

by the existing contracts except in cases where the tenants consent. We say “the system authorized by the existing contracts” so as to leave it open, in the absence of mutual consent to the contrary, for determination by the Courts (if any doubt exists) as to whether the process should be that of valuation or arbitration. If the Court should determine that the process is valuation we recommend that that finding should not be interfered with unless the tenant consents. As to all other leases (which we may shortly call “new leases”) we recommend that valuation and not arbitration be always adopted.

PROVISION FOR APPEAL.—RECOMMENDATIONS.

We also consider that there should be some judicial remedy afforded in cases where the valuers happen to have gone wrong in principle or have otherwise erred. To a certain extent, by a reference to the Supreme Court, the means of doing so exist at present in cases where arbitration applies. In cases where the proceeding is a valuation relief from error would, if available at all, be available only in some special cases. The decision in Aitken, Wilson, and Co.’s and Others cases shows that. We think a power of correcting errors of principle or of calculation or the like should be expressly given to the Court whether the proceeding is a valuation or an arbitration. We recommend, therefore, that a provision to the following effect should be enacted :—

If any determination by way of arbitration or of valuation, whether of the rent or of the value of the buildings or improvements, is that of two only of the arbitrators or valuers by reason of one of the arbitrators or valuers dissenting, or where the determination is that of an umpire only or of a single arbitrator where only one has been appointed, either party may within twenty-one days after the publication of the determination appeal to a Judge of the Supreme Court upon a Judge’s summons to the other party, which shall state specifically in what respects the determination is alleged to be erroneous, whether by reason of the principle applied in arriving at the determination or by reason of miscalculation or other error in law or fact. The appeal shall be based on such of the materials before or within the knowledge of the arbitrators or valuers, or the umpire or single arbitrator, as shall be presented by them or any of them or him to the Judge, and for the purposes of such appeal the arbitrators, valuers, and umpire or single arbitrator shall be competent and compellable witnesses as regards the grounds and reasons for the determination and dissent respectively. No other evidence shall be adduced on the appeal unless the Judge shall specially require any person to be examined before him on any particular point. Upon such appeal the Judge shall decide whether the determination appealed against is fair, and if not he may, if the parties consent to his doing so, fix any other rent which upon the materials submitted he finds to be fair; otherwise he may remit the determination to the arbitrators, valuers, umpire, or single arbitrator for their or his reconsideration, with a statement of opinion upon any of the points raised, which shall thereupon be followed. If as a result of the appeal either before the Judge or any remit the rent assessed is not altered, or is not altered by more than $7\frac{1}{2}$ per centum, the appellant shall pay the respondent the costs of the appeal and those incidental to any remit thereon. In all other cases the incidence of the costs shall be in the discretion of the Judge, and the amount of any costs to be paid by one party to the other shall be fixed by the Judge.

Your Commissioners consider that if a right of appeal on these lines is provided for valuers will know that they are liable to be called on to give reasons for their decisions, and to demonstrate that they have proceeded on correct principles, and this will tend to ensure well-grounded and consistent decisions. Had such a provision existed when the Aitken, Wilson, and Others cases were before the Court an order to reconsider the valuations in these cases would have been possible. The provision as to costs will prevent trivial appeals.

Application to Existing Leases.

As regards the existing leases and the leases arising out of them by renewal it should be provided that this enactment shall not apply except in those cases where the municipality and the lessee agree that it shall apply.