

“the questions in issue were more suited for decision by a person with legal training coupled with some experience in land values.” It perhaps savours of irony that although Mr. Richards had insisted (as he was entitled to do) upon the arbitration being conducted as a hearing with all formalities, and the Judge appointed a solicitor because it was to be conducted in that way, the fact appears to be that, except in *Crocker's case* and quite possibly in a limited number of other cases, instead of the arbitration being conducted according to the new conception of Mr. Richards, and the arbitrators and umpire constituting themselves into a tribunal for hearing evidence and argument, the old practice was adopted of the arbitrators inspecting the lands comprised in a lease and making their valuations, and, in the event of their disagreement, referring the matter to the umpire : and the gentleman appointed by Mr. Justice Blair seems then, in various cases in which he was umpire, to have made his award on his own independent valuation.

36. We feel that the appointment made by Mr. Justice Blair was an unfortunate one, not because of any personal objections affecting the appointee, whose integrity has not been questioned, but because no question of law or legal principle was involved, and the case was essentially one, in our view, not for a lawyer or a Magistrate, but for a person of actual and considerable practical experience. However, that may be, the fact is that the awards made by the umpire very much increased the discontent and unrest.

37. The desirableness of the umpire being a practical man appears, we think, from a consideration of the judgment in *Cox v. The Public Trustee (sup.)*. In that case the Court was in substance considering the duties of arbitrators under clause 56 of the Schedule to the Act of 1892, and held (*inter alia*) that the actual cost of improvements was not an exclusive test of their value but may be examined and considered as an element in determining or testing that value if it should be thought necessary to resort to it for the purpose, and that the estimated cost of effecting similar improvements at the date of valuation may also be resorted to as a test of value. There can be no doubt that in practice arbitrators have valued improvements in the main on the basis of the cost of effecting similar improvements at the date of valuation. It should be stated that in *Cox's case* the Court was considering clause 56 in the light of an arbitration referable to a first-renewal lease. The question of the interpretation of the clause as referable to subsequent renewal leases that came before Mr. Justice Blair in *Crocker's case* had not arisen when *Cox's case* was decided : it did not emerge till 1934.

38. After the appointment of the umpire the arbitration in *Crocker's case* proceeded, and two persons on behalf of the lessee made a joint valuation, which was presented to the arbitrators. Those valuers valued the improvements at actually more than the gross or capital value of the whole property. Further reference will be made later to the values given by witnesses for both sides at the arbitration. Suffice it to say meantime that the joint valuation already referred to was £35 per acre for the gross or fee-simple value of the whole property, while the improvements were valued at £43 per acre. The two arbitrators were, of course, unable to agree, and it fell to the umpire to decide the matter.

39. By this time the Native Trustee had become very much perturbed. The reduced rental was being brought about partly, of course, by the increased value which was being placed upon improvements that had been effected many years before ; in particular, felling and clearing bush and scrub and grassing, which had cost so much per acre originally, were now being allowed on present-day costs, with the result that they were allowed at sums much in excess of what they cost originally, and the result was to depress substantially the residual value of the land upon which the rent had to be based ; but it is not unfair to assume that to some extent, though it is impossible to say how far, the result was contributed to by arbitrators and umpire adopting Mr. Richards's “productive value” theory. It then occurred to the Native Trustee or his advisers that the method adopted by the arbitrators might be wrong and that the meaning of clause 56 of the Schedule might be that the only improvements which could