1948

NEW ZEALAND

REPORT OF ROYAL COMMISSION APPOINTED TO INQUIRE INTO AND REPORT UPON THE OPERATION OF THE LAW RELATING TO THE ASSESSMENT OF RENTALS UNDER LEASES OF THE WEST COAST SETTLEMENT RESERVES

Laid on the Table of the House of Representatives by Command of His Excellency

Royal Commission to Inquire into and Report upon the Operation of the Law relating to the Assessment of Rentals under Leases of West Coast Settlement Reserves

GEORGE THE SIXTH by the Grace of God, of Great Britain, Ireland, and the British Dominions beyond the Seas, King, Defender of the Faith:

To Our Trusty and Well-beloved Counsellor SIR MICHAEL MYERS, Knight Grand Cross of Our Most Distinguished Order of Saint Michael and Saint George, and to Our Trusty and Well-beloved HANARA TANGIAWHA REEDY, of Ruatoria, Farmer, and ALBERT MOELLER SAMUEL, of Auckland, Retired: GREETING.

WHEREAS by the clause numbered 56 in the Schedule to the West Coast Settlement Reserves Act, 1892 (hereinafter referred to as the said Act), it is, amongst other things, provided in respect of the renewal of a lease of land to which the provisions of the said Schedule apply and which is a renewal of a lease of any lands to which the said Act applies (hereinafter referred to as the reserves) that within the prescribed time before the end of the term for which the lease is granted a valuation shall be made by arbitration of the then value of the fee-simple of the lands then included in the lease, and also a valuation of all substantial improvements of a permanent character made by the lessee during the term and then in existence on the land then comprised in the lease: and,

further, that after the making and publishing of the awards therein referred to, the lessee shall elect as therein provided whether he will accept a fresh lease of the said lands for a further term of twenty-one years from the expiration of the then term at a rental equal to five pounds per centum on the gross value of the lands after deducting therefrom the value of the substantial improvements of a permanent character as fixed respectively by the arbitration:

And whereas it was ordered and declared by the Supreme Court on the 17th day of July, 1935, upon an originating summons in which the Native Trustee was the plaintiff and one, Violet Gwendoline Crocker, was the defendant, that the words "a valuation of all substantial improvements of a permanent character made by the lessee during the term and then in existence on the land then comprised in the lease" as used in the said clause numbered 56 meant a valuation of all such improvements in existence at the time of that valuation and made during the current or expiring term of twenty-one years only:

And whereas by subsection (5) of section 19 of the Native Purposes Act, 1935 (hereinafter referred to as the said section 19), section 56 of the said Act is amended by omitting from the first paragraph thereof the words "made by the lessee during the term and", and it is declared that such amendment shall be deemed to have taken effect from the 1st day of January, 1934:

And whereas it is represented that the reference in the said section 19 to section 56 of the said Act is intended to be a reference to the said clause numbered 56 in the Schedule to the said Act, and also that the effect of the amendment thereby made is that, in any case arising after the date from which the said amendment takes effect, the improvements in respect of which a deduction is, in accordance with the provisions of the said clause numbered 56, to be made from the gross value of the land, are improvements effected not only during the current or expiring term of the lease but also during any former or expired term of the lease:

And whereas the Maori beneficial owners of the reserves have, by petition to Parliament and otherwise, claimed and contended that, by the said section 19, they are suffering an injustice on account of the rentals under the renewed leases subject to the provisions of the said section 19 being consistently reduced and on account of other matters, and have prayed for the repeal of the said section 19:

And whereas the Government desires that inquiry should be made into the operation of the law so far as it relates to the method of assessing the rentals payable under renewed leases of the reserves, to the end that what is right, just, reasonable, and equitable shall be done as well to the beneficial owners of the reserves as to the lessees thereof:

Now know ye that We, reposing trust and confidence in your impartiality, knowledge, and ability, do hereby nominate, constitute, and appoint you, the said

Sir Michael Myers,
Hanara Tangiawha Reedy, and
Albert Moeller Samuel

to be a Commission—

(*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; and

(*b*) To inquire and report whether, due regard being had to the events and circumstances aforesaid and to the circumstances prevailing at the time of the enactment of the said section 19, the lessees of the reserves did, by virtue of those provisions of the said section 19 mentioned in the last preceding paragraph, obtain some benefit or valuable right which was otherwise than fair and reasonable; and

(*c*) To inquire and report whether the subsisting law so far as it relates to the method of assessing the rentals payable under renewed leases of the reserves works, or can be so construed as to work, any injustice upon the beneficial owners of the reserves or upon the lessees thereof; and

(*d*) If it be reported that the law so works, or can be so construed as to work, any injustice as aforesaid, then to make such proposals as you may think fit for the amendment of the law, and, in particular, of that portion of it, which, in the fixing of the amount upon which the rental is to be based, touches the ascertainment of the gross value of the lands and the value of the substantial improvements of a permanent character; and

(*e*) If, in your opinion, there should be any amendment of the law, to report whether such amendment should relate only to the renewal of leases in the future, or whether the same should apply to leases which have been renewed since the provisions of the said section 19 came into force, or whether some other provision should be made in respect of the leases so renewed; and

(*f*) If it be reported that some other provision should be made as aforesaid, then to recommend what form that provision should take; and

(*g*) Generally to inquire into and report upon such other matters arising out of the premises as may come to your notice in the course of your inquiries and which you consider should be investigated in connection therewith, and upon any matters affecting the premises which you consider should be brought to the attention of the Government:

And we do hereby appoint you, the said

Sir Michael Myers,

to be Chairman of the said Commission:

And for the better enabling you to carry these presents into effect, you are hereby authorized and empowered to make and conduct any inquiry under these presents at such times and places as you deem expedient, with power to adjourn from time to time and place to place as you think fit, and so that these presents shall continue in force, and the inquiry may at any time and place be resumed although not regularly adjourned from time to time or from place to place:

And you are hereby strictly charged and directed that you shall not at any time publish or otherwise disclose save to His Excellency the Governor-General, in pursuance of these presents or by His Excellency's direction, the contents of any report so made or to be made by you, or any evidence or information obtained by you in the exercise of the powers hereby conferred upon you except such evidence or information as is received in the course of a sitting open to the public:

And you are hereby authorized to report your proceedings and findings under this Our Commission from time to time if you shall judge it expedient so to do:

And, using all due diligence, you are required to report to His Excellency the Governor-General in writing under your hands not later than the thirty-first day of March, one thousand nine hundred and forty-eight, your findings and opinions on the matters aforesaid, together with such recommendations as you think fit to make in respect thereof:

And, lastly, it is hereby declared that these presents are issued under the authority of the Letters Patent of His late Majesty dated the eleventh day of May, one thousand nine hundred and seventeen, and under the authority of and subject to the provisions of the Commissions of Inquiry Act, 1908, and with the advice and consent of the Executive Council of the Dominion of New Zealand.

In witness whereof We have caused this Our Commission to be issued and the Seal of Our Dominion of New Zealand to be hereunto affixed at Wellington, this thirteenth day of August, in the year of our Lord one thousand nine hundred and forty-seven, and in the eleventh year of Our Reign.

Witness Our Trusty and Well-beloved Sir Bernard Cyril Freyberg, on whom has been conferred the Victoria Cross, Knight Grand Cross of Our Most Distinguished Order of Saint Michael and Saint George, Knight Commander of Our Most Honourable Order of the Bath, Knight Commander of Our Most Excellent Order of the British Empire, Companion of Our Distinguished Service Order, Lieutenant-General in Our Army, Governor-General and Commander-in-Chief in and over Our Dominion of New Zealand and its Dependencies, acting by and with the advice and consent of the Executive Council of the said Dominion.

[L.S.] B. C. FREYBERG, Governor-General.

By His Excellency's Command—
P. FRASER, Native Minister.

Approved in Council—
W. O. HARVEY, Clerk of the Executive Council.

To His Excellency the Governor-General, Lieutenant-General Sir Bernard Freyberg, V.C., G.C.M.G., K.C.B., K.B.E., D.S.O.

MAY IT PLEASE YOUR EXCELLENCY,—

1. Having completed the inquiry directed by Your Excellency's Commission of the 13th August, 1947, in the matter of the West Coast Settlement Reserve leases, we now have the honour to make our report.

2. We held sittings at Hawera on the 26th, 27th, and 28th days of November and the 1st and 2nd days of December, and at Wellington on the 12th day of December. Messrs. North, K.C., and Houston appeared for the West Coast Settlement Reserves Lessees' Association, and Messrs. Spratt and Anderson for the Maori beneficial owners of the lands. The Native Trustee, Mr. Shepherd, was also present throughout the proceedings. At the outset, Mr. Spratt said that he and Mr. Anderson appeared for the Native Trustee as well as the beneficial owners, but, in effect, they were concerned only with the interests of the beneficial owners, and their representation was treated as limited accordingly.

3. We should, we think, record the fact that the Native Trustee and his officers gave every possible assistance to both counsel and the Commission. All the files and records available were collected by the Native Trustee's office and placed at the disposal of the Commission. We are particularly indebted to Mr. Sheehan, Mr. Harris, and Mr. Plane (who also acted as Secretary to the Commission), each of whom spared no pains to prepare various tabulated and other statements to assist counsel and the Commission in what, at the outset, appeared to be, and actually has been, a very difficult and complicated business, but which we think we are now able to reduce to terms of comparative simplicity. A considerable volume of evidence was tendered on both sides, both oral and documentary. We also had the advantage of hearing very full addresses from the leading counsel on each side.

4. We think it desirable, before entering into any detailed statement, to indicate briefly the substantial effect of our conclusions, and we say at once that our investigation leaves no doubt in our minds, and, we think, could leave no doubt in the mind of any reasonable person viewing all the circumstances dispassionately that the Maori beneficial owners of these lands have suffered a grave injustice as the result primarily of the action of the Legislature in 1935 in rushing through in the last hours of the session, and, be it said, the final session of a moribund Parliament, a hastily prepared and ill-considered enactment (the implications of which we cannot believe were appreciated or understood) vitally affecting the interests of a large body of Maoris, without any intimation to them, without their knowledge, and without their having any opportunity of being heard by way of protest. The extent of that injustice is not capable of exact assessment in terms of money, but the Maoris claim that it may amount to anything up to possibly £5,000 or £6,000 a year; though, whatever the amount may be, to what extent it may have been contributed to by other causes such as the adoption of the "heresy" to which we shall have to refer later, and for which the responsibility cannot be imputed to Government or Parliament, it is impossible to say. Be that as it may, the fact is that the injustice, whatever its contributory causes and whatever its extent, has continued year by year, and in the absence of remedial legislation, may continue indefinitely.

5. But it would be quite unfair to cast all the responsibility and blame for this state of things upon the Government which introduced, and the Parliament which enacted, the legislation in 1935. As the result of the election in that year a new Government came into power. The mischief created as the result of the 1935 Act had become obvious

very soon after the Act was passed, and in 1936 a deputation of the Maoris complained to the then Prime Minister, the late Right Honourable Mr. Savage, and asked for remedial legislation that year. In the meantime the then Native Trustee and his deputy had themselves become very much perturbed and alarmed at the position and suggested remedial legislation. In October, 1936, the Native Trustee asked for Ministerial instructions on the question whether remedial legislation was to be introduced, only to be met with the Ministerial minute "No action." The result has been that, instead of the injustice being remedied at once, it has continued for eleven years longer, making the solution of the problem much more difficult.

6. The net result is that a serious injustice has been done. It never should have been done at all; but, if done, it could and should have been remedied promptly—indeed, in the very next year. That it should be remedied now without further delay is, in our opinion, due no less to the dignity, self-respect, and sense of justice of the community as a whole than to the moral right of the Maoris to the redress of their legitimate grievance.

7. We are conscious that our comment may be regarded as strong, but, seeing that a great wrong has been done, and that the remedy may cost the country a considerable sum of money, we consider that we would be doing a disservice to the country if we permitted ourselves to gloss over the facts of the case and the acts and omissions that have brought about this result. We might add that our criticism is probably much less harsh than was the criticism in 1892 by various prominent legislators themselves regarding previous enactments and regulations affecting the West Coast Settlement Reserves and the administration thereunder. We recognize that it would be unfair merely to make our comments without stating the facts on which they are based. Those facts will be clearly stated later in this report.

8. During the proceedings before us counsel for both parties discussed at some length the history of these lands from the year 1863, and of the leases granted by Maoris prior to 1880, and by the Public Trustee during the "eighties" and until the passing of the West Coast Settlement Reserves Act, 1892: it was not until the enactment of the Native Trustee Act, 1920, that the Native Trustee took over the control of the reserves from the Public Trustee. It is not necessary for us to enter into any lengthy dissertation upon the historical aspect of these matters. Up till 1892 the position was, from a practical point of view, exceedingly difficult. The land comprising these reserves was virgin country, very much of it in brush and scrub. It was necessary to settle the country, but would-be settlers were naturally hesitant to take up leases unless they had security of tenure and the prospect of a reasonable return for their expenditure in effecting the improvements which were essential to the working of the lands. The leases which had been given by Maoris were for a term of twenty-one years with no right of renewal, and no provision for compensation for improvements. The leases given by the Public Trustee were originally for twenty-one years, later converted under legislative authority to leases for thirty years, and under these leases (if valid) the lessee had certain rights of renewal and the right to obtain compensation for improvements, which compensation, however, was limited to certain improvements and to a maximum of £5 per acre.

9. The leases granted by the Maoris themselves were of at least doubtful validity, and power was given by section 18 of the West Coast Settlement Reserves Act, 1881, and subsequent enactments to the Governor in Council to confirm any such lease for the term for which it was made; and under that power the leases were confirmed and were subsequently described in ordinary parlance as "confirmed leases," and we shall hereinafter refer to them by that description. As already stated, there was no provision for the renewal of those leases or for compensation to the lessees for improvements, and upon the expiration of the lease the improvements would belong to the Maori lessor.

10. So far as concerns the leases granted by the Public Trustee prior to the enactment of the West Coast Settlement Reserves Act, 1892, which we shall hereinafter, for brevity and convenience, refer to as the "Public Trustee leases," they, too, were in certain respects either invalid or, at least, of doubtful validity.

11. It was recognized by both the Government and the Legislature of the day—and, indeed, it was obvious—that this state of things could not be allowed to continue. It would have been unfair to the lessee who had taken his " Public Trustee lease " in good faith and had effected substantial improvements at considerable cost, and, on the other hand, it would have been unsatisfactory in the long run to the beneficial owners. In the first place, up to that time—(*i.e.*, 1892)—only relatively small portions of the total area of the reserves had been leased. It was essential that settlement should be promoted, and this could only be done at that time either by selling the land outright to European purchasers, or by devising a leasing scheme which would secure a fair and adequate rental to the beneficial owners and at the same time give reasonably satisfactory conditions to the lessee. Moreover, as to both the confirmed leases and the Public Trustee leases, if the lessee had no right of renewal and no right to compensation for improvements, his only incentive would have been to work the land to his own personal advantage and profit (though in the then circumstances there may have been both working and capital loss rather than profit), and this might well have resulted in the land going back to the Maoris in an impoverished condition and with the improvements neglected and deteriorated, to the great disadvantage of the beneficial owners and of the country generally.

12. In 1892, after careful inquiries (including exhaustive investigations by Parliamentary Committees) had been made into the various questions affecting these reserves, sale of the lands being contrary to the policy of Government and Legislature, a new leasing scheme of a comprehensive nature was devised by the Government of the day and was passed into law as the West Coast Settlement Reserves Act, 1892. Both lessees and Maoris had had the matter previously referred to them, and it is correct, we think, to say that the proposals had their general approval. The Bill containing the scheme was debated at considerable length in both branches of the Legislature, and speakers on both sides of political thought, who were very critical of the previous legislation and of the happenings in connection with the leases that had been granted, united in acclaiming the new scheme as being not only able and ingenious (as it certainly was), but as an earnest and honest attempt (as it also undoubtedly was) to settle finally a difficult and vexed problem : and it was hoped and expected that at last a plan had been devised which was fair and reasonable to all parties and would be a permanent and just settlement of all mutual grievances. And so it should and would have been but for subsequent developments, mainly economic, in the general conditions of the country, which were not forseen and which the legislators of those days can hardly be blamed for not having anticipated.

13. Under the scheme of the Act of 1892 the Public Trustee leases were validated by section 7, and the lessees were given by section 8 the right to surrender their leases and take new leases with the right of perpetual renewal : and the holders of confirmed leases were given the same right. The Public Trustee was also empowered by section 6 to grant leases with the right of perpetual renewal in respect of the large areas which had never been leased at all and which were still virgin country.

14. But, as a condition of the holder of a confirmed lease surrendering that lease and obtaining a lease which would be perpetually renewable, he was required to pay in cash to the Public Trustee the value of all improvements which would otherwise have passed to the lessor on the expiration of the term of the lease. Similarly, the holder of a Public Trustee lease who wished to surrender and convert was required to pay to the Public Trustee the difference between the £5 per acre, the compensation to which he would have been entitled under his validated lease, and the full value of the improve-

ments. In other words, the holders of the confirmed leases and of the Public Trustee leases who surrendered and converted in effect bought the reversion of the improvements from the Maoris at full value. That would seem to have been a perfectly fair arrangement for both parties—for the lessor who sold his right to the improvements and the lessee who retained the improvements for which he paid full consideration. The amounts actually paid for improvements by the lessees who converted aggregated £19,581.

15. That amount, under section 13 of the Act of 1892, had to be invested by the Public Trustee and the income paid from time to time to the Native owners entitled thereto. But by section 10 of the West Coast Settlement Reserves Amendment Act, 1915, the Public Trustee was authorized and directed to disburse these and other capital funds in his hands to the beneficial owners, and that was duly done.

16. In passing it should perhaps be said that a number of the holders of confirmed leases and Public Trustee leases did not convert their leases into perpetually renewable leases, but those cases were dealt with by the special legislation comprised in the West Coast Settlement Reserves Amendment Act, 1913. That enactment was a compromise between the conflicting contentions of the Public Trustee and the lessees, and, on the whole, the settlement effected was advantageous to the Maoris. The new leases which were granted under that Act to the lessees have all expired and the lands comprised therein are not within the ambit of our inquiry.

17. To continue now with the scheme of the Act of 1892. The Public Trustee was empowered to grant leases with the right of perpetual renewal in the manner and subject to the provisions of the Act and those set forth in the Schedule thereto. It must be remembered that at that time the lands referred to in section 6 of the Act, representing by far the greater proportion of the reserves, were entirely unimproved, unproductive, and to all intents and purposes useless. By the holders of Public Trustee leases and confirmed leases being given the option of converting their leases into perpetually renewable leases, conditionally on their paying the lessor the value of the improvements, the lands comprised in the converted leases for all practical purposes (so far as the terms of leasing were concerned) were brought into the same category as the lands comprised in section 6 of the Act, thus setting up a uniform system.

18. The idea underlying the plan of the Act of 1892 was that, though the leases were perpetually renewable, the rental should be fixed by a process of arbitration for each successive period of twenty-one years, and, assuming that the intention of the Act was that the lease should be what was then, and still is, described in New Zealand as a "Glasgow lease," though this description may not be a correct one, the lessor would in substance, retain the land at its "prairie value"; the lessee would own the improvements; and the rental would be based upon the prairie value. That value, of course, would be subject to variation, but in the ordinary course would be expected to rise, certainly not to fall. This system of so-called Glasgow leases has been very largely adopted under appropriate legislation by local authorities in respect of the lands constituting their endowments, and, on the whole, we think it may be said that the system has been successful so far as urban lands are concerned. Theoretically, there is no reason why it should not be successful also in respect of rural lands.

19. In theory, therefore, still assuming that the intention of the 1892 Act was that all improvements were to belong to the lessee and that the rent for each successive period was to be based on the value of the land alone without improvements, the scheme of the 1892 Act was ingenious, sound, and fair to both lessor and lessee. The holder of a confirmed lease or Public Trustee lease who converted his holding into a perpetually renewable lease had paid the Maoris for all improvements which, but for the conversion, would have passed to the lessor, and he was therefore in the same position as if he had effected his improvements anew at his own expense during the first term of twenty-one years of his perpetually renewable lease. He owned the improvements and took his new lease of the land at a rental based on the prairie value, which belonged to the lessor.

20. At that time what is now understood as the " unimproved value " of land according to the Valuation of Land Act had apparently not been thought of. It might be thought, and it evidently was thought in 1892, that the value of a piece of land considered without improvement (which was then regarded as the unimproved value) was the difference between the value of the improvements and the gross or capital value of the land, the residue left after deducting the value of the improvements from the gross or capital value. In that process the gross or capital value, which may be taken to be the selling value in the market, would be first ascertained, then the improvements would be valued and their value deducted, and the residue would be the value of the land *simpliciter*, or what might be called the unimproved value. Indeed, that was the scheme which had been laid down in respect of perpetual leases of rural land under the Land Act, 1885.

21. It was also the plan prescribed by the Government Valuation of Land Act, 1896, to provide for the periodical valuation of all landed properties in New Zealand. The particulars to be ascertained in respect of valuations under that Act were : the area of the land, its description, the number and nature of the buildings thereon and the total capital value thereof ; the nature and total capital value of all improvements other than buildings ; the total capital value of the whole property ; and the unimproved value of the land, " being the difference between the total capital value of the whole property and the total capital value of all buildings and other improvements as aforesaid."

22. It was found, however, that that system did not work satisfactorily and that it did not give the true unimproved value of the land—that is to say, the sum that the owner's estate or interest might be expected to realize in the market if no improvements had been made on the land. The law was therefore altered in 1900 (Government Valuation of Land Act), and the law as so altered by that Act and a subsequent amendment of 1912 is now contained in the Valuation of Land Act, 1925. By the new legislation (now the Act of 1925) " capital value " of land was and is defined as meaning the sum which the owner's estate or interest therein, if unencumbered by any mortgage or other charge thereon, might be expected to realize at the time of valuation if offered for sale on such reasonable terms and conditions as a *bona fide* seller might be expected to require. The term " improvements " was also defined, but it is not necessary for our purposes to refer to it, at all events at present. " Unimproved value " of any land was defined as meaning " the sum which the owner's estate or interest therein, if unencumbered by any mortgage or other charge thereon, might be expected to realize at the time of valuation if offered for sale on such reasonable terms and conditions as a *bona fide* seller might be expected to impose, and if no improvements (as hereinbefore defined) had been made on the said land." There was also a definition of " value of improvements," which was defined as meaning " the added value which at the date of valuation the improvements give to the land." It will be seen that the scheme of this Act is different from the scheme of the 1896 Act and that of the West Coast Settlement Reserves Act, 1892. The " unimproved value " is no longer obtained by first ascertaining the capital value of the land as improved, then the value of improvements, and then deducting the one from the other ; but under the new scheme the unimproved value is ascertained first, then the improvements are valued, and the sum of the unimproved value and the value of improvements so ascertained should agree with the " capital value " of the land. In the result the " unimproved value " as now understood may be quite a different thing from the " residue " upon which the rental was based for the purpose of computing the rent under the West Coast Settlement Reserves perpetually renewable leases.

23. There was, of course, no difficulty in fixing the rental for the first term of twenty-one years because the lands were actually in an unimproved state or were deemed to be so in the case of converted leases by reason of the payments made by the lessees representing the value of improvements. The position at that time was therefore that the unimproved value was, in substance, the capital value : the two things were really

one and the same. Nor was there any difficulty in the way of fixing the rent for the second term—that is to say, the term of the first renewal—because all the improvements on the land had been effected, or were deemed to have been effected, during the previous twenty-one years (the first term), and for all practical purposes the difference between the value of the improvements and the capital value of the land would be, or would approximate, the then real value of the land to the lessor or, as we would call it to-day, the " unimproved value " as defined by the Valuation of Land Act, 1925.

24. The difficulty came in later years when the rental for the third term—*i.e.*, the second renewal term—fell due for assessment. In the meantime costs of labour and material had risen many-fold, so that if the lessee was to be entitled to deduct all his improvements, including the felling and clearing of bush and scrub and grassing at their value at the time of the assessment, and the rent was to be fixed on the basis of the residue left after deducting the improvements from the capital value, the rents, instead of increasing, would, or might, be very seriously reduced. Indeed, there have been cases in which valuers called by the lessee have endeavoured to set up a valuation of improvements actually in excess of the capital or gross value of the land, though it is only fair to say that such valuations have not been adopted by the arbitrators or umpire. It is this factor which was not foreseen by the authors of the Act of 1892 and the Legislature which enacted that Act. Upon the assumption that the basic idea of the plan was that the lessor should own the land and the lessee the improvements, the tendency of the working of the Act of 1892 under the changed economic conditions would be to raise the value of the improvements far beyond their original cost, and to depress the value of the lessor's interest and correspondingly reduce the rent, although in fact the real " unimproved value "—that is to say, the market value of the land—if considered without improvements at the time of valuation might be much higher than at the time of the previous assessment of rent.

25. The provisions relating to the periodical renewals of the leases are contained in clause 56 and the following clauses of the Schedule to the West Coast Settlement Reserves Act, 1892. Clause 56 provides that not sooner than three years and six months and not later than one year (now altered to five months by an amendment in 1913) before the end of the term for which the lease is granted a valuation shall be made by arbitration of the then value of the fee-simple of the lands then included in the lease and also a valuation of all substantial improvements of a permanent character made by the lessee during the term, and then in existence on the land then comprised in the lease. It also provides in a second paragraph that in the case of a lease granted under section 8 of the Act—that is to say, a converted lease which was formerly a confirmed lease or a Public Trustee lease—then for the purposes of clause 56 and the following clauses improvements paid for under the provisions of section 8, and which are in existence at the time of the valuation required by this section, shall be deemed to have been made by the lessee " *during the term.*" This last-mentioned provision is of importance when considering the judgment of the Supreme Court which will have to be referred to a little later.

26. Clause 56 then proceeds to say that after the making and publishing of the awards provided for by the preceding paragraphs of the clause, but not later than three months before the expiry of the term for which the lessee then holds the lands, the lessee shall elect by notice in writing delivered to the Public Trustee, whether he will accept a fresh lease of the said lands for a further term of twenty-one years from the expiration of the then term at a rental equal to £5 per cent. on the gross value of the lands after deducting therefrom the value of the substantial improvements of a permanent character as fixed respectively by the arbitration.

27. Clause 57 says that if the lessee shall not elect to accept a renewal or shall refuse or neglect to execute a lease within seven days after the same is tendered to him for the purpose, then a new valuation of the substantial improvements of a permanent character then on the said land shall be at once made by arbitration and a lease of the lands shall not later than one month before the end of the term for which the terminating lease was

granted, be put up to public competition by public tender for such term of twenty-one years on the terms and conditions set out in the clause. Those terms and conditions provide that the upset rent shall be such rent as shall be fixed by the Public Trustee, not being a greater sum than that at which the lease was offered to the outgoing lessee: the amount of such upset rent shall be stated in the advertisements calling for tenders: if any person other than the outgoing lessee be declared the purchaser, he shall, within seven days after the day fixed for opening the tenders, pay over to the Public Trustee the amount of the value of the substantial improvements of a permanent character as fixed by the second arbitration: when the day arrives on which the terminating lease expires, the Public Trustee shall pay over to the outgoing lessee the amount received by him from the incoming lessee for improvements. If the lease is not sold to some person other than the lessee or if such person fails to execute the lease or to pay the sum offered by him, the lessee has a further option under clause 58 to accept a fresh lease " as aforesaid," and in the event of his not so electing he may continue as lessee of the lands from year to year so long as he pays the rent reserved by his lease—that is, the lease for the original term—or until the Public Trustee should succeed in finding a purchaser of the new lease.

28. The words " improvements " and " substantial improvements " were defined by section 2 of the Act as having the same meaning as the term " substantial improvements of a permanent character " in the third section of the Land Act, 1885. It is unnecessary to say more than that definition is in very wide terms and included (*inter alia*) reclamation from swamps; clearing of bush, gorse, broom, sweetbriar, or scrub; cultivation, planting with trees or live hedges; the laying-out and cultivation of gardens; fencing; and the erection of buildings. This definition was altered and somewhat extended by later Acts, and is now contained in the Land Act, 1924. We do not think that the extensions need be regarded as material for the purposes of this report.

29. For the purpose of clarity we shall refer to the leases for the first period of twenty-one years granted under the 1892 Act as " first-term leases "; leases for the second term of twenty-one years we shall refer to as " first-renewal leases "; and leases for the third term we shall refer to as " second-renewal leases." There are now in existence 474 leases in all which are subject to the 1892 Act, and are held by 429 lessees. The number of Maori beneficial owners is 4,272. The total of the various areas comprised in the leases is 71,643 acres. The total area was originally much greater but has been gradually reduced by Crown purchases, taking of land under the Public Works Act, and perhaps in other ways. A number of leases were granted very soon after the passing of the Act of 1892, but it was not until 1919 that the last of the lands was leased, and, as the original term was twenty-one years, it follows that since 1940 there have no longer been any first-term leases in existence.

30. The first of the first-renewal leases were granted in 1913 and the last in 1940. Inasmuch as the original leases were granted on different dates up till 1919, it follows that in some cases the first-renewal lease is still in existence, and the last of these first-renewal leases will not expire until 1961. The number of first-renewal leases still in existence, however, is only 50.

31. Speaking generally, no complaint has been, or, we think, could reasonably be, made by the beneficial owners with regard to the rents for either the original term or the first-renewal term. The aggregate of the rents reserved by the leases for the original term of the total area of 71,643 acres still held by the Native Trustee was £13,360 5s. 6d. per annum. In 1913 and the following years, when the original terms expired and the rental for the first-renewal terms had to be fixed by arbitration under clause 56 of the Schedule to the 1892 Act, the aggregate gross value of the lands was, according to the various arbitrations, £998,558 11s. 11d., of which improvements represented £383,476 7s. 2d. and the residue was £615,082 4s. 9d. The rentals, which were supposed to be 5 per cent. of the residual value of the land, totalled £30,993 4s., and we were told

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. Richard's 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

"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

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.

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 complacence 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

can be no doubt that in the second paragraph of clause 56 the words " during the term " *must* have one or other of those meanings, and, whatever the real meaning is, the same meaning must be given to the same words in the first paragraph. If the true interpretation is that clause 56 applies only to the first renewal, then the provisions with regard to subsequent renewals must be spelled out from clause 60, which reads thus : " All the provisions of this Act (except the provisions as to cultivation) as regards the tenders for sale, form, and conditions of first leases made under this Act and otherwise howsoever as regards such leases, shall, *mutatis mutandis*, apply to the sale, form, and conditions of the new or renewal leases above mentioned, and to the lessees thereunder and otherwise howsoever, and except as herein is otherwise expressly provided." If that meaning is correct, then the judgment could not be supported. Nor could it be supported, of course, if the suggested alternative contention is the correct one—viz., that the words " during the term " mean during the whole of the perpetual term (of which each period of twenty-one years is but a part). This line of argument does not seem to have been pressed upon Mr. Justice Blair as it should have been.

47. There are other grounds on which Mr. Justice Blair's judgment relies and which are open to question. For instance, he places much reliance upon the provisions of clause 57 of the Schedule, which says that if the lessee shall not elect to accept a renewal, then a new valuation of the substantial improvements of a permanent character then on the land shall be at once made by arbitration in like manner and subject to the same provisions in all respects as the arbitration under clause 56, and that valuation fixes the amount that an incoming tenant would have to pay for the improvements. The mere fact that the two valuations for improvements under clause 56 and clause 57 respectively may result in different amounts does not carry the implications mentioned in the judgment. It is necessary to have the two valuations because the first valuation under clause 56 may be made as long as three years and six months before the end of the term, whereas the valuation under clause 57 might be made only just before the end of the term, and there might well be a considerable variation in the improvements and their value during the interval. The provisions of clause 57, therefore, do not have the significance that Mr. Justice Blair attaches to them, and do not seem to help the conclusion at which he arrived.

48. Then again Mr. Justice Blair suggests that any apparent injustice to the lessee resulting from the fact that all improvements made previously to the then current term would go to the lessor is mitigated by the fact that, if a new lease is sold to some person other than the lessee, the incoming lessee has to pay the outgoing lessee in cash the full value of *all* the outgoing lessee's improvements whenever effected. This would be quite an illusory benefit to both the outgoing lessee and the beneficial owners. Illusory, because it would mean that the incoming lessee would have to pay for the improvements twice over—first, by the payment of the actual cash value to the outgoing lessee, and, second, by having to pay the lessor during the term of the renewal lease a rack-rent—that is to say, 5 per cent. on the residual value of the land itself and 5 per cent. upon his own capital represented by the value of all the improvements which had been effected prior to what has been referred to as the expiring term. And worse still would be the case of the lessee who had converted a " confirmed lease " : he would have had to pay three times for the whole of his improvements—first in the cost of effecting the improvements, then by payment to the lessor on conversion of his lease, and then again (if he accepted a renewal) by the payment of a rack-rent. The lessee who had converted a " Public Trustee lease " would be in the like position in respect of his improvements in excess of £5 per acre, while he would be paying twice for the first £5 per acre of improvements. It is hardly conceivable that any ordinary prudent person would become an " incoming lessee " by taking up a renewal lease on such terms, and, if that is so, the provision relied on by Mr. Justice Blair as mitigating an apparent injustice to the lessee would in practice be illusory. It would also be illusory to the beneficial owners

because either a substantial reduction in rent would have to be made to secure a purchaser, or, if no purchaser could be found for the renewal lease, the lessee would remain in possession for an indefinite period at the rental reserved under the expiring lease.

49. It should also be stated—but this does not appear to have been placed before Mr. Justice Blair—that as far back as 1894 the Legislature enacted by section 2 of the Trustees Acts Amendment Act of that year (see now section 97 of the Trustee Act, 1908), that it should "be lawful for a trustee . . . to invest any trust funds in his hands in advance by way of mortgage on the security of . . . any Native land held on perpetual lease under the West Coast Settlement Reserves Act, 1892," subject to certain conditions, one of which was that "no such advance shall be made unless the lessee is entitled under his lease to compensation for all improvements made by him on the land comprised in his lease." In other words, the Legislature made those leases an authorized trustees' security. It might, of course, be suggested that, even if Mr. Justice Blair's decision is right, the lease does provide (by virtue of the clauses in the Schedule to the Act of 1892) for compensation in the event of the lessee refusing to take a renewal lease and some other person purchasing the renewal. But the suggestion would be a cynical one because the improvements would go to the lessor on the expiration of the term and the lessee would not receive any payment for them except from a purchaser of the renewal lease in the unlikely event of one being found: so that the trustee who made the advance under the authority of an Act of Parliament would find that his security was in effect a sham. Any interpretation that would lead to such a result would be rejected by any Court unless no other more reasonable interpretation were possible.

50. If the judgment of the Supreme Court was right—that is to say, if Mr. Justice Blair's interpretation of the provisions of the Schedule to the Act is correct—then there was a valuable right given to the beneficial owners by the Act of 1892 of which they have been deprived by section 19 of the Act of 1935, but the result would have been a grave hardship to the lessees amounting to a moral injustice, inasmuch as it connoted, to all intents and purposes, a confiscation of their improvements; and it is no exaggeration to say that it would have involved many of them in financial ruin. If, on the other hand, the judgment is wrong, it would follow that the Act of 1935 (however much it may be condemned otherwise) did not deprive the Maori owners of any right given to them by the Act of 1892, but that result would have been a very serious hardship to the beneficial owners amounting to a moral injustice. It would be unreasonable to think, whatever be the meaning that the words of the clauses in the Schedule may be held to bear, that Parliament in 1892 "designed" or "intended" either the one injustice or the other.

51. While, therefore, it might be invidious to express a definitive opinion as to the correctness or otherwise of Mr. Justice Blair's decision, that aspect of the matter had necessarily to be considered, and what has been said shows that at best the matter is not free from difficulty and doubt; it is intended to present a true perspective of the situation as it existed in 1935; and it shows the reasons which made it necessary that something should be done to clarify and ameliorate a very difficult position.

52. In all this doubt and uncertainty Mr. King very wisely took the view that some settlement, just to both the lessees and the beneficial owners, should if possible be arrived at without further litigation, and amended legislation was the only way in which the difficulties could be properly met. Ordinarily, Parliament does not legislate in matters of this kind until the parties have exhausted their legal remedies, and, as events have turned out, it might have been better if that principle had been adopted in this case; but still it cannot be said that a departure from the principle was not justified because further proceedings by way of exhausting the legal remedies of the parties would have resulted in great expense and great delay, and, in the long run, would have been fruitless

inasmuch as, whichever way the issue was ultimately decided, an adjustment by legislation would have been necessary in the final resort. But amended legislation should not have been enacted without notice to the beneficial owners and without their having had the fullest opportunity of being heard.

53. In these circumstances Mr. King suggested to counsel for the lessees that amending legislation should be devised, and the appeal by the lessees from Mr. Justice Blair's judgment not proceeded with. This course was suggested by Mr. King on or about the 14th August, 1935, but nothing of any importance was done until the 25th September, 1935, when a conference was held in Hawera. At that conference there were present Mr. King and Mr. Anderson (solicitor for the Native Trustee), and, for the lessees, Messrs. W. O. Williams, Meuli, Robinson (secretary of the Lessees' Association), and Houston. A discussion took place which lasted the whole morning. The representatives of the lessees adhered to and contended for the wording of the 1892 Act as they understood it (which was contrary, of course, to Mr. Justice Blair's judgment), and at one o'clock the meeting broke up, nothing having been agreed.

54. At that stage there is an unfortunate difference in the recollection of events as between Mr. Anderson and Mr. Houston. Mr. Anderson says that at 1 o'clock there was an adjournment for lunch and the parties were to meet again at 2 p.m., and that when he and Mr. King returned at that time none of the lessees' representatives had arrived, and, after some inquiry, Mr. King and Mr. Anderson were informed that the lessees' representatives had departed for Wellington. Mr. Houston says that it was decided when the meeting adjourned that the matter should be further discussed with the Native Trustee in Wellington and that representatives of the lessees should wait on the Prime Minister to make representations. Be that as it may, there was evidently a misunderstanding, and the representatives of the lessees left that same afternoon for Wellington.

55. On the following morning, the 26th, they first met Mr. Campbell, and then, by arrangement, they met the Prime Minister, the Right Honourable Mr. Forbes, and there were also present the Right Hon. Mr. Coates, the Hon. Mr. McLeod, the Hon. Mr. Masters, the two latter being M.L.C.s from Taranaki, the last named being a Minister, and Messrs. Wilkinson, Dickie, and Smith, three members of Parliament (Mr. Smith being also a Minister), representing Taranaki constituencies. After lengthy discussion, according to Mr. Houston, Mr. Forbes indicated that "the matter would be favourably considered and urgency accorded as requested." The official report of the deputation reports the statement of Mr. Forbes thus: "He had not yet had an opportunity of discussing this matter with the Department, but that would be done. It would be advisable to get the support of the representatives of the Maori race—the Members of Parliament—so that they might feel that a fair thing was being done. Legislation of such a nature as that suggested came before the Native Affairs Committee and the Maori Members would see it there. In any alteration of the Act that might be made he would be very pleased also to consult with Mr. Wilkinson, so that those interested might be communicated with and have an opportunity of discussing the clause." Mr. Campbell's attitude was that the matter should not be left as it was under Mr. Justice Blair's judgment, but the details of any proposed legislation would have to be settled and agreed to. The Prime Minister indicated the importance of the parties coming to an agreement as to the terms of the proposed legislation.

56. On the 14th October a discussion took place by telephone between Mr. Anderson and Mr. Houston, at which the latter says: "I made it clear to him" [*i.e.*, Mr. Anderson], "that the lessees would not be prepared to come to any arrangement which would have the effect of incorporating the provisions of the Valuation of Land Act and that the idea of proceeding purely on the Government valuation as a basis would be quite unsuitable to the lessees." Mr. Houston formulated alternative suggestions to which it is not necessary to refer further than to say that according to his suggestions "the

lessees should be given credit now for rent computation purposes for all improvements whenever made, this being on the lines of the 1892 Act; but that in regard to improvements to be hereafter made, the lessee would be prepared to concede to the Native Trustee the principle of the propriety of such future improvements; that in regard to the improvements included in the definition of the Land Act, 1924, the lessees would be prepared to concede that two classes of improvements be excluded therefrom as suggested by the Native Trustee—namely, telephones and purely ornamental gardens." During the discussion between these gentlemen Mr. Houston says that Mr. Anderson doubted if legislation could possibly be brought forward in time for the current session, and, says Mr. Houston, "I disagreed with him, saying that the matter had been accorded urgency by the Prime Minister."

57. On the 16th October Mr. Anderson sent to Mr. King a draft Bill which he had prepared to meet the position from what he understood to be (and actually was at that time) Mr. King's point of view as well as his own. What he seems to have had in mind was something which might be regarded as a fair compromise of the claims of the parties, and when we speak of "compromise" we mean an arrangement which would be fair and just to both parties and not one such as the lessees, at that time at all events, seemed to have in view, whereby all (or substantially all) the concessions would be made by one side and none (or practically none) by the other. Mr. Anderson's actual draft, as he himself said when sending it to Mr. King, was somewhat crude as a matter of draftsmanship and may have required some further consideration and a good deal of "polish," but fundamentally his proposal, as we see it, was fair and just to both parties. What he sought to do was to invoke the provisions of the Valuation of Land Act, 1925, and particularly the definition of "unimproved value," to the intent that the rental in all the renewal leases would be 5 per cent., not of what we have called the residual value as provided by the Schedule to the Act of 1892, but of the "unimproved value" as defined by the Valuation of Land Act, 1925.

58. Whether or not Mr. Houston saw Mr. Anderson's actual draft is not plain, though it is fair to assume that he must have seen it; but, whether he saw it or not, he was informed on the 18th October, when he again telephoned Mr. Anderson, that Mr. Anderson had drafted a clause on the lines desired by Mr. King and had forwarded the draft to Wellington. According to Mr. Houston, Mr. Anderson said that he did not suppose that the clause would be acceptable to the lessees.

59. On the very next day, the 19th October, Mr. Houston says that he telegraphed the Native Trustee: "Representatives West Coast lessees hope to meet you in conference 9 a.m. Tuesday morning." On the same day, the 19th, one of the Taranaki Members of Parliament also sent a telegram to the Prime Minister: "West Coast lessees greatly concerned at delay in drafting legislation which must go through before House rise. Suggest conference all parties next Tuesday. Can you arrange." A reply was sent by the Prime Minister that he would be glad to arrange a conference as suggested.

60. It is not without interest to mention that Mr. Anderson regarded it as impossible to have a suitable and complete amendment passed during the then current session, and he suggested to the Native Trustee that a provision might be included in a "washing-up" Bill extending the leases which had already expired or would shortly expire on the lines of a provision in the "washing-up" Act of 1912—namely, section 37 of the Reserves and other Lands Disposal and Public Bodies Empowering Act, 1912—with reference to the unconverted leases which were finally dealt with by the West Coast Settlement Reserves Amendment Act, 1913. That was a very wise and proper suggestion, in that it would have given a *locus pœnitentiae* for the consideration of the whole matter and for the preparation of appropriate legislation which could have been brought before Parliament in the following year. Incidentally, we think we should say that on the 12th September, 1935, in a letter to the Right Hon. the Native Minister, the Native Trustee said, *inter*

alia : " It is considered that a reasonable way of meeting the situation would be to allow the lessees the valuation of improvements at the time the valuation is being made, and the Maoris would, I think, accept such an arrangement, *but whatever is finally agreed upon could be submitted to them for approval before the necessary legislative amendments are submitted for approval* " (the italics are ours). As will have been already seen, the lessees were pressing for legislation during the then current session, and, unfortunately, their wishes prevailed.

61. On the 22nd October, 1935, Mr. Williams, Mr. Robinson, and Mr. Houston, who had come to Wellington for the purpose, had a long conference at the Native Trustee's office as to the position generally, and in an endeavour to reach agreement. There were present Mr. Campbell (Native Trustee), Mr. King (his deputy), Mr. Robinson, and Mr. Houston. The Member of Parliament who had sent the telegram to the Prime Minister on the 19th October was also present. Mr. Houston says that the clause was carefully debated, and in the afternoon there was a meeeting with the Prime Minister, there being present in addition to the Prime Minister, Messrs. Dickie, Wilkinson, Smith (three of the Taranaki Members of Parliament), Mr. Campbell, Mr. Robinson, and Mr. Houston. It was arranged, says Mr. Houston, that they should place the whole matter before the Native Affairs Committee of the House and obtain their concurrence. The Prime Minister indicated that he was not prepared to move in the matter " unless the Native Affairs Committee were in accordance with the proposals and prepared to support the same." In the evening, says Mr. Houston, they met Sir Apirana Ngata and Mr. Taite te Tomo. There were present Messrs. Dickie, Wilkinson, Campbell, Robinson, and Houston. Mr. Houston says that he presented the case for the lessees in the same manner as he had presented it to the Prime Minister on the 26th September ; that Mr. Campbell also spoke ; and that Sir Apirana Ngata and Mr. Taite te Tomo said they would consider the matter.

62. Next day, says Mr. Houston, 23rd October, " we again met the Prime Minister, who stated that the Native Affairs Committee had agreed to the amending clause." (There must be some error here, as, according to the parliamentary records, the Bill was not referred to the Native Affairs Committee till the 24th. What Mr. Houston was told must have been that Sir Apirana Ngata and Mr. Taite te Tomo had agreed.) " The basis of the clause amending the 1892 Act was finally agreed on. We were to see the Native Trustee and settle the final draft of the clause. Present on this occasion were Messrs. Dickie, Wilkinson, Williams, Robinson, and myself." Mr. Houston proceeds : " We then conferred with Mr. King at the Native Trustee's office. We considered and finally settled the draft clause. We then discussed the clause with Mr. Campbell, and he approved. He was to send the clause to the House forthwith, first obtaining the approval of Mr. Dykes, the solicitor to the Native Trust Office. Present on this occasion were Messrs. King, Campbell, Williams, Robinson, and myself."

63. Later on the same day, according to Mr. Houston, he and Mr. Robinson went to the House and met Messrs. Dickie and Wilkinson. " Mr. Dickie obtained Sir Apirana Ngata's approval of the clause as drafted. Mr. Dickie went alone to Sir Apirana Ngata's room for this purpose." On the 26th October, 1935, the Native Purposes Act was passed including section 19, which is the section dealing with these reserves.

64. We cannot avoid saying that, in our view, there could not have been a more unfortunate or a more perfunctory method of dealing with an important matter of this kind vitally affecting the interests of the beneficial owners ; and we emphasize that from first to last the beneficial owners were not consulted, not advised in any way whatever of what was being done or what was proposed, and never given any opportunity whatsoever of being heard by way of objection or protest, although the Native Trustee had mentioned the matter of the Natives being consulted in his letter of the 12th September, to which reference has already been made.

65. It may be said, of course, that the legislation had the approval of at least two, and perhaps three, of the Maori Members of Parliament, because, as we shall show directly, Mr. Tirikatene was also present at the meeting of the Native Affairs Committee, and that it had also the approval, for what it was worth in the circumstances, of the Native Affairs Committee; but from what we have already said, and what we shall say directly, our own view is that the approval of the Maori members and of the Native Affairs Committee was worth nothing. It may also be suggested that the Native Trustee approved and that his duty was to protect the Maoris. That was undoubtedly his duty, and it cannot be too strongly emphasized that the Native Trustee, although a servant of the Government, has just as strict a duty to his *cestuis que trust* as any ordinary trustee in the case of a private trust. In this case the interests of the Maoris were not protected, though in all the circumstances of the case as set out in this report we feel that the blame can hardly be said to lie at the door of the Native Trustee or his deputy.

66. We have already said that Mr. Anderson had prepared a Bill on the 16th October which, with appropriate alterations, would have met the position in a manner fair to both parties. He had also suggested that legislation should not be passed during that session at all except a provision extending the term of the expiring or expired leases for a year or so, in order to enable the whole matter to be properly considered and appropriate legislation prepared and settled. That was the last heard of Mr. Anderson. Both he and his draft Bill and his suggestion for a temporary extension of the term of the expiring or expired leases seem to have been entirely dropped, and, unfortunately, the departmental file does not help us to any extent in ascertaining what was done and what was the actual course of events on and after the 22nd October. That no doubt is due to the fact that the end of the session was at hand and this business was done hurriedly and orally.

67. All we know is that some one prepared a new draft, being the draft which, apparently with some amendments, became the provision that was actually passed as section 19 of the Native Purposes Act. Mr. King is under the impression that the draft clause was prepared by some one on behalf of the lessees, and was then submitted to Mr. Dykes, the office solicitor, for approval. Mr. Houston says that this is not so, and that the draft was prepared by Mr. Dykes and approved by him, Mr. Houston. We are of opinion that Mr. King's recollection on this point is faulty. We think it is most probable that the draft was prepared by Mr. Dykes, but there is no record as to what his instructions were, or how or by whom he came to be instructed. We have endeavoured, through the secretary of the Commission, to ascertain from Mr. Dykes exactly what did happen, but he says that he has no recollection.

68. Probably what happened (though we do not regard this point as material) was that Mr. Houston and Mr. King conferred and that Mr. Houston indicated what terms he required, and finally, these being agreed to, either the two gentleman together, or perhaps Mr. King alone, informed Mr. Dykes of what was required, and Mr. Dykes proceeded to prepare a draft which Mr. Houston approved with some alterations made by himself.

69. That would appear from Mr. Houston's account of these transactions to have been on the 23rd October, and on the same day Mr. Campbell wrote to the Right Hon. the Native Minister as follows: "A further conference has been held with the representatives of the Lessees' Association and their solicitor . . . and they are now agreeable to the following amendments to the existing legislation as set out in the draft clause herewith, which is submitted for inclusion in the Native Purposes Bill, if approved." The Prime Minister, on the same date, minuted the letter: "The Under-Secretary. Include in the Bill. G.W.F. 23/10/35."

70. The Bill was read a first time in the House on the 24th October and a second time *pro forma* and referred to the Native Affairs Committee. At that time the clause relating to the West Coast leases was not in the Bill. The minute-book of the Native

Affairs Committee records that the Committee met on that same day (the 24th), when there were present Mr. Ansell (Acting-Chairman), the Right Hon. Mr. Forbes, Hon. Sir Apirana Ngata, Mr. Broadfoot, Mr. Te Tomo, and Mr. Tirikatene. A new clause, 16A (which ultimately became section 19 of the Act), was proposed by the Hon. Sir Apirana Ngata and agreed to. There were other new clauses and amendments to the Bill dealing with matters other than the West Coast leases, and ultimately it was resolved that the Bill, as amended, be agreed to and that the Chairman do report the Bill as amended to the House. There is no minute of any discussion at all on the matter by or before the Committee.

71. According to *Hansard*, Volume 243, page 623, the Bill came before the House again on the 25th October, and on the question "that this Bill be now committed", the Right Hon. Mr. Forbes, Prime Minister, said: "Sir, this is the usual 'washing-up' Bill affecting certain matters in connection with petitions and Native lands. I move the committal of the Bill." The report says, "Motion agreed to." The Journals of the House show that in Committee some slight (but immaterial) amendments were proposed by the Right Hon. Mr. Forbes, and the clause as amended was agreed to.

72. On the following day, the 26th October, the Bill came before the Legislative Council, and the following is the complete report from *Hansard*, Volume 243, page 650:

NATIVE PURPOSES BILL

This Bill was read the first time. On the question that the Bill be now read the second time, the Hon. Mr. Masters, leader of the Council, said—"Mr. Speaker, as a full explanatory memorandum has been attached to the Bill, it will not be necessary for me to discuss the details of the measure. I move the second reading of the Bill."

Bill read the second and third time.

73. It is interesting to record the explanatory note which was printed and attached to the Bill after it had passed through the Native Affairs Committee of the House of Representatives. The note is as follows:—

Clause 16A. Renewals of leases of West Coast Settlement Reserves have been held up on account of a recent decision of the Supreme Court which held that the lessees were only entitled to be allowed the improvements effected by them during the previous term of twenty-one years. As this is contrary to what has always been assumed to be the position, it is necessary to provide that all the improvements on the lands leased will be the property of the lessees, and the section further provides that improvements are to have the same meaning as is contained in the Valuation of Land Act, 1925, and it is proposed that this shall operate as from the 1st January, 1934, to cover all leases due for renewal since that date. A number of valuations for renewal purposes have not been made within the period fixed by existing legislation, and it is proposed to extend that period to the 31st December, 1936, to enable all overdue valuations to be finalized.

74. No explanation beyond the explanatory note already set out above was given either to the House or to the Legislative Council; and, in our opinion, it was quite inadequate to enable the Members of either branch of the Legislature to appreciate the implications of the proposed enactment. Assuming that it was Mr. Dykes who prepared the draft of the clause, there is nothing to indicate that he knew with any real appreciation the nature of what was being done; and by the 26th the Bill was passed into law and the business of Parliament ended on that date.

75. The beneficial owners learned soon afterwards of the Act having been passed, and naturally they were very much concerned. A deputation of Chiefs waited upon the Prime Minister at Wanganui on the 12th November and complained, *inter alia*, that the Maoris had not been consulted when the decision regarding the clause had been made, and they asked that the matter should be reconsidered. However, nothing was done, except that the arbitration in *Crocker's case* proceeded to completion, and many other arbitrations were also proceeded with.

76. It is not without interest that on the 26th November, 1935, the Under-Secretary (Mr. Campbell) wrote to the Prime Minister: "Referring to the minutes of the deputation which waited upon you at Wanganui on the 12th instant in connection with the

legislation passed during the recent session to deal with the renewal of leases of the West Coast Settlement Reserves, I have to advise that it is considered that the beneficiaries do not fully realize the effect of the new statutory provisions." Perhaps not! —but they certainly feared (and their fears were ultimately realized) a great deal more than the Under-Secretary, who ended his letter to the Prime Minister by saying that it was considered that the fears that the beneficiaries' interests were being sacrificed in any way were groundless.

77. Indeed, it may be doubtful whether any of the persons responsible for the enactment appreciated the implications of the enactment, and what its real effect was, or perhaps what it was not. Certainly Mr. King did not, because he says, and we believe him, that he thought that the effect of the Act would be that the rental under the renewed leases would be based upon the "unimproved value" as defined by the Valuation of Land Act. Nor did Mr. Campbell, who believed that by invoking the definition of "improvements" in the Valuation of Land Act the valuation of improvements for the purpose of ascertaining the rental would be reduced and the "residual" value increased. He blames the arbitrators and umpire for the results which were contrary to his expectations, and to some extent at least he is no doubt right. However all that may be, what section 19 does is merely to invoke the definitions of "capital value" and "improvements," but that does not mean that the rental is based upon the "unimproved value" in accordance with the provisions of the Valuation of Land Act. On the contrary, under the enactment as passed it is enacted in effect that all permanent improvements are to be taken into account whenever effected, and not merely those effected during the current and expiring term, and, instead of the "unimproved value" being ascertained first as it would be if all the definitions of the Valuation of Land Act had been invoked, and the rental fixed at 5 per cent. of the value, the capital value is ascertained first, then the improvements, and the rental is based at 5 per cent. on the residue in accordance with the Schedule to the 1892 Act. The capital value and the value of the improvements were still to be ascertained by arbitration, and the arbitrators were at complete liberty to fix their own valuations and to disregard the valuations made by the Government valuers as appearing in the valuation roll.

78. To illustrate now what was happening:—

I. First, in *Crocker's case*, where the area was just over 87½ acres, the values submitted to the arbitrators and umpire were—

——	Fee-simple or Gross Value.	Improvements.
		£ s. d.
For the Lessor		
Mr. Gardiner	£47 10s. per acre; £4,156 5s. in all (*i.e.*, residue, £2,103 15s. — 5 per cent. = £105)	2,052 10 0
Mr. Bremer	£45 per acre; £3,937 10s. in all (*i.e.*, residue, £1,803 13s. — 5 per cent. = £90)	2,133 17 0
Mr. Charles Dickie	£45 per acre; £3,937 10s. in all (*i.e.*, residue, £2,131 18s. — 5 per cent. = £106)	1,895 12 0
For the Lessee		
Messrs. Wickham and Marchant	£35 per acre; £3,062 10s. in all (*i.e.*, residue, nil—a minus quantity)	3,790 14 5
E. A. Pacey (buildings only) ..	..	1,367 6 0

The umpire's award was—Fee-simple or gross value: £3,718 15s; and improvements: £2,563.

On this award the residue was £1,155 15s. and the rent £57 15s. 9d.

The rent for the first-renewal term had been £96 5s., being 5 per cent. on the difference between £2,612 (gross value) and £687 (improvements).

II. To take some other typical cases which we choose at random, where Mr. Good was arbitrator for the Native Trustee, Mr. Richards for the lessee, and the gentleman whom Mr. Justice Blair appointed as umpire in the *Crocker case* was umpire—

	Mr. Good.	Mr. Richards	The Umpire.	Former Rent.	New Rent.	Government Valuations.	
	£	£	£	£ s. d.	£ s. d.		
No. 1—Gross..	4,180	3,080	3,300			Date: 31st March, 1926	31st March, 1938.
Impts.	1,883	1,938	2,019	104 7 6	64 1 0	C.V.: £5,425	£3,480
Resid.	2,297	1,142	1,281			Impts.: £1,355	£1,555
						U.V.: £4,070	£1,925
No. 2—Gross..	4,300	3,508	3,509			Date: 31st March, 1926	31st March, 1938.
Impts.	1,867	2,308	2,165	95 2 6	67 4 0	C.V.: £5,315	£3,950
Resid.	2,433	1,200	1,344			Impts.: £1,515	£1,450
						U.V.: £3,800	£2,500
No. 3—Gross..	3,977	2,578	2,500			Date: 31st March, 1926	31st March, 1938.
Impts.	1,485	1,584	1,618	118 5 0	44 2 0	C.V.: £6,221	£4,985
Resid.	2,492	994	882			Impts.: £2,061	£1,720
						U.V.: £4,160	£3,265
No. 4—Gross..	3,724	3,336	3,435			Date: 31st March, 1926	31st March, 1938.
Impts.	1,619	1,955	2,156	117 12 0	63 19 0	C.V.: £4,642	£2,944
Resid.	2,105	1,381	1,279			Impts.: £1,457	£1,229
						U.V.: £3,185	£1,715
No. 5—Gross..	4,235	3,388	3,630			Date: 31st March, 1926	31st March, 1937.
Impts.	2,093	2,402	2,495	102 17 0	56 15 0	C.V.: £3,879	£3,400
Resid.	2,142	986	1,135			Impts.: £854	£1,450
						U.V.: £3,025	£1,950
No. 6—Gross..	15,132	13,968	13,092			Date: 31st March, 1926	31st March, 1938.
Impts.	6,954	9,216	7,359	523 16 0	282 3 0	C.V.: £18,436	£14,957
Resid.	8,178	4,752	5,643			Impts.: £6,214	£5,645
						U.V.: £12,222	£9,312

Taking No. 3 as an example, the rent on Mr. Good's valuation would have been £124 12s. (5 per cent. on £2,492); on Mr. Richards's, £49 14s. (5 per cent. on £994); and on the umpire's, which, of course, fixed the actual amount payable, £44 2s. (5 per cent on £882). The rent for the previous term had been £118 5s. It will also be seen that in cases Nos. 3 and 4 the umpire's residual value was actually less than that of Mr. Richards the lessee's arbitrator. It is difficult to resist the conclusion that the umpire must in these and other cases have been acting on Mr. Richards's theory of "productive value"; on no other theory, comparing his figures with those of Mr. Richards, do his awards seem explicable.

79. It is not only in such cases as those referred to in the last preceding paragraph that dissatisfaction exists. Taken by and large, the same unsatisfactory position exists in respect of all the second-renewal leases even where the arbitrators found themselves able to agree. The same system prevailed throughout, with the same result—high values on the improvements based on changed conditions and costs—probably the adoption of Mr. Richards's theory, depression of "residual value." To cite one case as an example—a case decided in 1940 by arbitrators, in which Mr. Richards was *not* an arbitrator—the area was 339 acres, "felling and grassing" were allowed at £4 10s. per acre, stumping at £6 per acre, and Boxthorn hedge 434 chains at £2 per chain.

80. The results may now be summarized in figures. The aggregate figures for the purposes of the first-renewal leases were: Gross value of land, £998,558 11s. 11d., of which improvements represented £383,476 7s 2d., and the residue, £615,082 4s. 9d. The rentals aggregated £30,993 4s. The gross value of all the lands since the granting of such of the leases for the second-renewal leases of the land as are now in that term, is £1,271,885 16s., of which the improvements amount to £770,075 4s. 2d., and the residue £501,810 11s. 10d., the total rentals being £25,130 12s. 3d. per annum.

81. It is interesting to note that the Government roll valuations of all these lands made at various times from, say, 1926 to 1931, amount to: capital value, £1,418,845, of which the unimproved value is £870,319, and the value of the improvements £548,526; and the present-day aggregates of the Government valuations made in and since 1938, but mostly in that year, are: capital value, £1,253,872; unimproved value, £666,756; and improvements, £587,116. It will be seen that 5 per cent. even on the Government unimproved values of 1938 and thereabouts would be over £33,000, which is substantially in excess of the rentals under the first renewal leases. It may be that the difference between the 1926–31 valuations and those of 1938 can be accounted for by the fact that the later ones were made in an immediate post-slump period; and, indeed, it is only just to observe that the arbitrations made in 1934 and subsequent years of the lands comprised in the West Coast leases were made in a period of severe depression.

82. Naturally enough, as these awards were being made after the passing of the 1935 Act, the Native Trustee and his deputy became more perturbed than ever. So did the Maoris, a deputation of whom waited upon the new Prime Minister, the Right Hon. Mr. Savage, at Wellington on the 11th September, 1936. In the meantime Mr. King on the 3rd August, 1936, had written a memorandum to the Native Trustee, which concluded with the following paragraph:—

> Mr. Anderson has suggested that a Commission should be set up to survey and report on the whole question of these rents, and sufficient authority to set up such a commission is contained in the Commissions of Inquiry Act, and I consider that the present issue is of such moment to beneficiaries of the West Coast Settlement Reserves, that it warrants the matter being referred to the Government to decide whether any further action is to be taken, and it is within your province as Native Trustee to take such a course of action. It may, I think, be contended that the honour of the New Zealand Government is involved, as these lands were set aside for lease in perpetuity on behalf of the Maori beneficiaries wholly as a matter of Government policy and without the consent or concurrence of the then beneficial owners, and it is the duty of the Government to see that all reasonable and proper steps are taken to protect the interests of the Maori owners.

83. The delegates who interviewed the Prime Minister on the 11th September, 1936, stated that the Maoris objected to the valuations made, and they asked that the Native Minister should agree to set up an Assessment Court so that they could place their facts before it and give the lessees the right to appear also. Their suggestion was that the umpire appointed by Mr. Justice Blair was not a practical farmer and knew nothing about farming and was not a capable umpire to adjust the values of the two valuers. They said that "the whole thing could be satisfactorily settled if a Court of Assessment were set up to investigate and fix rentals on a proper basis under the Valuation of Land Act."

84. The Prime Minister met the views of the Natives very sympathetically, and said that "Certainly something different would have to be done, and done pretty smartly. No one could defend the figures that had been quoted. Mr. Campbell would get a report, and the whole matter would be gone into to alter the procedure in some way." The report of the proceedings of the deputation was, by minute of the Right Hon. the Prime Minister, referred to the Under-Secretary of the Native Affairs Department.

85. Mr. King wrote a memorandum to the Native Trustee on the 22nd October, 1936, in which he stated that it appeared from the report of Mr. Ironside, one of the Native Trustee's officers, as if some action should be taken, and the Native Minister recommended to approve of legislation being introduced (1) to cancel all the awards, or (2) to set up a tribunal to go into any objection which was made to the umpire's awards.

86. On the 28th October, 1936, the Hon. Mr. Mawhete, M.L.C., who had attended with the deputation to the Prime Minister on the 11th September, wrote to the Right Hon. the Prime Minister in the following terms—

Re *West Coast Reserve Leases Acts, 1882 and 1892, Taranaki District*

A deputation of 25 Taranaki Maoris beneficiaries under above leases of which the Native Trustee is Trustee met yourself, the Native Trustee and myself at your office last month in which they asked for relief, in so far as the valuations of their lands under the arbitration system is concerned and asking that they should be given the right of appeal to an Assessment Court to review any valuations made on which the rental is based. Some of these valuations amount to confiscation in that the Maori has lost his equity. They claim that under the arbitration system they have no say, whereas under an appeal to an Assessment Court, a review may be taken of the valuations so as to give them a chance of stating their objections to any unfair value on which rentals to lessees are based. I understood the Native Trustee was to have sent in his report and valuations for your information to enable you to review the matter.

I would ask for your immediate consideration and to insert a clause in the Washing-up Bill of this session giving them relief; at the same time to suspend signature of all leases now ready for a renewable lease by the Native Trustee. I may also point out that the right of appeal against valuations should be open to lessor and lessee.

As this matter has been made known to the Native Trustee I would ask that his report should be forwarded to you immediately so that your immediate decision may be given.

Thanking you, Sir, in anticipation of an early reply.

87. That letter was, by minute of the Prime Minister, referred to the Under-Secretary, who says that he had many discussions with the Minister in connection with the matter in 1936, and who on the 29th October, 1936, wrote to the Acting Native Minister as follows :—

West Coast Settlement Reserves Arbitrations

If any action is desired in connection with these arbitrations a clause in the Native Purposes Bill this session will be necessary.

The Supreme Court's reasons for the appointment of the Umpire, and our Supervisor's comments on the valuations, are tagged hereunder. Will you please instruct as to what action is to be taken.

88. This letter was, on the following day, the 30th October, minuted by the Minister—"No action. F.L. 30/10/36"; and the Minister wrote to Mr. Awhikau, one of the leading members of the deputation of the 11th September, as follows :—

Tena koe. Referring to the deputation to the Rt. Hon. the Prime Minister on the 11th September when it was requested that a Court of Assessment be set up in connection with the valuations which have been made for the purpose of fixing the rents to be paid under the renewed leases of some of the West Coast Settlement Reserves, I now have to inform you that it has been decided that no action can be taken to give effect to the request.

89. There the matter rested until the 6th October, 1946, except that there were various petitions to Parliament from time to time by sections of the beneficial owners (and representations and deputations to Ministers) and reports were made by the Native Affairs Committee recommending (*inter alia*) that an Assessment Court be set up by legislation to investigate the new valuations between lessor and lessee: but no action was taken. On the 6th October, 1946, a deputation of Maoris waited upon the present Prime Minister and Minister of Native Affairs, the Right Hon. Mr. Fraser, and voiced their grievances. The Prime Minister said that a case had been made for a searching inquiry into the method of fixing rents and other matters. Hence, presumably, this Commission, which was issued on the 13th August, 1947.

90. Mr. King's understanding of the effect of section 19 of the 1935 Act we have already given, but that understanding was not correct; nor was Mr. Campbell's expectation realized. Nor do the lessees or those acting for them appear to have had, nor could the Legislature have had, a very clear understanding of the effect of what had been done. Perhaps this is not altogether surprising in view of the manner in which the business was transacted. So far as the lessees are concerned, Mr. North, their counsel, in addressing us on their behalf, said: "Indeed, to be frank, I think they" [*i.e.*, the lessees] "thought they were going to the Valuation of Land Act in its entirety, and

giving up the residue value. They thought that because, after all, the alternative provision for accepting a special Government valuation was put in with the idea of avoiding unnecessary arbitrations." That statement was, we have no doubt, made by Mr. North in all sincerity, but it should be pointed out that Mr. Houston, according to his own statement, was not prepared on the 14th October, 1935 (see paragraph 56), to agree to the course of invoking the Valuation of Land Act in its entirety when proposed by Mr. Anderson and Mr. King. Not only that, but Mr. Houston's note of his address before the Prime Minister on the 26th September contained this passage: "The ideal would be consent legislation, but the attitude of the Native Trustee in desiring to import into the statute the principle of the Valuation of Land Act appears to preclude the possibility of any agreement between the parties." It should, however, be said, in justice to Mr. North, that his deduction as to the view of the lessees is referable to a later period when the terms of the clause were agreed in Wellington and there was in the clause the provision incorporating the definition of improvements as contained in the Valuation of Land Act. But, if the lessees did think that "they were going to the Valuation of Land Act in its entirety, and giving up the residue value," they simply shared Mr. King's error.

91. Be that as it may, Mr. Hickey, the chairman of the Lessees' Association, said, in giving his evidence before the Commission, that the lessees wanted to be perfectly fair and felt that the Land Valuation Act definitions would protect the Native interests more than the method that had been adopted; and Mr. North, in the light of added knowledge and experience, also said that "it does seem just to us that the rent should be fixed on the 'unimproved value.'"

92. In our view the beneficial owners should now be given the fullest measure of justice and future protection and security that it is reasonable and possible to give them. They are entitled to that whether Mr. Justice Blair's decision be right or wrong. If it was right, then the fruits of their victory have been taken from them without their even having the opportunity of being heard. If it was wrong, they would still have suffered a hardship which requires redress. Mr. North has pressed upon us the contention that the judgment is wrong. The Chairman has already expressed certain views on that point, but we cannot assume for our present purposes that it was wrong. We should assume, we think, that it is a matter of doubt, and that, whether right or wrong, legislation was and is necessary to do substantial justice to both the lessees and the beneficial owners. Such legislation must necessarily be in the nature of a compromise, but the compromise should be a fair and just one. The arrangement expressed in the Act of 1935 remedied the injustice to the lessees on the hypothesis that the judgment was right, but it failed to do justice to the Maori owners on the hypothesis that the judgment was wrong, although it would appear that both Mr. Campbell and Mr. King thought—but erroneously as it has turned out—that what was being done was fair to the Maori owners. The fact is that on either hypothesis the arrangement or compromise effected by Parliament in 1935 has turned out to be unfair to the Maori owners, and for that reason, and because it was made without their knowledge, it should not be permitted to stand.

93. If the matter had been appropriately dealt with by the Government in 1936 or within a reasonable time thereafter, the position could have been corrected by remedial legislation before much harm was done and probably without any pecuniary loss to the State. Instead of that, nothing was done, and the injustice was allowed to continue until now, a period of eleven years. During that interval something like one hundred and forty leases have changed hands and have been acquired by the present holders for valuable consideration. If the appropriate remedy had been devised and applied in 1936 all the leases could have been cancelled and new leases granted at fair and proper rentals to be ascertained in accordance with just principles. As it is, the beneficial owners have suffered an injustice for a period of years. That injustice it is difficult, if not impossible, to measure

accurately, or even perhaps with close approximation, in terms of money, but something should be done in the way of a money payment towards remedying the injustice. It would be wrong to attribute to the Act of 1935 the whole of the £5,000 or £6,000 per annum which the Maoris claim (as stated in paragraph 4) to be the measure of their loss. True, the difference between the rentals in and since the year 1934 amounts to nearly £6,000 a year, but of that amount, as previously stated, the sum of £953 15s. 8d. is represented by reductions made in arbitrations and during 1934 prior to *Crocker's case*, and £191 0s. 3d. is represented by reductions in seventeen of the twenty cases where the rental was fixed after the Act of 1935 was passed by special Government valuation; in addition, we have no doubt that a large proportion of the reduction is attributable to the adoption of erroneous methods by arbitrators and umpire for which the Act cannot be blamed.

94. We feel that we cannot recommend legislation in the direction of compelling the lessees to pay anything in respect of past years. That would be unfair for many reasons. It would be most unjust to endeavour to compel payment from persons who have acquired these leases from the lessees to whom they were granted, and it would not be right to attempt to compel payment by persons who have in good faith transferred their leases and been paid for them. Nor would it be fair to attempt to compel payment from those persons who have not transferred their leases, because, apart from any other question, it would involve discrimination as between those who have, and those who have not, disposed of their leases.

95. The matter is one for a compromise now as it was in 1935 in regard to both monetary recoupment for the past up to the end of 1947, and to future protection and security to be provided by legislation. As to the first, we consider, in view of what we have said in paragraph 93 and of the advantages and security that will accrue from our recommendations regarding legislation, if effect be given to them, that a payment of the sum of £30,000 would be reasonable and just, but not excessive, compensation, which amount should be paid out of the accumulated profits in the Native Trustee's Account; and we would recommend accordingly. Those profits do not belong to the Maoris, but are payable from time to time into the Consolidated Fund as directed by the Minister of Finance (see section 49 of the Native Trustee Act, 1930). They belong to the community as a whole and would eventually have been transferred to the Consolidated Fund. It is for that reason that we stated in the earlier part of this report that there may be a loss of a considerable sum to the community.

96. As to the future much as we dislike any interference with existing contracts, we feel that the lessees are benefiting at the expense of the Maoris who are suffering an injustice, and that such a position should not be allowed to continue. If *Crocker's case* was rightly decided, then, whatever might have been the previous understanding as to the effect of clause 56 of the Schedule, the Act of 1935 would in itself have been an interference with the lessee's contracts, an interference in their favour. If that interference turns out to be unfair to the beneficial owners, we cannot see that the lessees have any valid ground to complain of a further interference which is necessary to remedy that unfairness. Moreover, the lessee of these reserves have in the past (in and prior to the year 1892) had their contracts altered in their favour when it appeared that the terms of those contracts were unfair to them.

97. So far as concerns the fifty first-renewal leases referred to in paragraph 30, we do not think it necessary to suggest any alteration. On the whole the rentals reserved by those leases seem to be not unfair, and we see no reason for disturbing the present position.

98. There are also twenty second-renewal leases where the rent was agreed upon between the Native Trustee and the lessee at 5 per cent. on the unimproved value according to a special valuation made by the Valuation Department on the application

of the Native Trustee. Although they show an aggregate reduction in rental of £191 0s. 3d. the fact that the rentals were fixed on a special Government valuation (though the valuations are subject to the comment that they were made during a severe depression), and the further fact that the reduction is relatively a small amount, make it inadvisable in our view that those leases be disturbed.

99. As to all the other second-renewal leases, we have considered various possibilities. We were at one stage disposed to think that they should be allowed to continue but at a rental as from some fixed date, say, 1st January, 1948, equivalent to the rent which the lessee paid under his first-renewal lease. On consideration we have come to the conclusion that that would involve various complications and would not be satisfactory.

100. Alternatively, we considered whether the leases should continue at a new rent as from say 1st January, 1948, upon the basis of the present system of 5 per cent. on the residual value, with a proviso that for the purpose of computing the residual value the orginal improvements of clearing the land and stumping and grassing should either be excluded from consideration or be included at not exceeding some stated fixed sum per acre approximating the probable original cost. This suggestion also we have felt compelled to discard as being difficult, hardly practicable, and probably inequitable and unfair. Moreover, we think that the generally accepted principles as to the rights of the parties to a perpetually renewable lease—namely, that the lessor's return should be based on the value of the land only without improvements, and that the improvements should be the property of the lessee—should not be departed from if any other practicable and fair scheme can be devised.

101. We have also considered whether it would be feasible to adopt the scheme of local-body perpetually renewable leases by providing that the rent should be a "fair rent" for the land without improvements. But that would involve the continuance of the arbitration system which we think it better to eliminate. Further, we are strongly inclined to think that the scheme of fixing the rent under the local-body leases, while it may be satisfactory in the case of urban lands, would be neither suitable nor satisfactory in the case of rural lands such as those comprising the West Coast Settlement Reserves.

102. We have come to the conclusion that the best scheme, and one which should be fair to both the beneficial owners and the lessee, would be to fix the rent (subject to the minimum to be indicated later) at 5 per cent. of the "unimproved value" of the land ascertained according to the definition and principles of the Valuation of Land Act, 1925, and we recommend that this course be adopted as from 1st January, 1948. This would require legislation cancelling *all* the existing second-renewal leases except the twenty where the rent has been already fixed according to a special Government valuation, and providing for the granting of a new lease in substitution. The Valuer-General should be directed and required to proceed forthwith with the preparation of a special valuation of all the lands comprised in *all* the existing leases (both first-renewals and second-renewals) and as soon as possible to supply the Native Trustee with copies of all the valuations so made, and it should be the duty of the Native Trustee to send to each lessee a copy of the valuation of the land comprised in the lease held by such lessee. We apprehend that the making and supplying of these valuations can be done at once as a matter of administration without waiting for legislation. The present system of arbitration should be ended. A Tribunal should be set up consisting of three persons, one to be appointed by the Lessees' Association, one by the Native Trustee, and the third to be appointed by the Valuer-General and to be either an officer or an ex-officer of the Valuation Department. The two persons to be appointed by the Lessees' Association and the Native Trustee respectively should be men of practical farming experience in the Taranaki district, who are not interested in any of the leases; the person to be appointed by the Valuer-General should be an officer or ex-officer of the

Valuation Department who was not concerned in the making of the special valuation furnished as aforesaid by the Valuer-General (cf. sections 8, 9, 10, and 11 of the West Coast Settlement Reserves Amendment Act, 1913). Either the lessee or the Native Trustee should have the right of objection to the valuation, and such objection should be heard by the Tribunal, whose assessment after hearing the objection would be final and conclusive. The rent to be 5 per cent. on the "unimproved value," according to the special valuation or, in case of objection, the decision of the Tribunal, provided however, that the rent under the new lease or under any subsequent renewal of any lease of any portion of the reserves shall not be less than the rental reserved by the first-renewal lease of the same land (to be apportioned where the land has been subdivided) save where it is shown to the satisfaction of the Tribunal that the "unimproved value" of the land comprised in any particular lease has depreciated owing to any cause which was not reasonably within the power of the lessee to control. The new lease to be for a term of twenty-one years as from 1st January, 1948, up to which date the lessee would pay the rent reserved by the cancelled lease. All the foregoing provisions should, *mutatis mutandis*, apply to all subsequent renewals of the new leases to be granted in substitution for existing second-renewals and to the renewal of leases which are now in their first-renewal term and of the twenty leases where the rent has already been fixed at 5 per cent. on the unimproved value according to a special valuation.

103. The beneficial owners should as far as possible have an assured minimum rent, and we think a minimum based on the rentals reserved by the first-renewal leases (subject to the proviso we have suggested in the case of deterioration) would be fair to both parties, and certainly more fair to the lessees than to base it on, say, the higher, and possibly somewhat inflated, Government valuations of 1926 and immediately following years, or even on the 1938 Government valuations, which in the aggregate are higher than the aggregate "residue" on which the rentals on the first-renewal leases were based. The beneficial owners, on our recommendation, would have the benefit of any increase in the Government "unimproved value" now or in the future, but (subject only to the proviso regarding deterioration of any of the land) would not suffer in the event of a reduction.

104. We have thus sketched an outline of the legislation which we recommend. It would, of course, involve repealing or amending some of the clauses in the Schedule to the 1892 Act and also section 19 of the Act of 1935. We would add that it would obviously be quite unsatisfactory merely to repeal section 19 without more as appears at times to have been suggested in some of the Maori representations. That would simply produce chaotic conditions. It certainly could not be done without reopening the litigation in *Crocker's case* and permitting an appeal to the Court of Appeal, and, if desired by either party, to the Privy Council. Even if that could be done and were done the parties in the meantime would not know where they stood, and, whatever the ultimate decision, there would be an injustice to one or the other set of parties which would have to be met by legislation. Even in that event we do not think that legislation could be devised then more favourable to the Maori owners or on the whole more fair to the lessees than we are recommending now.

105. We would suggest that, in the first place, counsel for the Native Trustee and the Lessees' Association should endeavour to prepare and agree upon a Bill on the lines we have indicated. Such Bill will require careful preparation, and careful consideration by the Native Trustee and the Parliamentary Law Draftsman to whom it should be submitted for consideration and approval. There may be saving clauses relating to particular cases and various other matters which have not come before us, but which may require to be provided for. Those would be matters of detail which should not present any great difficulty.

106. We have deliberately omitted from our recommendations any suggestion as to meeting the case of a lessee not wishing to take a renewal. We have assumed, seeing that the intention is that the lease should be perpetually renewable, that the lessee wil accept the renewal as each successive term expires. It would be always open to him to dispose of his lease at any time and on such terms as he may think fit. Nevertheless, this is a matter which counsel may desire to consider, and it may be necessary to include in the scheme some provision to meet the point.

107. We would recommend that the proposed Bill should include a provision that no amendment of the Valuation of Land Act, or any other Act, altering the definition of "unimproved value" shall apply to these West Coast Reserve leases unless the amending legislation expressly so provides. We would also respectfully recommend that, if legislation on the lines we have suggested is passed, no Government should, at the instance of either the lessees or the Maori owners, permit any future legislation affecting the interests of either the one or the other unless such legislation has been considered and approved by both the lessees and the Maoris as well as the Native Trustee, or, in the event of the lessees and the Maoris not being in agreement, without first submitting the proposals to some competent and independent authority for inquiry and report. Otherwise there will always be the danger of a repetition of the agitation caused by the Act of 1935, which itself is reminiscent of the agitation created by the various Acts preceding the Act of 1892.

108. It was suggested during the proceedings before us that an authoritative record should be compiled in regard to all the leases showing the original condition of the land comprised in each lease, whether swamp, heavy bush land, light bush, flax, tutu, and generally the nature of the land, also as far as possible what improvements, including bush-felling, clearing, and grassing, were effected, and when, and the original cost, if possible. The suggestion we think is a good one, and we recommend its adoption by the Native Trustee as an administrative matter—it should not require legislation. The ascertainment and compilation of these particulars would not be easy, but the difficulties will become greater year by year as the old settlers disappear and memories fail. For example, we were told that Mr. Alan Good was one of the few remaining persons who had grown up in the district and had accurate knowledge as to the original condition of these lands, but he is now dead. The record may not be so necessary if the system of computing the rent be altered as we have recommended, but it would still be useful, and situations might arise in the future in which the record might be very important and its absence productive of great trouble and difficulty.

109. In this report we have not answered *seriatim* the various questions into which Your Excellency's Commission directed us to inquire, but we think that we have nevertheless covered all the ground, and that this report will be found to contain a comprehensive survey of the relevant facts and circumstances, and of our own views and recommendations.

We have the honour to be,
Your Excellency's humble and obedient servants,
MICHAEL MYERS, Chairman.
A. M. SAMUEL, Member.
HANARA TANGIAWHA REEDY, Member.

Wellington, 8th March, 1948.

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