

that the actual rental for the year ended 31st March, 1934, was £31,186. These figures do not accurately represent 5 per cent. of the residual value of the land, but that is because some slight adjustments and reconciliations have to be made which are immaterial from our point of view. For all practical purposes it may be taken that the rentals for the whole area for the year prior to the commencement of the arbitrations for the second-renewal leases amount to the total sum of, say, £31,000.

32. When the time was approaching for the taking of second-renewal leases the lessees formed an association called the West Coast Settlement Reserves Lessees' Association, which seems to have been promoted by a Mr. Richards, a professional valuer of Stratford, who was appointed arbitrator for the lessee in a very large number of cases. According to a press report of a meeting of the association in August, 1932, Mr. Richards (who is now an elderly man of over eighty and not in good health and did not appear before us) conceived that idea that "West Coast leases should not be on the basis of what some maniac would give . . . . Land had two values—exchange value and productive value . . . . The question for the association was to secure the establishment of a proper method of the valuation of the land and the improvements." Mr. Richards' conception of "productive value" as against "exchange value" for the purposes of the computation of rent on these leases is a heresy. The Supreme Court (comprising Stout, C.J., and Chapman and Hosking, JJ., in *Cox v. Public Trustee*, [1918] N.Z.L.R. 95 at page 100, expressly laid it down that by the "fee-simple" value or the "gross value of the lands" it is the exchangeable value in money or the marketable value which is meant.

33. The result of the first arbitrations (in 1934) was very unsatisfactory to the Native Trustee in that the rentals tended to be all below those for the first-renewal term, whereas, not unnaturally, the Native Trustee thought they should, save perhaps in some exceptional cases, have been substantially increased. This reduction in the rentals (amounting in respect of these particular leases to an aggregate of £953 15s. 8d.) did not happen by reason of a reduction in the gross or capital value of the land. On the contrary, the gross value—we are speaking generally and subject to possible exceptional cases—was largely increased, and the reduction of rent happened through the increased amount at which the improvements were valued and the consequent reduction of the residual value of the land, though to what extent the results may have been influenced by the adoption of Mr. Richards's "heresy" it is impossible to estimate.

34. Then there arose in 1934 what has been called the test or experimental case of a *Mrs. Crocker*, an assignee of one of the leases. In this case Mr. Richards was appointed arbitrator for the lessee, and Mr. Alan Good, a highly experienced farmer of Taranaki lands, was appointed by the Native Trustee as his arbitrator. At about this time Mr. Richards conceived another idea: that instead of the practice that had hitherto obtained of the two arbitrators visiting the land together and making their valuations, and, in the event of disagreement, calling in an umpire who also inspected the land, considered the valuations of the arbitrators, and then made his award, there should be a formal hearing in each case before the arbitrators and umpire sitting together at which witnesses should be called, and he insisted that the umpire should be what may be called a legal man—a retired Judge, a Stipendiary Magistrate, or a practising lawyer. Mr. Good, on the other hand, desired that the person to be appointed should be a practical farmer or an officer of the Valuation Department.

35. The arbitrators being unable to agree, Mrs. Crocker's solicitors applied to the Supreme Court to appoint an umpire, and, in another case (Riddick's), which was also apparently being treated as a test case, the Native Trustee made a similar application. These applications came before Mr. Justice Blair, who, on the 21st August, 1934, appointed as umpire a solicitor practising in Stratford. The Judge's minute says: "It being conceded that the matter must be conducted as an arbitration, the parties agreed that the only question was the selection of a suitable umpire"; and his view was that