

one and the same. Nor was there any difficulty in the way of fixing the rent for the second term—that is to say, the term of the first renewal—because all the improvements on the land had been effected, or were deemed to have been effected, during the previous twenty-one years (the first term), and for all practical purposes the difference between the value of the improvements and the capital value of the land would be, or would approximate, the then real value of the land to the lessor or, as we would call it to-day, the “unimproved value” as defined by the Valuation of Land Act, 1925.

24. The difficulty came in later years when the rental for the third term—i.e., the second renewal term—fell due for assessment. In the meantime costs of labour and material had risen many-fold, so that if the lessee was to be entitled to deduct all his improvements, including the felling and clearing of bush and scrub and grassing at their value at the time of the assessment, and the rent was to be fixed on the basis of the residue left after deducting the improvements from the capital value, the rents, instead of increasing, would, or might, be very seriously reduced. Indeed, there have been cases in which valuers called by the lessee have endeavoured to set up a valuation of improvements actually in excess of the capital or gross value of the land, though it is only fair to say that such valuations have not been adopted by the arbitrators or umpire. It is this factor which was not foreseen by the authors of the Act of 1892 and the Legislature which enacted that Act. Upon the assumption that the basic idea of the plan was that the lessor should own the land and the lessee the improvements, the tendency of the working of the Act of 1892 under the changed economic conditions would be to raise the value of the improvements far beyond their original cost, and to depress the value of the lessor's interest and correspondingly reduce the rent, although in fact the real “unimproved value”—that is to say, the market value of the land—if considered without improvements at the time of valuation might be much higher than at the time of the previous assessment of rent.

25. The provisions relating to the periodical renewals of the leases are contained in clause 56 and the following clauses of the Schedule to the West Coast Settlement Reserves Act, 1892. Clause 56 provides that not sooner than three years and six months and not later than one year (now altered to five months by an amendment in 1913) before the end of the term for which the lease is granted a valuation shall be made by arbitration of the then value of the fee-simple of the lands then included in the lease and also a valuation of all substantial improvements of a permanent character made by the lessee during the term, and then in existence on the land then comprised in the lease. It also provides in a second paragraph that in the case of a lease granted under section 8 of the Act—that is to say, a converted lease which was formerly a confirmed lease or a Public Trustee lease—then for the purposes of clause 56 and the following clauses improvements paid for under the provisions of section 8, and which are in existence at the time of the valuation required by this section, shall be deemed to have been made by the lessee “*during the term.*” This last-mentioned provision is of importance when considering the judgment of the Supreme Court which will have to be referred to a little later.

26. Clause 56 then proceeds to say that after the making and publishing of the awards provided for by the preceding paragraphs of the clause, but not later than three months before the expiry of the term for which the lessee then holds the lands, the lessee shall elect by notice in writing delivered to the Public Trustee, whether he will accept a fresh lease of the said lands for a further term of twenty-one years from the expiration of the then term at a rental equal to £5 per cent. on the gross value of the lands after deducting therefrom the value of the substantial improvements of a permanent character as fixed respectively by the arbitration.

27. Clause 57 says that if the lessee shall not elect to accept a renewal or shall refuse or neglect to execute a lease within seven days after the same is tendered to him for the purpose, then a new valuation of the substantial improvements of a permanent character then on the said land shall be at once made by arbitration and a lease of the lands shall not later than one month before the end of the term for which the terminating lease was