

43. At the time of these events the Native Trustee was Mr. O. N. Campbell, a land surveyor by profession, who was appointed Acting Native Trustee in May, 1935, and was permanently appointed to the position in August, 1935. He had not had any previous experience in dealing with trusts and the law relating thereto. The Deputy Native Trustee was Mr. H. S. King, who had held that position since 1921 and who is a solicitor of the Supreme Court, though he has not been in private practice. Mr. King primarily had charge of all dealings relating to the matters into which we are inquiring, reporting from time to time as necessary to Mr. Campbell, who, as a rule, saw and discussed matters with the Minister when any interview or conference with the Minister was necessary.

44. Both Mr. King and counsel for the lessees doubted the correctness of Mr. Justice Blair's judgment, and the lessees contemplated, and would without doubt have taken, an appeal to the Court of Appeal. The matter was so important from the point of view of the lessees that it can scarcely be conceived that they would have been satisfied with an adverse judgment even in the Court of Appeal. If, then, the judgment of the Court of Appeal had been adverse to them, an appeal to the Privy Council could have been expected, and the final determination of the issues involved might easily have been delayed for two or three years; and, even then, whatever the final determination, the position would have had in some way to be met by legislation. The prospect was one that could not be viewed with equanimity or complacency by the parties, the Government, or Parliament.

45. Before proceeding further with our narrative, we would point out that the terms of our Commission apparently contemplate our reviewing Mr. Justice Blair's decision, because we are asked "(a) to inquire and report whether, due regard being had to the events and circumstances (so far as the same can be ascertained) leading to and surrounding the enactment of the said Act, there was some benefit or valuable right which can be regarded as having been designedly secured by the said Act to the beneficial owners of the reserves of which they have been deprived by those provisions of the said section 19 which, in the fixing of the amount upon which the rental of a renewal of a lease is to be calculated, permit to be deducted from the gross value of the lands comprised in the lease, the value of the substantial improvements of a permanent character whether made during the current or expiring term of the lease or during any former or expired term." the task of considering the judgment and expressing our own views upon its correctness is a somewhat invidious one, but, nevertheless, criticism of it is necessary, if only to enable all the circumstances to be seen in true perspective and to remove and prevent any false impression. Messrs. Samuel and Reedy feel that, as laymen, they are not in a position to criticize the judgment, and accordingly, at their request, this task is undertaken by the Chairman, and the views expressed in the six immediately following paragraphs must therefore be regarded as his personal opinion.

46. The Chairman feels bound to say, with all respect, that there are strong reasons for questioning the correctness of the judgment: it must at least be regarded as open to grave doubt, and there can be no certainty that it would have been upheld on appeal to a higher Court. Mr. Justice Blair assumed that clause 56 of the Schedule applies to any and every renewal of the lease and that the words "during the term" apply only to the expiring term at the time when the valuation is made of the rental for the ensuing term. That is the substance of his decision, but, at best, in the Chairman's opinion, it is exceedingly doubtful whether that is correct. It is very arguable that clause 56 applies only to the *first* renewal, and that the words "during the term" mean and apply to only the original period of twenty-one years. Alternatively, there is force in the contention that in several of the places where the word "term" is used, it means simply "period," while the crucial words "during the term" mean during the whole term of the lease—*i.e.*, the perpetual term—of which each period of twenty-one years is but a part. That contention derives support from section 8 (3) (c) of the Act, which speaks of the fixing of "the rent to be paid for the new lease *for the first twenty-one years of the term.*" There