the Court of Claims should not only be a permanent constitutional court, but that its judges should be reorganized as equal in dignity and importance to justices of the Supreme Court. It was also recommended that these judges be elected and not appointed, thereby separating them from the Executive Department of the State. Although the proposal to make the Court of Claims a constitutional court was defeated by the vote of the executive committee by a narrow margin, the supplemental report of the executive committee recommended the inclusion of the provision providing for the power of the Legislature to create or abolish a board or court with jurisdiction over claims against the State. This provision finally became a part of the Constitution by vote of the people on November 3, 1925, approving the adoption of a new judiciary article (article VI) of the Constitution, including Section 23:

> "Nothing in this article contained shall abridge the authority of the legislature to create or abolish any board or court with jurisdiction to hear and audit or determine claims against the state, and any such tribunal existing when this article shall take effect shall be continued with the powers then vested in it until otherwise provided by law." [4]

---

[3] See Poletti report, v. IX, Problems relating to judicial administration and organization, pp. 445-449.

[4] See Poletti report,v. I, New York State Constitution, Annotated, pp. 128-129.

By vote of the people on November 8, 1949 article VI, section 23 was amended to read as follows:[5]

"The court of claims is continued and shall be a court of record. It shall consist of the six judges now authorized by law, but the legislature may increase such number. The judges shall be appointed by the governor by and with the advice and consent of the senate and their terms of office shall be nine years. The judges now in office shall hold their offices until the expiration of their respective terms. The court shall have power to appoint and remove its clerk and such other employees as the legislature may provide for. The judges shall have the same qualifications and shall be subject to the same restrictions as justices of the supreme court. The court shall have jurisdiction to hear and determine claims against the state or by the state against the claimant or between conflicting claimants as the legislature may provide. The practice and procedure shall be that now or hereafter provided by law."

The first general statutory provision for claims against the State was the Erie Canal Act of 1817 (L. 1817, ch. 262). This act authorized the construction of the Erie and other canals and included a provision for canal commissioners who were given the power to "pay the damages so to be assessed and appraised and the fee simple of the premises so appropriated shall be vested in the people of the state. "

In 1821 (L. 1821, ch. 240) the Legislature passed an act creating a body of appraisers of property taken for canal purposes. These two acts, in providing for determination of claims against the State, were limited to claims for the appropriation of property for canal purposes.

In 1825 (L. 1825, ch. 275) the Legislature empowered the Governor to nominate, and by and with the consent of the Senate to appoint two freeholders, who in association with any one of the acting canal commissioners would constitute canal appraisers with the duty of assessing and appraising all unsettled claims for damages which any persons have sustained or may sustain, by means of either the Erie or Champlain Canals, or any work connected therewith, in the same manner, with the same authority and upon the same principles as the canal commissioners were then by law authorized to assess such damages. In addition, the act of 1825 provided for an appeal to be taken to the Board of Canal Commissioners by any claimant dissatisfied with the decision of the appraisers, and the decision of the board would be final and conclusive.

By chapter 293 of the Laws of 1830 an additional remedy was provided for claims arising out of the construction of the canals. By chapter 287 of the Laws of 1836, the Legislature provided for appraisal of damages and claims in connection with the construction of canals, or works connected therewith, and not settled by agreement.

As the claims against the State began to multiply, the Legislature in 1870 (L. 1870, ch. 321) passed an act to provide for the appraisal of canal claims against the State. (Now section 120 of the Canal Law.) Jurisdiction was granted to a Board of Canal Appraisers to hear and determine all claims against the State of any and all persons for damages alleged to have been sustained by them from the canals of the State and from their use and management or arising from the negligence or conduct of any State official having charge thereof or from any accident or other matter connected with the canals.

The canal appraisers were to prescribe rules for the filing of claims, for the taking of evidence and for compelling the attendance of witnesses. However, the great mass of claims against the State were still submitted to and passed on directly by the Legislature, which provided for their payment.

The auditing of claims arising out of the construction and operation of the canal system of the State was limited to the canal appraisers under the powers granted to them by the Legislature. The Legislature, however, also exercised its power to pass directly upon private claims by means of appropriations.[6] This unsatisfactory practice and abuse of Legislative power resulted in the constitutional amendment of 1874 (art. III, sec. 19) to prohibit the

---

[5] The provision of former section 23 of article VI empowering the Legislature to create "any board or court with jurisdiction to hear and audit or determine claims against the state" was omitted and the new section substituted.

[6] See the *Fifteenth annual report of the Court of Claims*, p 7.

Legislature from auditing or allowing any private claim or account against the State.[7] All of these laws were repealed by the Canal Law which took effect by its terms on October 1, 1894 (L. 1894, ch. 338). The present Canal Law was enacted as part of the *Consolidated Laws of New York* (L. 1939, ch. 542).[8] Eventually, the Court of Claims was given jurisdiction to hear all canal claims.

Many attempts were made to amend Article III, Section 19 of the Constitution in later constitutional conventions after 1874. The effect of these proposed amendments would have been to provide for private claims by general laws.

Undoubtedly these proposed amendments were designed to eliminate the continuing practice of introducing special claim bills in the Legislature ranging from 25 to 150 annually. The object of the bills was to confer jurisdiction upon the Court of Claims for determination of those special claims but in almost every instance they were vetoed by the Governor on the ground that the jurisdiction of the Court of Claims should be governed by "general rules of application impartially " and not by legislation in favor of particular claimants. As a result, these bills served no useful purpose and by reappearing year after year simply cluttered up the Legislative process. Instead of enlarging the jurisdiction of the Court of Claims, the proposed amendments would have covered these cases by general legislation. The question may be raised whether general legislation is always adequate to give special relief in every meritorious case. This proposal, however, was never reported out of the committees which were considering it. Since 1917 there have been no further attempts to amend this section.

Therefore, by virtue of the constitutional provision of 1874 (art. III, sec. 19) it became necessary, unless the State was either to violate its obligations or was willing to surrender its immunity and subject itself to suits in the courts like other litigants, for the Legislature to create some board or tribunal which could pass upon and audit claims against it. (*Quayle v. State*, 192 New York 47 (1908), *People ex rel Swift v. Luce* 204 New York 478 (1912).

In 1876 (L. 1876, ch. 444) the Legislature created the State Board of Audit, consisting of the Comptroller, Secretary of State and the State Treasurer, with power to hear all private claims and accounts against the State except such as were then heard by the canal appraisers, to administer oaths and take testimony in relation thereto and to allow such sums as should be equitable. The board was also authorized to establish rules as to forms and methods of procedure before it.

In 1883 (L. 1883, ch. 205) the Legislature abolished the Office of Canal Appraisers and the State Board of Audit. In its stead, a Board ,of Claims was created with jurisdiction to hear, audit and determine all private claims against the State, and all counterclaims by the State against private claimants before the board. The board was composed of three commissioners appointed by the Governor for a term of six years. Although the jurisdiction of the board was comprehensive, nevertheless many special acts were passed giving the board jurisdiction to hear and decide special private claims.

In 1897 (L. 1897, ch. 36) the Legislature enacted "an Act to revise, amend and consolidate the several acts relating to the Board of Claims, to establish a Court of Claims, to amend the Code of Civil Procedure, etc. " In effect, the Board of Claims was continued under the designation "Court of Claims. " It had all the powers and jurisdictions of the old board. That its jurisdiction was not sufficient to cover all claims against the State was indicated by the last sentence of section 264 of the Code of Civil Procedure, as amended by that chapter. This sentence provided that where the Legislature conferred jurisdiction by special law, to hear and determine a claim, the State's liability was not implied thereby, but the State could defend and counterclaim in the same manner and to the same extent as if the claim had been presented under a general law. The existing commissioners were continued in office with the designation "Judges of the Court of Claims, " their successors to be appointed by the Governor with the advice and consent of the Senate for terms of six years. In 1906 (L. 1906, ch. 692), the terms of judges then in office were extended to 10 years from the date of the act and it was provided that they should continue in office until their successors were appointed and qualified.

In 1911 (L. 1911, ch. 856) the Court of Claims was abolished and reconstituted under the title of "Board of Claims, " its members to be known as commissioners instead of judges. This was accomplished by amending section 363 of the Code of Civil Procedure. The judges of the Court of Claims, then serving as such, were to be known as

---

[7] For an authoritative discussion of the laws creating the waiver of immunity relating to canal claims and their construction by the courts see *Davidson*, pp14-20

[8] See McKinney's *Consolidated laws of New York, Annotated*. Brooklyn. Edward Thompson Co. 1939. Book 7, Canal Law and the consolidators notes and historical notes on the origin of the present Canal Law, pp. 1-3.

commissioners and their terms were abrogated and their successors directed to be appointed by the Governor within 60 days after the passage of the act. The constitutionality of this statute was challenged by the judges of the Court of Claims in a *quo warranto* action to oust from office the commissioners of the Board of Claims appointed under chapter 856 of the Laws of 1911. The constitutionality of the statute was upheld in *People ex rel Swift v. Luce* 204 N.Y. 478 (1912) on the ground that tribunals to pass upon claims against the State were really quasi-judicial bodies, and calling such a body a court did not make it such. The practice of making the Court of Claims a political football, reconstituting it with every change of political control of the Legislature, under mere changes of nomenclature from the "Court of Claims" to "Board of Claims " and vice versa finally ceased in 1915. In the Constitutional Convention of 1915, commenting upon the varied history of the Court of Claims and its being subjected to political tinkering, Judge Clearwater said:

> " . . . the history of that court and of its predecessors, the Court and the Board of Claims, is a very illumining example of how an important body dealing with matters of the greatest moment to the people of the State and to the government of the State can be made the football of designing men, for purely selfish purposes. " (Revised Record, v. III, p. 2527)

In I915 (L. 1915, chs. 1 and 100) the Board of Claims in turn was abolished and the Court of Claims revived permanently. The court created in 1915 was continued by Laws of 1920, Chapter 922. An interesting résumé of its developments and manipulations may be found in the prevailing opinion of Chief Judge Cullen and the dissenting opinion of Judge Gray in *People ex rel Swift v. Luce*, 204 New York 478 (1912).

Several attempts were made to give jurisdiction to the Supreme Court of the State for claims against the State. In 1883 a constitutional amendment was proposed requiring claims against the State to be adjudicated by the Supreme Court or the Court of Appeals before payment by the Legislature, and in the Constitutional Convention of 1894 a motion was made that the Supreme Court be given such jurisdiction.

In 1915, Governor Charles S. Whitman in his message to the Legislature (Assembly Doc. 1915, No. 2, p. 12) asked it to consider a constitutional amendment providing for a permanent Court of Claims. In the alternative the Governor suggested legislation to confer jurisdiction upon a Claims Division of the Supreme Court.[9] Undoubtedly this message led to the enactment of the Laws of 1915, chapters 1 and 100 abolishing the Board of Claims and reviving the Court of Claims which has survived all further attempts to abolish it. The Court of Claims created in 1915 was continued by Laws of 1920, chapter 922 and by Laws of 1939, chapter 860.

In 1936 a bill was introduced in the Legislature to vest jurisdiction of the Court of Claims in the Supreme Court and to abolish the Court of Claims (Senate Intro. No. 111). The Committee on State Legislation of the Brooklyn Bar Association adopted a resolution on February 13, 1936, disapproving the bill. The present Court of Claims Act was passed in 1939 (L. 1939, ch. 860), effective July 1, 1939. This law repealed the old Court of Claims Act but revised the old act with a needed rearrangement and simplification thereof. The Committee on State Legislation of the Association of the Bar of the City of New York approved the proposed bill and reported on the numerous changes in form and substance which the proposed bill would effect, in its Memorandum No. 212 (1939) :

> " 'An Act in relation to the Court of Claims and the jurisdiction, practice and procedure therein.'
>
> "This bill would enact a new Court of Claims Act in the place of the present act, which would be repealed. The bill is a general revision of the present act and makes a needed rearrangement and simplification thereof. Besides numerous changes in form, important changes of substance which the bill would effect are as follows:
>
> "1. The bill would provide for a court of five judges appointed by the Governor, with the advice and consent of the Senate, for terms of 9 years each. The present act provides for 3 judges with 9 year terms and 2 temporary judges for terms not exceeding 3 years. In recent years the latter offices have always been filled.
>
> "2. The provision for waiver of immunity by the State has been rephrased so as to cover immunity 'from liability and action'. Heretofore the waiver in the Court of Claims Act related only to 'torts', although there were provisions for waiver as to contract and condemnation claims in other statutes.

---

[9] See also *Public papers of Governor Whitman*. 1915. pp. 43-44.

"3. The bill would confer on the Court of Claims jurisdiction to hear and determine claims against the State 'for the appropriation of any real or personal property or any interest therein, for the breach of contract, express or implied, or for the torts of its officers or employees while acting as such * * *'. The present provisions refer only to 'private claims', including claims for wrongful death and claims for damages to person or property. The provision for hearing counterclaims in favor of the State would be continued.

"4. The bill would provide a maximum period of 2 years after the death of a decedent within which to file claims for wrongful death. At the present time such claim may be filed within 2 years after the appointment of an executor or administrator, even though such representative takes office many years after the death of the decedent.

"5. The bill would permit all matters before the Court to be heard and determined by a single judge, at the same time providing that the presiding judge may order any claim or class of claims to be heard by more than one but not more than three judges, in which event the concurrence of two shall be necessary. Under the present law two judges must concur in a determination or judgment, although proof may be taken before a single judge.

"6. One of the most important changes proposed in the article relating to practice would permit the Court in its discretion, and upon such conditions as it deemed proper, upon the application of a claimant after notice to the Attorney General and 'upon proof that the examination of an officer or employee of the state or of a witness is material and so necessary that he cannot properly prepare for trial or present his claim to the court upon the trial and that the interests of justice require the same', to order the examination before trial of such officer, employee or witness. The present provisions for examinations before trial by the State would be continued, except that the Attorney General would be required to give five days notice thereof.

"7. The bill contains a new provision for payment by the Comptroller of such portion of a judgment from which no appeal has been taken by the State.

"The Act would take effect July 1, 1939.

"This bill, which has been in preparation for several years, was introduced at the instance of the judges of the Court of Claims, and meets with the approval of the Attorney General. The proposed revision would correlate and simplify the more numerous provisions of the old Act, as it has been amended from time to time. It would preserve the rights of claimants against the State as embodied in the present law, and by amplifying the provisions regarding waiver of immunity and jurisdiction should eliminate many of the controversies that have arisen over these points. The proposed changes in practice, giving claimants a carefully limited right to examination before trial and requiring payment by the State of portions of judgments not appealed from, likewise commend themselves as liberalizing the procedure in favor of claimants. It is believed that the elimination of the requirement that two judges concur in any determination or judgment will substantially reduce delays in the rendering of decisions, while at the same time the interests of the State will be adequately preserved through giving the presiding judge the right to require consideration by two or three judges in important cases. We think, therefore, that the proposed revision is well considered and desirable."

By article VI, section 23, of the Constitution, effective January 1, 1950, the Court of Claims finally became a constitutional court of record.

Further information about the New York Court of Claims can be found on the Court's website:
http://www.nyscourtofclaims.state.ny.us/faq.shtml