

OBSERVATIONS THEREON.

It is to be noted that as the mode of valuation provided for by the Wellington leases is based primarily on special statutes and is contained in the leases themselves, and as the legislation which the Corporation sought was merely an amendment of the general statute—i.e., the Municipal Corporations Act, 1908—it is difficult to see how the Corporation would have accomplished its object if the legislation it proposed had been passed. It is thought, if an alteration is to be made which is to affect the Wellington City leases, it cannot be done by any such general amendment of the Municipal Corporations Act as that proposed. The leases themselves would require to be altered by the legislation. For the same reason it is obvious that in strict language our inquiry should extend to the system of valuation provided for by the Wellington City leases, and we treat the Commission as so extended.

DISTINCTION BETWEEN VALUATIONS AND ARBITRATIONS.

There is—or, at all events, until the passing of the Arbitration Act Amendment Act, 1906, was—a well-recognized distinction between a valuation and an arbitration. In the case of a valuation the appointed persons are not bound by the common law to call evidence or hear the parties in the presence of each other, or otherwise act as in a judicial proceeding, but may arrive at a binding conclusion based on their own skill and knowledge. In other words, a valuation *prima facie* meant an appraisal. For this reason, in the case of a valuation, the persons usually appointed are those who are experts in the subject to be valued. An arbitration, on the other hand, must, save to the extent to which the parties may waive compliance, be conducted in the manner of a judicial proceeding, for the parties are to be heard, witnesses may be called, counsel may be introduced, and the arbitrators must decide upon the evidence and are in several respects amenable to the control of the Courts. Arbitration is therefore calculated to be a more elaborate and expensive proceeding than valuation, and does not postulate any particular skill in the arbitrators.

ASSIMILATION OF VALUATIONS WITH ARBITRATION SUPPOSED TO BE EFFECTED BY LEGISLATION.

Before the Municipal Corporations Act, 1908, or the Act of 1900 on which it was founded, leases had been granted by public bodies containing provisions for the determination of the rent and the value of buildings by means of valuers as distinguished from arbitrators; but in 1906 an Act was passed, now embodied in section 2 of the Arbitration Act, 1908, which applied the provisions of the Arbitration Act “to any agreement under which any questions or matter has to be decided by one or more persons to be appointed by the contracting parties.” Under this legislation it was assumed by the Wellington City Council and its lessees that the valuations provided for by their leases were for all purposes converted into arbitrations, and in recent years the parties have proceeded by way of arbitration instead of by the simpler and less expensive method of valuation. The lessees, it is said, do not admit the soundness of the view taken, but yielded to it as it opened a way to the Courts for the purpose of settling the principles on which the value should be assessed. The legal member of the Commission ventures to think that, where it has been agreed by the parties or ordained by statute that there shall be a valuation, it is very doubtful if the amendment of the Arbitration Act was intended to have or in fact has the effect of letting in witnesses and other apparatus of judicial procedure in substitution for the knowledge and skill of the persons appointed to value. It is thought that by expressly providing for valuation the parties exclude those common-law incidents to an arbitration proper, but that, although they do so, the Arbitration Act is still left to operate as regards the filling of vacancies and suchlike matters.

NECESSITY FOR DISTINCTION.

If, therefore, legislation dealing with the method of arriving at the rents and value of buildings is undertaken, care should be taken (according to what is determined to be done) either to convert the valuations into arbitrations to all intents and purposes, or to make it clear that while the Arbitration Act applies so far as it goes the valuation is nevertheless to be made according to the knowledge, skill, and experience of the valuers appointed.