

'improvement' within the meaning of the said leases?" Well, no lessee could have said it was an improvement within the meaning of the lease, because we have considered the lease already. The lease set out that it was the buildings, fixtures, and fences that would be valued. The question was not argued. All that happened was this: "Mr. Skerrett admits that the third question must be answered in the negative. What are to be valued are the buildings, fixtures, and fencing, and not the bush felled and the grassing. By the agreement of the parties there will be no costs.—Mr. Stafford: Will your Honour indicate what, in your opinion, ought to be valued as 'buildings, fixtures, and fencing'?"—Cooper, J.: That I cannot do at present. That question is not asked in the special case, and there are no facts stated which can enable me to do so. It is open for the parties, if they cannot agree upon the principle upon which the valuation is to be made, to state the facts, and then upon such facts to ask the opinion of the Court. At present I merely answer the question put and state that the bushfelling and the grassing of the lands are not improvements to be valued under the lease." There is no suggestion either in the case put to His Honour or in Mr. Skerrett's concession made at the time that there is any limit whatever of £5 per acre to the lessee's improvements.

*Mr. Bell:* I thought Tinkler's case came as a surprise to all the lessees.

*Mr. Welsh:* And to the Public Trustee.

*Mr. Bell:* Yes, and to all the lessees.

*Mr. Welsh:* Quite so. My point is this: that the whole question was overlooked at the time in Tinkler's case as to the value that the lessee was entitled to for these improvements. There is no question he was either entitled to the full value for the whole of his improvements or he was limited to £5 per acre. That question is not put in Tinkler's case. All that the Judge is asked is, Are they or are they not improvements? and he says that bushfelling and grassing are not improvements under the lease; and Mr. Skerrett concedes that. My point is that again the question was overlooked by those considering the rights and the position of a lessee as to what was the measure of his improvements that he was to be paid for. Was the improvements that he was to be paid for merely his houses, his fixtures, and his fencing limited to £5 an acre, or was it, as the lease said it was, the whole of the houses, the whole of the fixtures, and the whole of the fencing? I invite you, sirs, to consider that, and to remember that it was not considered in Tinkler's case. I speak now subject to correction, but I say that it must have been clear to the Public Trust Department and the Government lending departments for a number of years past that the lessee was entitled to the whole of his improvements under his lease; that, at all events, the £5 limitation did not apply to the lessee's buildings, fixtures, or fences. So far as the Public Trust Department is concerned, all applications for transfers and all mortgages given by the lessee must have come under the notice of the Public Trust Office for their consent, and it must have been obvious to the Public Trust Department that in many cases the purchaser was paying the lessee a large sum of money over £5 an acre for his improvements, believing that they were entitled to the full measure of their improvements. In that I say at once they were wrong in concluding that they were entitled to the full measure of compensation for improvements, but they were entitled to the full measure of compensation for a certain class of their improvements. To my mind, the facts only point to one conclusion: that the Public Trust Department did not appreciate the position at the time that the purchasers from the lessees were paying large sums over the limit created by the regulations of £5 per acre.

*Mr. Kerr:* To what improvements do you say section 30 of the regulations refers?

*Mr. Welsh:* We will give evidence on that head, sir.

*The Chairman:* What you really mean, Mr. Welsh, is this: that there are two classes of improvements—improvements so called, and improvements called "substantial improvements"?

*Mr. Welsh:* Yes, that is so.

*The Chairman:* Why, then, should it not be read that they are all in one, and that the interpretation clause does not define improvements, but only defines what shall be called "substantial improvements"?

*Mr. Welsh:* That is so. The lease, you will remember, refers to it in the same terms, "substantial improvements." There are a number of improvements that are improvements which would not come under the category of "substantial improvements." Take grassing, for instance.

*Mr. Kerr:* The felling of bush would be a substantial improvement.

*Mr. Welsh:* Would it, sir?

*Mr. Kerr:* You are talking about permanent and temporary improvements.

*Mr. Welsh:* Under the Act of 1908 would it be a substantial improvement?

*Mr. Kerr:* Surely that would be of a permanent character.

*Mr. Welsh:* Undoubtedly, but whether it be a substantial improvement under the definition of "substantial improvements" is open to doubt.

*Mr. Kerr:* In the regulations it says, "Improvements to be suitable to, and consistent with the extent and character of, the holdings; and none shall be allowed for in any valuation in excess of five pounds for every acre of rural land or ten pounds for every acre of suburban land." That is about as comprehensive as you can make it. Your trouble is to make a difference between "improvements" and "substantial improvements."

*Mr. Welsh:* I am not asking this Commission to decide now as to the legal effect of the lease or the regulations or the definition of "improvements," but what I do say is that it is of importance to consider this for the purpose of obtaining a general view of the minds of the lessees at that time, because they were not going about with this Act of Parliament and these regulations in their pockets; they were going about with their leases in their pockets, and it is not only the lessees that came to that conclusion, but other people also.

*Mr. Kerr:* Those to whom they transferred.

*Mr. Welsh:* And the Public Trust Department and the Government lending departments.