

be included in the lessee's favour in ascertaining the residual value of the land were the improvements effected during the *then expiring term*. If that view were correct, the result would be, in most cases at all events, that no allowance at all could be made by way of deduction for such improvements as felling bush, clearing scrub, and grassing the land, or, indeed, for buildings or any other improvements effected during the original term. If that were the case, then obviously the rent would have been very largely increased beyond what it was under the first-renewal lease and may, indeed, have become a rack-rent. That was a very serious contingency from the point of view of the lessees.

40. The Native Trustee thereupon issued an originating summons in the Supreme Court for the purpose of obtaining the decision of the Court as to the true interpretation of clause 56 of the Schedule: and, pending the decision of the Court, the further hearing of the arbitration in *Crocker's case* was adjourned *sine die*. It must, however, be remembered that prior to the issue of this originating summons a number of arbitrations had already been held and awards made on the basis that the lessee was entitled to have all improvements, whenever effected, taken into account and deducted, and, as we have already said, the deductions were made on the basis of the then current costs; and this had resulted, in most cases, in the rent being reduced to a sum considerably below that reserved in the first-renewal lease (the reductions on these leases amounting, as stated in paragraph 33, to £953 15s. 8d.).

41. The originating summons was heard by Mr. Justice Blair on the 3rd April, 1935, and he delivered his judgment on the 17th July: *In re a lease: Native Trustee to Crocker*, [1935] N.Z.L.R. 1030. He held in favour of the Native Trustee, and, contrary to the argument on behalf of the lessees, that, on the true interpretation of clause 56, only those improvements were deductible from the gross or capital value for the purpose of ascertaining the residue on which the rental was to be based which had been effected during the term of the then existing and expiring lease. He decided in favour of the lessees on a minor point—viz., that the definitions of "improvements" or "substantial improvements of a permanent character" were to be read as having the meaning given in the interpretation section of the Land Act, 1924, instead of, as the Native Trustee had contended, the slightly narrower meaning in the Land Act, 1892.

42. Whether Mr. Justice Blair's judgment was right or wrong, it certainly created consternation amongst the lessees. It also came as a surprise to the Native Trustee, because there can be no doubt that, whatever be the true interpretation of clause 56, it had always been assumed in all quarters that all the improvements, whenever effected, were the property of the lessee, and were to be included, and that their value was to be deducted, for the purpose of ascertaining the basic value of the land on which the rental had to be computed. For example, we find in paragraph 865 of the report of Mr. Justice Smith's Commission in 1934 (Parliamentary Papers, 1934, G.—11), dealing with certain complaints made by Mr. North, as counsel for certain beneficiaries in the West Coast Settlement Reserves about their administration by the Native Trustee, the following statement: "Certain lands on the west coast of the North Island were, pursuant to the West Coast Settlement Reserves Act, 1892, vested in the Public Trustee in trust for the Native owners. The Public Trustee was given certain powers, including power to grant leases of the lands with perpetual rights of renewal on revaluations every twenty-one years, the lessees being entitled to the whole value of improvements." That, no doubt, was the general understanding, but the point dealt with in *Crocker's case* had not then arisen, and it probably was not in Mr. Justice Smith's mind at the time of his Commission's report. Until the point arose in *Crocker's case*, the Native Trustee's real complaint had been not that the improvements should not, or did not, belong to the lessee, but that, whatever may have been the cause, they had been overvalued, that the "residue" was in consequence undervalued, and that the lessor and the Maori beneficiaries had been prejudiced thereby.