1917.

NEW ZEALAND.

MUNICIPAL LEASES COMMISSION

(REPORT OF THE); TOGETHER WITH MINUTES OF EVIDENCE.

Presented to both Houses of the General Assembly by Command of His Excellency.

COMMISSION

TO INQUIRE INTO AND REPORT AS TO THE OPERATION OF THE PROVISIONS OF SECTION 137 OF THE MUNICIPAL CORPORATIONS ACT, 1908, AND IN PARTICULAR AS TO ITS OPERATION IN RESPECT OF CERTAIN LEASES GRANTED BY THE WELLINGTON CITY COUNCIL; AND FURTHER TO INQUIRE INTO AND REPORT AS TO THE SUFFICIENCY OF THE LEASING-POWERS CONFERRED ON BOROUGH COUNCILS BY THE SAID ACT.

LIVERPOOL, Governor.

To all to whom these presents shall come, and to the Honourable John Henry Hosking, a Judge of the Supreme Court of New Zealand; Charles F. Thomas, Esquire, of Auckland; and William Milne, Esquire, of Oamaru: Greeting.

WHEREAS it is enacted by section one hundred and thirty-seven of the Municipal Corporations Act, 1908, that every valuation made under paragraph (*b*) of section one hundred and thirty-six of the said Act (relating to the grant and renewal of leases by Borough Councils) shall be made by three independent persons, one to be appointed by the Corporation, one by the lessee, his executors, administrators, or assigns, and the third by such two appointed persons: And whereas by section one hundred and forty of the Reserves and Other Lands Disposal and Public Bodies Empowering Act, 1915, after a recital that the system of arbitration prescribed by section one hundred and thirty-seven of the Municipal Corporations Act, 1908, was under the consideration of the Government with a view to amending legislation proposed to be passed during the then next session of Parliament, it was enacted that, notwithstanding anything to the contrary in the Municipal Corporations Act, 1908, or in any of the leases to which the said section one hundred and forty relates (being leases granted by the Wellington City Council), no valuation in respect of any of those leases should be made in the manner prescribed by section one hundred and thirty-seven of the Municipal Corporations Act, 1908, after the passing of the Reserves and Other Lands Disposal and Public Bodies Empowering Act, 1915, and

before the first day of January, one thousand nine hundred and seventeen: And whereas by section forty-seven of the Reserves and Other Lands Disposal and Public Bodies Empowering Act, 1916, the said section one hundred and forty was amended by substituting the first day of January, one thousand nine hundred and eighteen, for the said first day of January, one thousand nine hundred and seventeen: And whereas it is expedient, with a view to legislation to be hereafter passed, that inquiry should be made into the working of the said section one hundred and thirty-seven of the Municipal Corporations Act, 1908:

Now, therefore, I, Arthur William de Brito Savile, Earl of Liverpool, the Governor of the Dominion of New Zealand, in exercise of the powers conferred on me by the Commissions of Inquiry Act, 1908, and of all other powers and authorities enabling me in this behalf, and acting by and with the advice and consent of the Executive Council of the said Dominion, do hereby constitute and appoint you, the said

JOHN HENRY HOSKING,
CHARLES F. THOMAS, and
WILLIAM MILNE,

to be a Commission to inquire into and report as to the following matters, namely:—

(1.) Is the system of valuation prescribed by section one hundred and thirty-seven of the Municipal Corporations Act, 1908, satisfactory in its application to—

(*a.*) Leases that have been heretofore or that may hereafter be granted by any Borough Council; or

(*b.*) Leases that have been heretofore or that may hereafter be granted by the Wellington City Council?

(2.) If the said system of valuation is not satisfactory, what alterations should be made therein?

(3.) Should the said alterations (if any) be made applicable—

(*a.*) Generally with respect to leases that have been heretofore or that may be hereafter granted by Borough Councils; or

(*b.*) With respect only to leases that may hereafter be granted by Borough Councils; or

(*c.*) With respect only to leases that have been heretofore or that may hereafter be granted by the Wellington City Council?

(4.) Are the provisions of the Municipal Corporations Act, 1908, relating to the leasing-powers of Borough Councils satisfactory and in the best interests of the lessees and the Corporations concerned?

(5.) If not, what alterations should be made in the said provisions?

And with the like advice and consent I do further appoint you,

JOHN HENRY HOSKING,

to be Chairman of the said Commission.

And for the better enabling you the said Commission 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 in the said Dominion as you deem expedient, with power to adjourn from time to time and place to place as you think fit, and to call before you and examine on oath or otherwise, as may be allowed by law, such person or persons as you think capable of affording you information in the premises; and you are also hereby empowered to call for and examine all such books, papers, plans, writings, documents, or reports as you deem likely to afford you the fullest information on the subject-matter of the inquiry hereby directed to be made, and to inquire of and concerning the premises by all lawful means whatsoever.

And, using all diligence, you are required to report to me, under your hands and seals, not later than the first day of March, one thousand nine hundred and seventeen, your opinion as to the aforesaid matters.

And it is hereby declared that these presents shall continue in full force and virtue although the inquiry is not regularly continued from time to time or from place to place by adjournment.

And, lastly, it is hereby further declared that these presents are issued under and subject to the provisions of the Commissions of Inquiry Act, 1908.

Given under the hand of His Excellency the Right Honourable Arthur William de Brito Savile, Earl of Liverpool, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Member of the Royal Victorian Order, Governor and Commander-in-Chief in and over His Majesty's Dominion of New Zealand and its Dependencies; and issued under the Seal of the said Dominion, at the Government House at Wellington, this ninth day of January, in the year of our Lord one thousand nine hundred and seventeen.

G. W. RUSSELL,
Minister of Internal Affairs.

Approved in Council.
J. F. ANDREWS,
Clerk of the Executive Council.

EXTENDING TIME FOR REPORT OF COMMISSION.

LIVERPOOL, Governor.

To all to whom these presents shall come, and to the Honourable John Henry Hosking, a Judge of the Supreme Court of New Zealand; Charles F. Thomas, Esquire, of Auckland; and William Milne, Esquire, of Oamaru.

WHEREAS by Warrant dated the ninth day of January, one thousand nine hundred and seventeen, you, the said

JOHN HENRY HOSKING,
CHARLES F. THOMAS, and
WILLIAM MILNE,

were appointed to be a Commission under the Commissions of Inquiry Act, 1908, for the purposes set out in the said Warrant: And whereas by the said Warrant you were required to report to me under your hands and seals your opinion as to the aforesaid matters not later than the first day of March, one thousand nine hundred and seventeen: And whereas it is expedient that the said period should be extended as hereinafter provided:

Now, therefore, I, Arthur William de Brito Savile, Earl of Liverpool, the Governor of the Dominion of New Zealand, in pursuance of the powers vested in me by the said Act, and acting by and with the advice and consent of the Executive Council of the said Dominion, do hereby extend the period within which you shall report to me as by the said Commission provided to the first day of April, one thousand nine hundred and seventeen.

And in further pursuance of the powers vested in me by the said Act, and with the like advice and consent, I do hereby confirm the said Commission except as altered by these presents.

Given under the hand of His Excellency the Right Honourable Arthur William de Brito Savile, Earl of Liverpool, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Member of the Royal Victorian Order, Governor and Commander-in-Chief in and over His Majesty's Dominion of New Zealand and its Dependencies; and issued under the Seal of the said Dominion, at the Government House at Wellington, this twentieth day of February, in the year of our Lord one thousand nine hundred and seventeen.

G. W. RUSSELL,
Minister of Internal Affairs.

Approved in Council.
F. W. FURBY,
Acting Clerk of the Executive Council.

FURTHER EXTENDING TIME FOR REPORT OF COMMISSION.

LIVERPOOL, Governor.

To all to whom these presents shall come, and to the Honourable John Henry Hosking, a Judge of the Supreme Court of New Zealand; Charles F. Thomas, Esquire, of Auckland; and William Milne, Esquire, of Oamaru.

WHEREAS by Warrant dated the ninth day of January, one thousand nine hundred and seventeen, you, the said

JOHN HENRY HOSKING,
CHARLES F. THOMAS, and
WILLIAM MILNE,

were appointed to be a Commission under the Commissions of Inquiry Act, 1908, for the purposes set out in the said Warrant: And whereas by the said Warrant you were required to report to me under your hands and seals your opinion as to aforesaid matters not later than the first day of March, one thousand nine hundred and seventeen: And whereas by Warrant dated the twentieth day of February, one thousand nine hundred and seventeen, the time within which you were required to report was extended to the first day of April, one thousand nine hundred and seventeen: And whereas it is expedient that the said period should be further extended as hereinafter provided:

Now, therefore, I, Arthur William de Brito Savile, Earl of Liverpool, the Governor of the Dominion of New Zealand, in pursuance of the powers vested in me by the said Act, and acting by and with the advice and consent of the Executive Council of the said Dominion, do hereby extend the period within which you shall report to me as by the said Commission provided to the first day of May, one thousand nine hundred and seventeen.

And in further pursuance of the powers vested in me by the said Act, and with the like advice and consent, I do hereby confirm the said Commission except as altered by these presents.

Given under the hand of His Excellency the Right Honourable Arthur William de Brito Savile, Earl of Liverpool, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Member of the Royal Victorian Order, Governor and Commander-in-Chief in and over His Majesty's Dominion of New Zealand and its Dependencies; and issued under the Seal of the said Dominion, at the Government House at Wellington, this twenty-sixth day of March, in the year of our Lord one thousand nine hundred and seventeen.

G. W. RUSSELL,
Minister of Internal Affairs.

Approved in Council.

F. W. FURBY,
Acting Clerk of the Executive Council.

REPORT.

NEW ZEALAND.

In the matter of a Commission, dated the 9th day of January, 1917, issued under the Commissions of Inquiry Act, 1908, to the Honourable Mr. Justice Hosking, Charles F. Thomas, Esquire, and William Milne, Esquire, directing them to inquire into and report as to the operation of the provisions of section 137 of the Municipal Corporations Act, 1908, and in particular its operation in respect to certain leases granted by the Wellington City Council, and also to inquire into and report as to the sufficiency of the leasing-powers conferred on Borough Councils by the said Act.

TO HIS EXCELLENCY THE GOVERNOR.

MAY IT PLEASE YOUR EXCELLENCY,—

We have the honour to report that we entered upon the duties imposed upon us by the Commission at as early a date as was practicable after its issue.

SITTINGS HELD.

We held our first sitting at Wellington on the 16th January, 1917, which was continued there on the 17th, 18th, and 19th January. We also sat at Auckland on the 22nd and 23rd January, at Christchurch on the 25th January, at Dunedin on the 29th, 30th, and 31st January, and again at Wellington on the 1st and 2nd March.

NOTIFICATION OF SITTINGS.

As a preliminary to our sittings in each city we caused advertisements to be inserted in the local daily newspapers announcing the Commission and inviting all persons interested to attend and give evidence or make any representations they desired. We also caused a letter to be written to the representatives of various local bodies for information and assistance. The invitation was not confined to the officials of cities and boroughs, but was extended to those of other local bodies, such as Harbour Boards in particular, known to possess endowments leasable with a right of perpetual renewal.

COURSE OF SITTINGS.

Throughout the sittings in Wellington the Wellington City Leaseholders' Association was represented by counsel, and the Wellington City Corporation was represented by the City Solicitor, Mr. O'Shea. He also attended the sittings of the Commission at Auckland and Dunedin.

In Wellington witnesses were produced by the Wellington City Corporation and by the City Leaseholders' Association. Certain gentlemen were also independently invited by the Commission to attend and express their views. At the other centres certain witnesses voluntarily tendered themselves in addition to those whom the Commission had asked to attend. The evidence was not taken on oath, as the character of what was stated by those who appeared before the Commission was not such as to really require the sanction of an oath. It consisted rather of matters of opinion, although facts were adduced in support of the opinions. Addresses affording considerable help were made by counsel, and the greatest readiness to assist the Commission was evinced on all sides, and in particular by the officials of the local bodies. At Auckland, Christchurch, and Dunedin the Council Chambers were placed gratuitously at the service of the Commissioners, and the greatest courtesy was extended to them by the Mayors and Town Clerks of those cities. Thanks are due to them and to the various witnesses for their attendance, and also for the trouble taken by them in compiling the various returns presented. It should be added that the witnesses attended and gave their evidence without fee. A list of the witnesses is contained in Appendix B herewith.

CAUSES LEADING TO THE ISSUE OF THE COMMISSION.

Legislation proposed by Wellington City Council.

The immediate cause of the Commission was the desire of the Wellington City Council to obtain legislation altering the mode in which the valuation of rents under their renewable leases should be effected.

The leases in question are of areas situated in the business quarter of the city, and confer a right of renewal every fourteen years in perpetuity under a revaluation of the rent. The leases provide that the revaluation shall be made by three independent persons, one of whom is to be appointed by the city, one by the lessee, and the third by the two persons thus appointed.

In 1915, when a Bill amending the Municipal Corporations Act, 1908, was before Parliament, the Wellington City Corporation had a clause inserted the purport of which was to repeal section 137 of that Act, and to substitute for it a provision that the third person should be jointly appointed by the Corporation and the lessee, and that if they failed to agree the senior Magistrate of the district should, *ipso facto*, be the third valuer.

In the more recent valuations difficulty had been experienced in the selection of the third person. The parties evidently laid great stress upon this appointment because, owing to the divergence of views which had taken place between the valuers directly appointed by the parties, it was justly thought that the third valuer would largely control the result. In the later cases a deadlock ensued over the appointment owing to the inability of persons appointed by the parties to agree, and the result was that the Supreme Court had to be invoked to make the appointment. But the Council's real reason for seeking the amended legislation was not so much the difficulty experienced about the appointment of the third valuer as its dissatisfaction with the results obtained under the recent valuations. In the course of the inquiry it was alleged for the Corporation that the third valuers with whom the decisions ultimately rested proceeded on wrong bases or principles. It was also suggested that with business men appointed to fill that office there is always an unconscious bias in favour of the tenant. If the amendment proposed was to be of any value to the Corporation it must have been because it was thought that if the Council had a direct voice in the appointment of the third man it might be able to secure the appointment of persons likely to adopt a more favourable view for the Corporation, and who at the same time would be free from the bias alleged to exist in favour of tenants.

The leaseholders are opposed to the legislation. At an early stage they had become dissatisfied with the valuations because they considered the reassessed rentals were too high, and as a result the basis on which the rents should be assessed came to be canvassed.

Difference of Views as to Basis of Valuation.

It was as to what this basis ought to be and not as to the nature of the valuation tribunal that the differences between the Corporation and its tenants primarily arose. The contention of the Corporation had been that the rent should be a certain percentage of the capital value of the fee-simple, which was to be established mainly by reference to sales of land in the vicinity; whereas the lessees contended that this basis of assessment was wrong, and that the sale prices were not a true and much less the main criterion of value for the purpose in hand. In order to protect themselves and secure united action the city lessees, in conjunction with the Harbour Board lessees, whose leases are similarly framed as regards the mode of valuation, formed an association called "The Wellington Leaseholders' Association," and in the early part of 1912 the rival contentions as to the basis on which the rents were to be assessed came before the Court of Appeal.

Decision of the Court of Appeal in the D.I.C. Case.

The Court of Appeal held that the contention of the Corporation was wrong, and that the true basis on which the valuation should proceed was that the valuers must ascertain what a prudent lessee would give for the ground-rent of the land for the term and on the conditions as to renewal and otherwise contained in the lease, and must put out of consideration the fact, if it be a fact, that there are buildings or improvements on the land. (See The D.I.C. (Limited) *v.* Mayor, &c., of Wellington—31 N.Z. L.R. 598.) The valuations by the lay tribunals which followed after this decision are those which the Council hold to be too low.

Subsequent Proceedings re Aitken, Wilson, and Co.'s and Others Awards.

Certain of these awards were brought before the Supreme Court in 1914 (see The Mayor, &c., of Wellington *v.* Aitken, Wilson, and Co. and Others—33 N.Z. L.R. 897) in the shape of proceedings by the city to set the awards aside on the alleged

ground that the rents fixed were so low as to indicate that the arbitrators were partial or had arrived at their conclusion by some improper method. No personal charge of corruption was made, but the Court was asked to infer from the alleged inadequacy of the rents some bias or misconception on the part of the arbitrators. A comparison of the rents awarded with the previous rents and with the values claimed by the Corporation valuers was laid before the Court, and the Court said that, "if it had to deal with an award as it deals with the verdict of a jury, there was a strong case made out for interference by the Court based on some misconception of the position by the arbitrators, and that the rentals were lower and irreconcilable with the decision of the D.I.C. arbitration, the umpire in that case having been a Judge of the Court. Further, if the awards are proper, then the Government valuation of land in the centre of Wellington is far beyond what it should be, and people who have bought land near the centre are giving absurd prices." The Court nevertheless held that, as the tribunal was appointed by the parties and no right of appeal was given, the awards could not be interfered with merely because the Court might come to the conclusion that the results were against the weight of evidence or based upon some error in law or fact.

Corporation still press for Assessment on Capital Values.

The principle on which valuations were to be made was not dealt with by the last-mentioned judgment, but the Corporation evidently still laid great stress on sales of the freehold. The Court said, "This is how counsel for the Corporation present their case: they take the rents previously paid, and they take the value of the land sold recently or formerly in the vicinity; they also take the Government valuations, which they say have been increasing in this part of the city." From examples cited by the Court in illustration of this it is evident that the Corporation's counsel tested the propriety of the rents awarded by contrasting them with 5 per cent. on the freehold values. The tenants maintain that the Corporation's effort still is to have the rents assessed by way of a percentage on the freehold value and thus to get away as far as they can from the basis of valuation laid down by the Court of Appeal, and hence they view with grave suspicion the attempt of the Corporation to obtain legislation on the subject. Legislation on the subject has so far been deferred, and in the meantime this Commission was appointed to inquire and report.

New Proposal by Corporation.

Since then the Corporation has put forward a suggestion with the view of inducing the lessees to submit to a change in the constitution of the tribunal. At the outset of our inquiry the Corporation's counsel made a proposal, which the Mayor confirmed, to the effect that if the capital value of the land was under £2,000 a Magistrate, and if or over that amount a Judge of the Supreme Court, should be the sole assessor, and stated that if the tenants agreed to this the Corporation was prepared to grant a lease renewable every twenty-five years, with a provision that if a lessee did not wish to renew the Corporation should pay him 60 per centum of the value of his buildings at the end of the term. The lessees replied to this that, while they would welcome any concession, they did not desire any to be forced upon them, and strenuously opposed any change in the constitution of the tribunal. The tribunal thus proposed, it will be noted, differs from that for which the legislation of 1915 was promoted, and dispenses altogether with a lay tribunal.

The first question submitted is:—

(1.) Is the system of valuation prescribed by section 137 of the Municipal Corporations Act, 1908, satisfactory in its application to (*a.*) Leases that have heretofore or that may hereafter be granted by any Borough Council; or (*b*) leases that have been heretofore or that may hereafter be granted by the Wellington City Council?

THREE TYPES OF RENEWABLE LEASE.

Under the Municipal Corporations Act, 1908, section 136, three distinct types of renewable leases involving valuation are open to be granted by a Municipal Council. These are—

(1.) A lease for a term not exceeding twenty-one years, with a provision that the lessee may at any time before the expiration of the term have a new lease for a

further term not exceeding twenty-one years at a rent to be fixed by valuation of the land only without regard to the value of any buildings or improvements thereon. The renewed lease is to contain a similar provision, and so *toties quoties* in perpetuity or until the lessee ceases to require a renewal. It will be noted that in this type of lease there is no compulsion on the lessee to renew, but if he does not renew he gets no valuation for improvements. If he should desire at any time to get anything out of his improvements he would have to sell his lease to a third party for what he could get. For convenience we shall refer to this type as a " non-auction renewal."

(2.) A lease for a term not exceeding twenty-one years, with a provision that prior to its expiry a new lease for a further term not exceeding twenty-one years, containing the same provisions, is to be put up to auction at the upset price of the annual value of the land only, without regarding the value of any buildings or improvements thereon, but subject to the condition that if a stranger becomes entitled to the lease, as he may do by being the highest bidder at the auction, he is to pay the outgoing lessee the value of the buildings or improvements. We shall for convenience call this an " auction renewal."

(3.) A lease for a term not exceeding twenty-one years, with a right for the lessee, at his option, to have a non-auction renewal of type No. 1 or an auction renewal of type No. 2.

Mode of Valuation prescribed by Section 137.

Section 137, referred to in the question, provides that the valuations therein mentioned shall be made by three independent persons, one to be appointed by the Corporation, one by the lessee, and the third by such two appointed persons. The section further provides that the lease may contain any subsidiary matter to give due effect to the provisions with regard to the various types of leases, and may include such other covenants, conditions, and provisions not being contrary to the Act as the Council of the Corporation thinks fit. Those provisions enable the Council within limits to use its powers so as to adapt the lease to its opinion of what is best in all the circumstances of the case.

City of Wellington Leases.

The Wellington City Council, like some other public bodies, has from time to time obtained special legislation to supplement its leasing-powers. Under the Wellington Reclaimed Land Act, 1871, the Corporation was empowered to let for any term not exceeding forty-two years. No right of renewal was authorized. Under this Act many leases were granted. Then in 1885, by the Wellington Corporation Leaseholds Act, the Corporation was empowered to insert in its future leases a provision for an auction renewal for a term not exceeding twenty-one years in perpetuity, and provision was made for granting a lease of this type in exchange for such of the forty-two-year leases as still had twenty-one years to run.

By the Wellington City Leasing Act, 1900, further authority was granted to accept surrenders of existing leases that did not contain provision for renewal or compensation for buildings, and to grant in exchange a lease for a term not exceeding twenty-one years, with provision for perpetual renewal of the auction renewal type. The form of the lease is given *in extenso* in the schedule to the Act. This lease provided that the annual rental for the renewal term and the value of the buildings should be ascertained by a valuation made by three independent persons as above described.

Then, by the Wellington City Leasing Act, 1904, the Corporation was authorized to grant a new lease providing for a " non-auction " renewal in exchange for any then existing lease that contained any provisions for renewal or compensation. It appears that this Act was the result of objections on the part of the lessees to expose the right of renewal to auction.

A few of the old forty-two-year leases are still current. There are also a few leases extant which contain the auction renewal provision, but the Corporation is always willing to waive the auction if the tenant so desires. They are treated as on the footing of non-auction leases. The rest of the leases are in the form authorized by the Act of 1904 with respect to the mode of ascertaining the value of the rent.

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 appraisement. 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.

Finding.

General.

The finding of your Commission upon the first question is that, subject to the qualifications to be mentioned, the system of valuation prescribed by section 137 of the Municipal Corporations Act, 1908—*i.e.*, by three independent persons as stated—is satisfactory in its application to leases that have been or may hereafter be granted by Borough Councils. The qualifications referred to are: (1) That the system be maintained as a system of appraisement as distinct from arbitration; (2) that an appeal be provided for as hereafter recommended; (3) the City of Wellington is specially dealt with.

This finding, it will be noted, has, like the question itself, nothing to do with the point whether a lease perpetually renewable at a valued rent at stated periods is preferable to a non-renewable lease for a long term such as sixty-six years. It is simply to the system of valuation, where valuation is provided for, that the finding relates.

No evidence has been adduced to show that dissatisfaction with the mode of valuation exists anywhere except in the City of Wellington, where the system provided for by their leases corresponds, as we have pointed out, with that prescribed by section 137.

Operation of the System in Dunedin.

In Dunedin, where the system of letting on a renewable lease subject to a revaluation of rent appears to have originated in Provincial Council days, and where it has been adopted by the City Council, the Otago Harbour Board, the Presbyterian Church Board of Property, and other public bodies, as well as by private owners, the mode of revaluation by two persons appointed by the respective parties and a third person selected by these appointees is actively approved, and the evidence given before us by the representatives of the local bodies there indicates that, so far from desiring any alteration in it, they wish it retained. Further, the system of arriving at the values by skilled valuers has not there been abandoned in favour of arbitration. As an act of precaution in deference to the legislation referred to the parties are now asked if they wish to be heard on the subject, but it is found in practice that they are content to leave the decision to the valuers, acting on their knowledge and experience, and so the expense and other disadvantages of arbitration continue to be avoided.

Operation in Wellington.

In Wellington the dissatisfaction which originated with the lessees was, as already pointed out, with the basis of valuation at one time adopted by the valuers, and which the Council supported—viz., that of assessing the rental at so-much per centum of the capital value, and of basing the capital value mainly on the sale prices of adjacent lands. But after the Court of Appeal decision that the annual rent to be ascertained was what a prudent lessee would give the valuers approached the subject from that point of view, and since then the rents assessed have for the most part not borne that ratio to the assumed capital value which the Corporation thought they should. Hence the Corporation has in turn become dissatisfied.

Nature of Dissent with regard to Basis of Valuation.

The tenants, in effect, say that the main test of what ground-rent a prudent lessee would give is what could be made out of the land with an up-to-date building suitable to the site erected thereon. In order to ascertain this they say that the income from an actual or hypothetical subletting must be found, and from this reasonable allowances for interest on the outlay in buildings, for rates, insurance, repairs, sinking fund, and other matters must be deducted. Broadly speaking, the later valuations have involved this test. The pamphlets issued on both sides and the contentions submitted to us by counsel show that the Corporation do not accept this as a proper test, and that, adopting it, there is much difference of opinion as to the matters in respect of which allowances ought to be made, and what the amounts of these allowances should be for the purpose of arriving at the net return. The opposing views have led to strenuous and costly proceedings before the arbi-

trators, the lessees believing, rightly or wrongly, that the Corporation seeks to evade the test laid down by the Court of Appeal and are unduly straining after excessive rentals, while on the other hand the Corporation appears to regard the Leaseholders' Association as a menacing combination bent on exploiting the city. A spirit of antagonism between the parties has thus come into existence. It will, however, be apparent that the real cause of this is not the constitution of the tribunal, but the difference of opinion as to the detailed principles and standards by which the rents should be assessed. We think it obvious that, if the basis of valuation remains thus unsettled, the chance of divergence and dissatisfaction is as likely before a Magistrate or Judge, whether sitting alone or as one of a body of assessors, as it is under a tribunal of three independent persons appointed as prescribed by the Municipal Corporations Act or the Wellington City leases.

It may be said that if a Magistrate or a Judge sits as the assessor detailed questions of principle which may arise in determining what the prudent lessee would give would in time come to be settled, and difficulties would thus be diminished; but as matters at present stand it is quite open for the parties, if they are willing, to bring any such question before the Courts and have it determined, as was done when the Court of Appeal decided that the annual rent was to be assessed in accordance with what the prudent lessee would give.

The dissatisfaction of the Corporation may therefore be summed up in this: that since the decision of the Court of Appeal its counsel and experts have not been successful in convincing the lay tribunals—or, rather, the third member thereof—that the Corporation's estimate of what after all is, within limits, a matter of opinion is sounder than the view presented by the lessees.

Observations on Methods of Valuing.

As a considerable amount of evidence was given as to the way in which values should be arrived at we summarize its effect in Appendix A, but would observe that no uniform rule or set of rules applicable in all cases can be deduced from the evidence.

Cost of Valuations in Wellington.

In addition to the Corporation's objection to the constitution of the tribunal the lessees complain that the system as at present worked involves them in unduly heavy expenses. With the payments to be made to witnesses and solicitors and counsel, and the heavy fees to assessors on account of the length of time involved, the cost to a tenant of ascertaining his rent has been shown to run from anything up to £140. The cost to the Corporation in respect of each case is from £30 to £40. Such a heavy burden on the Corporation ought to be, if it is not, a source of dissatisfaction to the Corporation also. It ought to be concerned not merely because of the amount of its own expenditure, but because the cost to the tenants must tend to diminish the rents that can fairly be expected to be given.

Cost in Dunedin.

The contrast which the cost of valuations in Dunedin presents to the Wellington cost is striking. Taking the forty-nine cases of renewals of Dunedin City leases extending over the years 1915 and 1916, the total cost of the renewals, including valuer's fee, advertising, auctioneer's commissions, and legal expenses, amounted to £1,260, or an average of £25 14s. in respect of each lease, the lowest figure being £8 10s. and the highest £62 4s. These figures include the solicitor's fees for the preparation of new leases. Of this £1,260, £706 fell on the Corporation and £554 on the lessees. It must be remembered that the Dunedin City leases involved an auction on renewal. The city pays the cost of the auction, otherwise the costs of renewal are equally divided. Thus, by the £706 falling on the Corporation and £554 on the lessees, the average cost of renewal per lease to the Corporation is £14 8s., and to the lessee £11 6s. The £1,260 is made up as follows: Advertising, £63; auctioneer's expenses and other kindred expenses, £529; valuer's fees, £765; law costs for new leases, including stamp duty, £171. The forty-nine leases referred to represent a yearly rental of £4,378, or an aggregate rental for the term of twenty-one years of £92,000. The total cost of renewal to both parties was therefore

1·36 per centum of the aggregate rental, divided between them in the proportion of 0·76 per centum to the Corporation and 0·60 per centum to the lessee; or, in other words, the cost to the Corporation was practically 15s. per annum and to the lessee 12s. per annum in respect of each £100 of yearly rental.

Four typical cases may be given: Renewal rental, £363; cost of renewal to the Corporation, £29 19s.; cost to the lessee, £20 2s. 6d.; or, spread over a term of twenty-one years, a little less than £1 per annum. Another instance: Renewal rental, £123; cost to the Corporation, £14 13s.; cost to the lessee, £10 16s. A third case: Renewed rental, £207 19s. 2d.; cost to the Corporation, £33 14s.; to the lessee, £28 10s. A fourth case: Renewed rental, £240; cost to the Corporation, £24 3s. 6d.; to the lessee, £17 9s. 6d.

Costs a Grievance.

We consider the burden of the costs incurred in Wellington constitute a well-founded grievance, but this is mainly due to the fact that the parties themselves, believing or assuming that the law was so altered, turned the simple valuation which the leases provided for into the elaborate proceedings which arbitration demands.

The second and third questions, which we deal with together, are as follow:—

(2.) If the said system of valuation is not satisfactory, what alteration should be made therein?

(3.) Should the said alterations (if any) be made applicable—(*a*) Generally with respect to leases that have heretofore or that may be hereafter granted by Borough Councils; or (*b*) with respect only to leases that may hereafter be granted by Borough Councils; or (*c*) with respect only to leases that have been heretofore or that may be hereafter granted by the Wellington City Council?

PRELIMINARY OBSERVATIONS.

Meaning of Contract.

In approaching these questions two or three preliminary observations seem requisite. In the first place, both sides are entitled to have the rent arrived at in accordance with the meaning and intent of the contract they have entered into. The contract as well as the legislation is silent as to the basis of valuation, and so it is left to the law to determine what is and what is not a proper basis. The Court of Appeal has said that in the case of the Wellington leases the basis is what a prudent lessee would give under a lease for the term and with the conditions offered, and negatives the suggestion that it must be a given percentage of the capital value. This principle would no doubt be held to govern all leases containing provisions on the subject similar to those found in the Wellington leases.

Contracts not to be interfered with.

In the next place, your Commissioners believe it to be accepted by Parliament as a sound principle that private contracts should not be interfered with by legislation in order to settle controversies between the parties capable of being dealt with by the Courts, unless, of course, both parties consent, or unless the controversies are of such a nature that the interests of the public are prejudicially affected thereby. Hence we point out that any alteration in the system of valuation would be altering not merely the statutory provisions on the subject of valuation, but the terms contained in the leases themselves, for the leases themselves embody and amplify the statutory provisions.

Further, to make any alterations applicable only to "leases that may hereafter be granted" will not be free from the vice of altering existing contracts where the future leases are consequent on the provisions for renewal contained in the existing leases, for the existing leases stipulate that the new lease is to contain the same provisions as those in the lease renewed. If interference with existing contracts is to be avoided the alterations must be restricted to those cases where the municipality leases land not previously offered, or land which has reverted by reason of non-renewal, forfeiture, or otherwise.

Non-interference by Parliament.

We lay great stress upon non-interference by Parliament with leases already granted by public bodies where the interference is sought by public bodies as against their tenants. In our opinion such interference would tend to shake confidence in public leases and to lessen the rentals to be obtained. Moreover, in any alteration of existing contracts, mortgages and other subordinate interests must be regarded. It further appears to us that, if the Wellington Corporation desires to have the terms of its leases altered by Parliament, the appropriate course would be not to seek to amend the general law, but to promote local legislation restricted to Wellington, so that all interested may be heard.

The foregoing observations with regard to non-interference with contracts do not, of course, apply to legislation enabling the parties by consent to come under new terms.

It may be suggested—and, indeed, it is impliedly asserted by the Wellington City Council—that the public interests are prejudicially affected by reason of the present mode of constituting the valuing tribunal, and that therefore they are entitled to parliamentary relief. If the Corporation can demonstrate that they cannot get fair treatment at the hands of three independent persons available in or about Wellington the suggestion would possess force, but they have not demonstrated its truth to us; and in view of the standing of the gentlemen who have acted as valuers in the cases in which the Corporation are dissatisfied, and of the evidence given by them as to the mode in which they worked out their conclusions, we do not think it could be demonstrated.

The evidence convinces us that the rival views of the parties received most exhaustive consideration. Nor is it made out, as now asserted by the Corporation, that a bias against it exists in the minds of business men appointed to value. We regard this assertion as surmise. The assessments made prior to the D.I.C. decision, by way of percentage on the capital value, are not complained of by the Corporation; yet they were made by business men who were residents of Wellington. From the absence of a similar complaint elsewhere it is a just inference that lay tribunals appointed to value are quite capable of doing their duty unaffected by bias. To suggest that a lay tribunal of valuers, equally capable of doing their duty without bias, cannot be produced from the people of Wellington is a libel on that community to which we cannot subscribe. We therefore do not consider the suggestion of possible bias as a sufficient reason for putting an end to valuation by a tribunal of laymen.

Alternative Kinds of Tribunal.

Various suggestions were made with regard to the constitution of the tribunal. The Corporation's present suggestion of a Magistrate or Judge, according to capital value, of course involves the hearing of expert and other evidence, the attendance of counsel, and all the other apparatus of legal procedure. If the Corporation is empowered to adopt this course in cases where the tenant consents, well and good; but we condemn the litigious process and its attendant expense. The same observations apply to the suggestion of permanent local Boards of Valuation and that of a permanent Board for the whole Dominion.

Litigious Processes to be avoided.

In this connection we should like to give point to some evidence which was tendered by two lessees in particular concerning the relations that ought to prevail between landlord and tenant. It was to the effect that a partnership relation exists between them, and that a person in business as a landlord on an extensive scale who manifests a disposition to rack-rent creates misgivings on the part of the tenants, and in the long-run will not get the best out of his property. We agree with this, but must observe that in the case of a public body it is its duty to see that it gets fair rents so that its endowments are not sacrificed to the tenants, and that it is not in the same position to make graceful concessions as is a private landlord. But, granting this, repeated contests between the landlord and his tenants in the form of keen litigation, on the landlord's side to enhance the rents, and on the tenant's side to defeat the landlord's claims, tend to create a feeling of bitterness and distrust and to prejudice the letting-value of that landlord's property.

Why Dissatisfaction in Wellington only?

It was frequently asked in the course of your Commissioners' sittings how it was that in Dunedin, where the system of valuation as against arbitration had prevailed so extensively and for so many years, such acrimony and dissatisfaction have not arisen as now prevail in the case of Wellington City leases. The answer that it was because Dunedin was not progressing cannot be sustained, for the evidence is that the current rents are 50 per cent. in advance of the previous valuations, and in one quarter of the city, Stuart Street, leading to the new railway-station, rents had been raised 200 per cent. The only satisfactory answer that suggests itself is that in Dunedin a reasonable view has been taken on both sides of what rents ought to be; that capital values on which the rents have been assessed have not been determined by the arbitrary sale prices of adjacent sites; and that the revaluation of the rents has not taken the form of hostile litigation between the parties, actively participated in by the Corporation officials, but has been left wholly to the peaceful determination of competent valuers. This observation applies not only to the Dunedin City leases, but to those of the Otago Harbour Board and other Dunedin leases subject to the like system. The tribunal proposed by the City Council would not remove the litigious aspect from the valuations, and would continue to render renewals a costly process. Hence we do not recommend it.

Valuation Department Officers as Valuers.

One of the lay members of the Commission holds a strong opinion that it would be advantageous that the Valuer-General, or a District Valuer under him, should act as the third valuer in all cases. It is thought that the accumulated experience derived from his Department would render him an ideal member of the tribunal. If this opinion is adopted it should only be made applicable to entirely new leases hereafter granted, or where the parties consent.

In General, Valuation System to be adhered to.—Recommendations.

Apart from the Wellington City leases, and proceeding upon the materials laid before us and our own experience and appreciation of the subject, we certainly cannot recommend any interference with the system of having the values appraised by three independent persons appointed as prescribed; and we strongly recommend that the obscurity created by the amendment of the Arbitration Act should be cleared away by declaring specifically that, while the provisions of the Arbitration Act are to apply to valuations in other respects, the valuations are nevertheless to be based upon the personal knowledge, skill, and experience of the valuers, so that the calling o witnesses and so forth shall be unnecessary. That will be to bring the legislation into accord with the practice which the contracts originally intended, and which has in substance continued to prevail outside of Wellington. Hence we except the Wellington City leases. We also recommend that section 137 be amended by enacting that, except where the parties provide to the contrary, the decision of any two of the valuers shall bind. This will accord with what now requires to be and is in practice expressly stipulated for.

It may be pointed out that the leases granted by many of the public bodies other than municipalities, and possibly by some municipalities, expressly stipulate for arbitration as distinguished from valuation, and leases granted under the Public Bodies' Leases Act, 1908 (No. 240), provide expressly that the valuations are to be made by indifferent persons as arbitrators. We do not suggest that any of the existing contracts made by municipal bodies, under which the reference is to arbitration, should be altered, but we do recommend that it should be made competent for municipalities to substitute valuation for arbitration in all future leases, and also, if and in so far as the lessees so agree, in all existing leases and the leases flowing out of them by renewal. We recommend also that the Public Bodies' Leases Act, 1908 (No. 240), should be amended so as to operate to that effect where adopted by municipal bodies.

Likewise in Wellington.

With regard to existing Wellington City leases and the future leases arising out of them by renewal, we do not recommend any alteration of the system authorized

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

PROVISION FOR APPEAL.—RECOMMENDATIONS.

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

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

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

Application to Existing Leases.

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

Short Form of Agreement.

It could be enacted that this agreement may be effected by the execution of a simple endorsement on the lease to this effect: "Memorandum that the parties [*Naming them*] have agreed that section of the Act [*citing its title*] shall apply to the within lease and all renewals thereof, and a provision to that effect shall be inserted or implied in all future renewals of this lease." The consent of mortgagees should be provided for.

FIXING RENEWAL RENTS BY AGREEMENT.—RECOMMENDATION.

For facilitating business and minimizing friction and expense we recommend that the chief cities and all boroughs with a population of over 10,000 should have power by agreement with their tenants to fix the renewal rentals, subject to the safeguarding provision that the agreement be authorized by a special order. In the cases in which such an agreement is come to it would dispense with a valuation, but provision should be added that the agreement must be concluded before the date fixed for the commencement of the valuation, so as to enable that to proceed in terms of the lease if no agreement is made. The effect of having such a power will, it is thought, lead in practice to a timely and preliminary announcement by the Council of the rents it is prepared to take upon renewal, and to negotiation between the tenants and a committee of the Council. Then, if a provisional agreement is arrived at, the special order can be proceeded with. As the special order must be advertised publicity is given to the intended agreement.

In the case of smaller boroughs—that is, with a population of under 10,000—we recommend that a similar power should be conferred, but that, in addition to the special order, the rental be certified by the Valuer-General to be in his opinion a fair rental.

The cost of advertising the special order, and the Valuer-General's reasonable fee, which he is to be authorized to charge, to be borne equally by the landlord and the tenant.

Where several leases fall in at or about the same time one special order could be made applicable to all, and cost would thus be minimized.

The fourth and fifth questions are these:—

(4.) Are the provisions of the Municipal Corporations Act, 1908, relating to the leasing-powers of Borough Councils satisfactory and in the best interests of the lessees and the Corporation concerned?

(5.) If not, what alterations should be made in the said provisions?

FINDING.

Speaking generally on the materials before us, the provisions of the Municipal Corporations Act, 1908, relating to the leasing-powers of Borough Councils are satisfactory, and afford scope for leases that are in the best interests of both parties compatible with the fact that the landlord is a public body. We make this qualification because if the landlord were a private individual it could be provided that an agreement between the parties should supersede what is prescribed. But this elasticity cannot well be allowed in the case of leases by public bodies without some safeguarding check for preventing favouritism, undue pressure, or undue influence. One cannot therefore expect public-body leasing to be as elastic as private leasing may be made. Hence all such variations as they are permitted to make in current leases must be made by way of special order. But even in this way there is considerable scope for substantial variation. The Corporation may reduce rents; it may accept surrenders of leases on such terms as it thinks fit and again lease the land; or it may grant the former tenant a new lease for the remainder of the term of the surrendered lease at a rent to be fixed by the Council by special order either before or after surrender, and on any terms and conditions authorized by the Act. These provisions enable a Council, by the process of special order, to alter the rent or other terms of any lease where from considerations of hardship or mutual advantage it is thought desirable so to do. Somewhat more extended powers in the same direction may be acquired by a municipality by coming under the Public Bodies' Leases Act, 1908 (No. 240).

Variety in Terms and Conditions.

The scope for variety in the terms and conditions which the provisions of the Municipal Corporations Act allows in respect of leases has been taken advantage of, so that, generally speaking, each municipality has a form of its own. It apparently seeks to adopt the kind of lease which best suits local opinion, and this differs considerably.

Long-term Lease v. *Renewable Lease.*

In Auckland, for example, a long-term lease—say, of fifty or sixty years—appears to be preferred. The Auckland Harbour Board for a time adopted the renewable-lease system, but has now reverted to the long-term lease. In Dunedin a perpetually renewable auction lease is the rule. In Wellington, according to the evidence before us, the opinion of business men as to whether a long lease or a short-term renewable lease is preferable appears to be divided. Recently the city offered two sections for lease either for a long term of years without renewal, or, at the option of the tenderers, for twenty-one years with the right of renewal in perpetuity. One section was taken up for the long term and the other as a renewable lease.

It is argued that with business sites and a term equal to the life of the building a business man knows definitely beforehand what sinking fund he must establish and his finance is fixed, whereas with a revaluation every fourteen or twenty-one years, or the like, that is not so. We venture to think this objection is more theoretical than practical.

In our opinion municipalities should be chary of, if not prohibited from, granting long leases of endowments within the city or borough (except in the case of virgin or undeveloped areas, such, for example, as reclaimed lands, and then only in the first instance) unless the lease provides for a revaluation of the rent at periods of, say, twenty-one or, at the most, twenty-five years; otherwise the municipality parts with the benefit of the increment in value for too long a period. Experience also has shown that it is difficult, if not almost impracticable, to keep the tenant up to his repairing covenants, and that at the end of the lease the ground is encumbered with buildings so out of date or dilapidated as to require to be pulled down. So that the landlord gets no benefit from the buildings to compensate for the loss of the increment in value.

Renewal Periods.

Then, again, there is a difference in practice as regards the length of the term in the case of renewable leases. In Dunedin the city leases are renewable every twenty-one years; those of the Harbour Board and Presbyterian Church Board every fourteen years. In Wellington the Harbour Board leases are for twenty-one years at the outset, followed by renewals every fourteen years. The Wellington City Corporation leases are renewable every fourteen years.

Twenty-one Years preferable.

The opinion most generally expressed, and one which the representatives of the Wellington City Council fully endorsed, was that twenty-one years was a preferable term and calculated to produce better rents. We cannot say that this result is altogether borne out by the experience in Dunedin. Certainly the system there prevailing of valuing the rents does not appear to lay much stress upon the difference in term. With a fourteen-years rest the landlord may come into the increment in value more quickly, but the tenant gains earlier relief if values go down. We think that the period of renewal should be left to the discretion of the local body so as to adapt it to its own local circumstances, but we find no sufficient reason for a longer period than twenty-one years.

Auction Renewals.—No Competition.

Attention should be drawn to the practical operation of auction renewals. In Dunedin, where they have prevailed, experience has shown that it is only in the rarest cases (only two or three instances could be recalled by the various witnesses

in which there is any bid against the sitting tenant. The nature of the valuation of the buildings may to a certain extent perhaps account for this, but the substantial cause is the general feeling that it is an opprobrious act to thus, as it were, evict a tenant from his holding. In Greymouth, where the Public Trustee is the leasing authority, he finds that a similar feeling prevails with a like result—so much so that in the only instance in which the sitting tenant was outbid the bidder was morally compelled to relinquish the lease.

A blot upon the auction renewal *in the case of business sites* is that a tenant is exposed to the loss of his goodwill at the hands of a rival trader. It was in consequence of this objection that the ultimate form of the Wellington leases excluded auction renewals. Practically in those localities where the auction-renewal system prevails nothing appears to be gained by the local body, but, as illustrated by the case of Dunedin, it is put to considerable expense without any commensurate benefit.

Option to dispense with Auction.—Recommendation.

It is to be noted that municipalities are empowered to grant leases which give the tenant an option of having an auction or not (see section 136 (1) (*b*) (iii), Municipal Corporations Act, 1908). We think that in the case of existing leases which do not provide for this option municipalities should be expressly authorized by special order to grant the renewed lease either in the form provided or by section 136 (1) (*b*) (i) or (1) (*b*) (iii). The limitation of the power to cases defined by special order will enable the municipality to restrict the right to business sites if it so thinks fit. When it comes to be known that if an auction takes place it is at the instance of the tenant the sentiment against ousting a man from his property which now restrains competition would cease to apply.

Automatic Increase of Rent.

In order to remove the necessity for valuations of rent, and so that a tenant might know once for all what his obligations were to be, it was suggested that leases should be granted for a long term at a rent which should automatically increase at a given rate per centum at stated periods. It is within the powers of a municipality under existing legislation to grant a lease of that kind if there is some one prepared to take it. It is obviously a lease which throws on the tenant the whole responsibility of the property increasing in value in correspondence with the increased rental, and it also would have the effect of depriving the Corporation of any increase in the rental value beyond that of the percentage. We make no recommendation in this connection.

Date of Valuations.—Recommendations.

A further suggestion, supported by a large body of evidence and made with regard to renewals without auction, is that the revaluation of the rent should take place at least *one year* before the expiration of the term so that if the tenant, on learning what the new rent is, elects not to renew he may have full opportunity for securing other premises. The municipality can, under its existing powers under the Municipal Corporations Act, make this provision except with regard to existing leases and leases growing out of them. For these express statutory power would be requisite. We recommend that this should be conferred. It should be framed so as to enable the Corporation to agree to the extended period in lieu of the period provided by the lease for that purpose, and to make any consequential alterations, such as that the tenant must be bound to notify the Corporation of his election within six months after the valuation is made.

In the case of an auction renewal where the buildings have to be revalued the propriety of the suggested alteration in the date of valuation is not so clear. The buildings ought to be valued as near to the date of the auction as possible, for the further away the valuation is from that date the greater the chance of dilapidation in the meantime. Indeed, it is conceivable that if the tenant wished to block competition it would be to his interest not to maintain the state of repair or make good any damage that might occur in the meantime.

Provision for Deterioration after Valuation.

In the case of an auctioned renewal the lessee ought, strictly speaking, to be expressly bound to maintain the premises in that state in which they were when the valuation was made. In view, however, that in practice there is no competition in the case of auctioned renewals, this point is at present rather an abstract than a practical one. It should be provided for by a special stipulation in the lease, but a general statutory provision would meet the case. There is precedent for it in section 189 of the Land Act, 1908.

Provision for declaring Basis of Rent.—Recommendation.

A further suggestion is that all leases should declare, in the language of the Court of Appeal, the basis on which the renewal rents should be valued—viz., what a prudent lessee would give, &c. We think this is a useful suggestion, and that it may be given effect to by legislation, as thereby no alteration is made in the terms of the contract, and the attention of the valuers is specifically drawn to the basis on which they should proceed.

Provision for Short Form of Renewal.—Recommendation.

With a view to lessening the cost of renewal we make two suggestions:—

(1.) That renewals should be effected by endorsement on the existing lease, or by means of a memorandum referring to it on a short form stating that the lease is renewed for a further term of —— years from the —— day of —— at the yearly rental of ——. The legislation providing for this should then state what the effect of such a memorandum is to be—that is to say, that with the alterations as to the term and rent it shall operate as if a new lease had been entered into between the parties to the endorsement or memorandum containing the same covenants, conditions, and provisions as are contained or implied in the lease renewed. The short forms providing for the extension of mortgages are a precedent for this suggestion, which should, it is thought, be confined to leases under the Land Transfer Act. Even under that Act it might not be available in all cases because of the state of the title. Provision should further be made that the memorandum should be stamped and registered as an instrument of lease.

(2.) The second suggestion is that the dates at which the renewal periods expire should be assimilated as far as practicable, so that the rents in as many cases as possible shall be reassessed at the same time. This would tend not only to save expense, but to uniformity in valuations. This plan is adopted by the Public Trustee in the case of numerous leases granted under the West Coast Settlement Act.

An adjustment to this end could be effected by mutual arrangement under the existing powers to accept surrenders and grant new leases, and if, in order to remove the obstacle of expense involved in such a surrender and new leases, the landlord undertook to bear it the future resulting benefit would be worth the expenditure.

In regard to entirely new leases hereafter granted, the local body should take care to provide for a uniform date of determination by shortening or lengthening the original term as the particular case may require.

We recommend that the date of expiry in any year should be the 31st March. It is a good date for business purposes.

Proposals of the Wellington City Council.

We have already stated that at the outset of the inquiry a proposal was made on behalf of the Wellington City Council that if the lessees would agree to the tribunal it suggested it would be prepared to grant the lessees leases renewable every twenty-five years, with a provision that if a lessee did not wish to renew the Corporation should pay to him 60 per centum of the value of his buildings at the end of the term. Evidence was given with regard to this proposal, and opinions varied as to what percentage of the value ought to be paid, some thinking it should be 50 per centum, others that it ought to be 80 or 90 per centum. Other opinions—opinions with which we agree—were to the effect that a municipality should not be allowed to pay any

compensation, and held that if they did agree to do so to the extent of 50 per centum or more they would have thrust upon them buildings which ought really to be pulled down.

The Corporation first intimated that compensation would be given in those cases only where it approved of the building. This, however, we intimated was untenable, because it might tend to favouritism. Ultimately the Corporation stated that the value of which it would pay 60 per centum was to be the efficient value of the building—that is, not its value as a structure, but the value, if any, which it added to the land. It was admitted by those who gave evidence on the lessees' side that a lease of the kind proposed would be more valuable than the existing leases. If so, it ought to produce a better rental. We cannot think that the Corporation should be permitted to grant such a lease in exchange for the existing lease without a *quid pro quo;* for if it be the case, as the Corporation contends, that for the existing term of fourteen years without compensation the rent has been assessed at too low a figure, no voluntary extension of the term at the same rent with compensation for buildings should be permitted.

From what we have said with regard to the proposed new tribunal it follows that we cannot regard the agreement to it by the lessees as a sufficient *quid pro quo* for the new lease proposed.

Twenty-one-year Renewals.—Recommendation.

The Wellington City Council's proposal implicitly recognizes that the fourteen-year period of renewal is unduly short for business sites on which permanent and expensive buildings are erected. Much evidence given justified this view. As the city has manifested a desire to improve the character of its lease, with a view to ensuring better returns and establishing confidence in its tenants, we recommend that the Corporation be empowered to agree with all tenants desiring the same to treat their current leases containing provisions for renewal for fourteen years as though they provided for a renewal for a term of twenty-one years, and on the expiry of the current fourteen-year terms to grant such tenants new leases with a right to a twenty-one-year renewal. This power should extend to all those expired leases which are now awaiting revaluation pending legislation.

Proposed Terms of Exchange for a Twenty-one-year Lease.

The power should be exercisable with respect only to those leases the holders of which notify their desire to have the new form of lease. But, as the holders of current leases who may thus acquire a right of renewal for twenty-one years instead of fourteen years will receive a benefit thereby, they should, with certain exceptions to be mentioned, be made obliged to pay for it by way of additional rent. We therefore suggest that as a preliminary to any such agreement provision be made that the Corporation must by special order fix the increased rent to be payable in respect of all the leases. This must be at a uniform rate so that one tenant is not preferred to another, and we recommend that it should be by way of a reasonable percentage on the existing rents. If the Corporation is desirous of making the scheme successful it will doubtless appoint a committee to confer with the tenants, so as to arrive at a reasonable percentage acceptable to both sides before it makes the special order. After the spec al order is made each tenant can determine for himself whether he will come in or not.

In our opinion the increased rent should not apply to those leases which at the passing of the Act have less than two years to run. Nor should it apply to those cases where the renewal took place and the valuation was made prior to the decision of the Court of Appeal in the D.I.C. case. These are the exceptions referred to. The increased rental would not, of course, apply to the expired leases awaiting valuation.

The increased rent should begin to run on the expiry of one month after the date of the special order, and be payable at the same dates as the original rent, with provision for a broken period. A tenant should be at liberty to notify his desire to have the new form of lease at any time after the special order not later than the date at which the valuation under his lease falls to be made; but at whatever time

he notifies his desire the liability for the increased rent should thereupon attach as from one month after the date of the special order, and all back rent, if any, should be paid up with his notification, so that no advantage is to be gained by delay. If a tenant does not notify his desire to have a lease in the new form before the time for valuation arrives he should lose the right to have it, and would not in that case, of course, be liable for any increased rent.

The new lease should be granted subject to and so as to embody the provisions of the amended legislation which we have suggested as to valuation, appeal, time of revaluation, and otherwise, and should allow the form of the renewal to be at the option of the tenant, as provided by section 137, subsection (1) (*b*) (iii).

Where a lease is under mortgage the consent of the mortgagee to the tenant's notification should be provided for.

Short Form of Agreement.

In any case in which the rights suggested have been agreed upon, the fact may be evidenced by a memorandum endorsed on or annexed to the lease to the following effect:—

"It is this day agreed between the Mayor, Councillors, and Citizens of the City of Wellington and , the registered proprietor of the estate and interest subsisting under the within-written [*or* annexed] lease, registered number , that inasmuch as the said has notified his desire in this behalf the said lease is now subject to the provisions of [*Refer to the section of the Act providing for the extended term*], and that the rent payable under the said lease is increased to £ per annum as from the day of 19 [*Date of expiry of one month from date of special order*]. Dated this day of , 19 ."

Written consent by the mortgagees should be made requisite. Provision should also be made for the registration of the memorandum as an instrument under the Land Transfer Act, and that the stamp duty payable shall be that assessed in respect of leases on a rent equivalent to the amount of the increase.

Other Suggestions.

In its freedom from restrictions on the tenants the Wellington form of renewable lease is the most liberal of all the forms brought under our notice, and in our view contains no tenant's covenants but such as ought justly to be inserted. But there are two points in respect of which useful alterations in any event may be made in the form.

(1.) The lease provides that the value of the rental is to be "the full and improved ground rental." In practice this phrase is not treated as amounting to anything more than the annual rental, and the Corporation admits that no effect is given to the enlarged expression. It should therefore be authorized to delete the words "full and improved."

(2.) Determination of the lease destroys the right of renewal if the term has been put an end to by re-entry. In proper cases the Court has power to relieve from forfeiture. We think the Corporation should be authorized to alter its lease so as to expressly provide that determination by re-entry shall not affect the right to renew if the Court has relieved against forfeiture. Possibly this is implied, but all doubt should be removed. There is a provision with this object in view contained in the form of lease authorized by the Public Bodies' Leases Act, 1908 (No. 240), but it is not too well expressed.

Wellington Leases as Security for Loans.

With a view of showing that the Wellington City lease was not of an acceptable form evidence was given that lending institutions in Wellington will not advance money on the security of this lease. At one time they did so, but that was before the lessees and the Corporation became unsettled.

As against this view of the lease it is to be observed that in Dunedin money is freely lent on the class of lease prevailing there, even although the right of renewal goes to auction. The evidence is that the lenders there try to get a half per centum extra interest on that class of security, but do not always succeed Reasonable and

uniform administration with regard to renewals has given confidence in the lease to lenders as well as to lessees. The Wellington attitude with regard to loans on the city renewable leaseholds may possibly be due to the litigation and unrest which have arisen with regard to the leases. To rescue its leaseholds from the slur thus cast upon them we suggest that the City Council should direct its Sinking Fund Commissioners that they may lend on these leaseholds as authorized securities. A general limit upon the amount which may be lent may be fixed. Within this limit the amount to be lent in any particular instance would be, in the discretion of the Commissioners, based on the valuation and the circumstances of the particular case

General.

Various Public-body Leases

The terms of our Commission confined our inquiries to leases granted by municipalities and to the operation of the provisions for leasing contained in the Municipal Corporations Act, but, as already indicated, there are other public bodies which grant renewable leases similar to those authorized under that Act. We desired the representatives of such bodies to give us information regarding the working of their leases, and in substance our suggestions may be fitly extended to such leases *where the endowments consist of town property.*

Several of such bodies have special legislation of their own on the subject of leasing, and this would have to be considered in making alterations. Some have taken the powers granted by the Public Bodies' Powers Act, 1887, or the Public Bodies' Leasing-powers Act, 1908, or the Public Bodies' Leases Act, 1908 (No. 240).

The Public Bodies' Leases Act, 1908 (No. 240).

The last-mentioned Act provides a very wide scope. It authorizes long leases without renewal for a period not exceeding fifty years, as well as renewable leases of the kind available under the Municipal Corporations Act. But the values of the rent and buildings *are to be determined by arbitration.* The Act provides for two *arbitrators* or an umpire, and the duty of the umpire is to consist in analysing the valuations of the two arbitrators if they disagree, and thereupon to make an independent valuation which is not to exceed the higher or be less than the lower of the arbitrators' valuations. We would also point out that in the limit of fifty years for a non-renewable lease there is a departure from the Municipal Corporations Act which gives a period of sixty-six years.

Harbour Boards.

The limit under the Harbours Act is likewise fifty years for town lands, but with a proviso that if the term is longer than twenty-one years the rent must be advanced at least 50 per cent. for the period beyond. There is no power to grant renewable leases as in the case of municipal bodies. Where a Harbour Board possesses that power it is either because of a special Act or because it has come under the Public Bodies' Leases Act or one of the earlier Acts of that type. In some cases it may be that harbour endowments consisting of reclaimed land, the potentialities of which have not been tested, require special treatment. Where such land is let for the first time a lease with the right of perpetual renewal or for a longer period than twenty-one years may or may not be prudent for the Board, and the probability of the development of the reclaimed land in the course of twenty-one years is doubtless the reason under the Harbours Act for the automatic increase of rent by 50 per cent. after the first twenty-one years where a longer term than twenty-one years is granted. When, however, the reclaimed area has once been developed by occupation the reason for the automatic increase fails and must form a bar to beneficial leasing. Escape from the position can, of course, be effected by the Board being brought under the Public Bodies' Leases Act.

Other Public Bodies.

Charitable Aid Boards and Hospital Trustees are restricted to forty-two years for town land or building-sites, with an automatic advance of not less than 50 per

cent. after twenty-one years if the term exceeds that period. But if the term does not exceed twenty-one years provision may be made for a new lease to be auctioned (apparently the Board is to fix the rent) subject to the payment of valuation for buildings if a stranger acquires the lease. It is expressly provided that this value is to be determined by *arbitration*.

There seems to be no reason for this arbitrary increase of rent after twenty-one years, and none why those bodies should not have the same powers of lease as are conferred on municipalities or as may be obtained under the Public Bodies' Leases Act.

High school reserves, where they consist of town land or building-land, may be let for fifty years, but if the term is longer than twenty-one years the rent must be advanced at least 50 per cent. for the period beyond. There is no provision for renewals. Why high school reserves in a city or borough should not be on the same footing as regards leasing as the endowments of municipalities is not apparent. Again, there appears to be no reason for the automatic increase of the rent.

Auckland Hospital Board.

The position of this Board was specially brought under our notice. It has special powers of its own under special Acts, and by section 7 of the Reserves, Endowments, &c., Act, 1898 (No. 39), as amended by the Auckland Hospital Acts Amendment Act, 1907, novel provisions with regard to renewals and valuations are enacted. Two valuations are to be made, one of the gross value of the property, the other of the permanent improvements, and the annual rent is to be 5 per cent. of the gross value of the property after deducting the value of the improvements. There is to be only one valuer. By the legislation as it stood prior to the Act of 1907 the endowments were vested in the Public Trustee, and it was the function of this neutral and disinterested official to appoint the valuer. But he was superseded by the Act of 1907, and the Board itself, which is the landlord and cannot be described as neutral, appoints the valuer. This consequence was doubtless overlooked when the Act of 1907 was passed, and deserves serious consideration with a view to some amendment. The effect was to alter (no doubt unconsciously) the operation of existing contracts.

Forms of Lease.

We have the honour to forward with the Commission printed forms of various public-body leases that have been brought to our attention. There are doubtless other varieties of which we have not heard.

Evidence.

We have also the honour to forward notes of the evidence as taken by Mr. H. M. Gore, the secretary to the Commission.

In witness whereof we have hereunto set our hands, this first day of May, one thousand nine hundred and seventeen.

J. H. Hosking, Chairman.
C. F. Thomas.
W. Milne.

APPENDICES.

APPENDIX A.

This appendix summarizes the evidence given before the Commission with regard to methods of valuation, and contains some observations thereon.

As to the Mode of Arriving at the Rental.

The Court of Appeal has laid down as the interpretation of the provision for valuation that the rental is to be what a prudent lessee would give under a lease for the term and with the conditions offered, including the right of renewal, and without regarding the buildings erected thereon—that is to say, that it is the rental value of the ground as if it were bare ground that has to be ascertained. The Court negatives the suggestion that the rental must be a given percentage of the capital value.

"A prudent lessee" seems to indicate not so much a person desirous of becoming a lessee for the first time, but one who is already a lessee and is desirous of obtaining the land for a renewed term. The proposed tenant's estimate of what the rental should be must, of course, be governed by the fact that the landlord cannot be expected to let for less than what a prudent lessee would give.

The ordinary test of the value of an article for the purpose of exchange is its value in the market if there is one. The market value may be said to represent the consensus for the time being of those who deal in the article based upon their current knowledge and experience of dealings in that article. To any one proposing to buy or sell the current market value at once gives him the existing result of that knowledge and experience without his having to reason it out for himself. Hence the saleable market value of a piece of land is gauged by the price which land of the like area, situation, and potentialities has brought, apart from any special factors inducing or affecting the sale or purchase. Similarly the market value for leasing of a piece of land is gauged by what land of the like area, situation, and potentialities is let for at the time on the conditions offered, and apart from special factors inducing or affecting the letting or taking on lease.

Where the material for such a comparison exists the prudent landlord may be expected to pay the current market rent. But material for the comparison may not be available, or may be inadequate; there may not have been equivalent transactions of such a character as to afford a safe comparison: hence the letting-value must be ascertained in some other way. It is here the difficulty arises.

It was apparently thought in Wellington that taking a percentage of 4 or 5 per cent. on the value of the fee-simple was a satisfactory mode of determining the rent until the Court of Appeal negatived that as a decisive test. But the Court have not denied that the *capital* value is a factor to be considered if there is a market to test it. Indeed, valuers in Auckland and Dunedin treat that as a cardinal factor. That, however, still leaves open the question of how the capital value is to be ascertained. The Government valuation is not necessarily to be adopted. That valuation may have been agreed, or, although the owner considers it high, it is allowed to stand because it suits him. Nor is the capital value necessarily the price at which the freehold of the like piece of land in proximity to that to be valued has been bought. Such a test may be fallacious unless all the circumstances of the transaction are taken into account, and these may not be fully known. On investigation it may be found that the buyer has reckoned for recompense on a future rise in value and is willing to pay something extra on that account, or he has desired the particular piece of land because it is specially adapted for his own particular business. In the case of a permanent institution such as a bank or an insurance company it may desire a conspicuous position, or is determined to have a freehold at any cost whether it yields a good rate of interest or not. In Wellington the large area of leasehold, the freehold of which cannot be sold, existing in the central business parts of the city also tends to give an additional freehold value to the limited quantity of saleable freehold in those parts.

In regard to the value of the fee-simple a distinction in terms may be suggested between what is the *capital* value—that is, a value capable of producing a regular return of a fair rate of interest to an investor (which in the case of a business-site would depend on the rental it commanded)—and the *freehold* value of land which, while not yielding a regular return of a fair rate of interest on that value, is desirable on account of the prospective or speculative value which is attached, or on account of some circumstances peculiar to the particular buyer or otherwise adventitious in their nature. If a fair rent on a renewal is to be assessed on a principal sum as at the date of renewal, then the opinion of valuers is that it ought to be on the capital value as thus distinguished from the freehold value. But, if there is no market to determine the capital value eliminated from all prospective or adventitious factors, it appears that one way at any rate of arriving at the capital value, or testing any figure put forward as such, is

to ascertain the net annual return to be got out of the land if put to its best use. This is the fundamental basis which would be adopted by an investor requiring a fair and immediate return of interest for his money. Therefore, where valuers proceed to fix rent by way of a percentage on capital value, it would seem that they should ascertain or verify the capital value by reference to the probable returns.

Moreover, when they have arrived at the capital value it does not follow that a fixed percentage such as 4 per cent. or 5 per cent. should be taken. The percentage or rent must vary according to the length of the term. In determining the rental the Corporation valuer, Mr. Ames, states that he proceeds on the value of the fee-simple, but in assessing the value "makes a considerable reduction." In one case he says he took £15 off £90. He then fixes the annual rental at a percentage of about 4 or 4½ per cent. on this reduced value. He does not indicate what rule, if any, guides him in making the reduction. The valuers with whose decisions the Corporation has been dissatisfied have endeavoured to ascertain the fair rental upon the hypothesis of what the land will produce. The land being city land in a business quarter, the best productive use to which it can be put is by erecting upon it some building which will produce a revenue. Hence the best building for the site and locality is assumed. As to this opinions may differ. If what is deemed a suitable building has in fact been erected and sublet the improved rents may be used as a test of the productive capacity. That test, however, is not available, or fully available, where the building is wholly or partially occupied by the tenant himself. In any case wide scope for divergence of view exists upon the question of what deductions should be made from the actual or estimated gross revenue in order to find the net return. Some witnesses considered this method fallacious, stating that by adopting it without other considerations it was possible to prove that the ground-rent should be nil.

The evidence of two experienced valuers in Auckland was taken. One was in effect that the proper method is by way of percentage on the fair market price of the land; that the Government valuations are not to be taken as the test; that sales are not an absolute test, for these must be investigated to see what special circumstances may have affected the price; and he added that those whose business renders them conversant with current land transactions and who have a capacity for weighing one property against another are best qualified for that task. A fourteen-years lease, he thought, could not possibly be worth more than 2 per cent. on the capital value at the very outside. A twenty-one-years lease, he thought, should be worth from 3 to 3½ per cent. at the very outside. The other of those witnesses in effect stated the practice of valuers to be that, guiding themselves to a great extent by sales in the vicinity, they endeavour to find what the land to be valued would sell for *and* what fair and satisfactory return could be obtained from it if put to its best use. A rate of interest lower than the market rate is to be expected, because the investment in ground-rents secured by a building with a right of distress over its contents affords as sound a security as can be got—preferable in many ways to a mortgage.

In Dunedin the valuers appear to be guided by three considerations: (1) The freehold values in the neighbourhood as tested by sales, eliminating cases where special circumstances existed; (2) other ground-rents in the neighbourhood; and (3) the productive value. They do not take the Government valuations, as the Government valuation follows the rentals they fix. One witness put it, "We endeavour to find the freehold value, then take 4½ or 5 per cent. on that, and we have the annual value. If we want to check that we put a building on it and estimate the rents. Then surrounding sales of freehold or leasehold are another guide."

The Otago Harbour Board valuer endeavours to ascertain as nearly as possible the freehold value by reference to the market. "Then," he says, "we generally adopt 5 per cent. on that as a fair percentage for rental." Others say they take a rate of interest 1 per cent. less than the market rate.

It will be seen from the foregoing how not only the method of approaching a valuation of rent, but where it proceeds on the capital value as a basis the notion of what is a fair percentage for rental differs according to locality. There appear to be no general and uniform rules for arriving at what the prudent lessee would give. To a certain extent it appears to be reached by a sort of instinct.

For your Commissioners to lay down any specific rules subversive of the existing practice and habit of thought in any particular locality would be to create more trouble than would be removed, and, as regards existing contracts, would be to interfere with the rights of the parties to be bound only by the interpretation which the Courts may place on their contracts. But, granted the best of rules, the reasonable determination of the values in a measure depends upon the spirit in which the valuers approach the subject. If those who are appointed by the parties, while bringing to bear all the particular knowledge they have gained from the parties appointing them, remember that they are appointed not to make a bargain but a valuation, a substantial difference in opinion ought to be the exception and not the rule.

As to the Mode of Valuing Buildings.

In the course of our sittings discussion arose as to the basis on which buildings should be valued—viz., whether their value is to be that of a structure costing so-much to erect and subject to so-much for depreciation, or whether their value must be that which they add to the land. It may be that the building is so old or out of date, or unsuitable to the locality, or so ill adapted for making the best use of the land that a prudent owner would pull it down. From this point of view the building would be worth no more than the value of the materials for removal. In Dunedin the practice is to value a building as a structure. This, it is thought, accords with the

provision for valuation, as it appears to indicate that the land and the buildings are to be treated as distinct entities. Under this method, in the case of auction renewals it is obvious that if, when the renewal is to take place, it would be best that the building should be pulled down the position is in favour of the sitting tenant, because a stranger desiring to bid would have to pay what was fixed for the value of the building as a structure. This tends to exclude competition. The result to the landlord is not otherwise affected, because the annual value of the land is to be ascertained as if it were unencumbered by any buildings.

We do not think that in the case of auctioned renewals the mode of valuation adopted, which appears to coincide with the intent of the lease, should be interfered with. We may add that according to the evidence taken the practice of valuers with respect to the valuation of buildings is to be liberal to the tenant. This, of course, in the case of an auction, is still further to the advantage of the sitting tenant by its tendency to exclude competition.

J. H. HOSKING, Chairman.
C. F. THOMAS.
W. MILNE.

APPENDIX B.

LIST OF WITNESSES.

Wellington.

Ames, J. (City Valuer).
Atkinson, A. R.
Beauchamp, H.
Brandon, A. de B.
Carter, F. J.
Ferguson, W.
Fitchett, F., LL.D. (Public Trustee).
Fitzgerald, G.
George, W. H.
Gray, A., K.C.
Hannay, W. M.
Harcourt, C. J. S.
Harland, W. J.
Kirkcaldie, S.
Liddle, E.
Luckie, M. M. F.
Luke, J. P. (Mayor).
MacEwan, J. B.
Morison, C. B.
Ward, W. F.
Weston, T. S.
Winder, G.

Auckland.

Burnett, H. B. (Secretary, Harbour Board).
Ewington, F. G.
Gunson, J. H. (Mayor).
Heather, H. D. (Chairman, Harbour Board).
Napier, W. J.
Russell, E. (Solicitor, Harbour Board).
Vaile, H. E.
Wilson, H. W. (Town Clerk).

Christchurch.

Holland, H. (Mayor).
Mason, G. H.
Smith, C. F.
Smith, H. R. (Town Clerk).
Stringer, L. A. (Town Clerk, Lyttelton).
Williams, C. J. R. (Secretary, Lyttelton Harbour Board).

Dunedin.

Bathgate, A.
Clark, G.
Harris, J. T.
Lewin, G. A. (Town Clerk).
Neale, G. B.
Park, J. A.
Quaill, J.
Rennie, J.
Reynolds, E. C.
Simpson, G.
Sligo, A.
Solomon, S., K.C.
Stephens, J. C. (Solicitor, Harbour Board).
Stevenson, W.

MINUTES OF EVIDENCE.

WELLINGTON, TUESDAY, 16TH JANUARY, 1917.

GEORGE WINDER examined. (No. 1.)

1. *To the Chairman.*] I hold two leases from the City Corporation. I am one of the tenants whose leases have to be revalued. I consider it is most unfair that there is no compensation for improvements, because if I am unable to pay the increased rent I shall have to throw up the buildings. At present I pay to the Corporation as ground-rent £70 10s. a year. The rates come to £80, insurance £9, upkeep £30. The interest on the £4,000 for the two buildings I reckon at £240 a year. Depreciation at 1 per cent. comes to £40. At present I am getting £450 a year as rents from my tenants, but I do not always get that. The average would be about £350. It will be seen, therefore, that if they increase the rent any more on me I might as well let the Corporation have the buildings. I certainly think there should be valuation for improvements if the tenant does not take up a new lease.

2. *To Mr. O'Shea.*] I would have no objection to the proposal of the City Council that the tribunal to fix the new rentals should be a Judge of the Supreme Court.

JAMES AMES examined. (No. 2.)

1. *To Mr. O'Shea.*] I am the Wellington City Valuer, and have occupied that office for upwards of forty years. I am also Government valuer for the City of Wellington. I do all the valuing for the Government Departments, such as the Government Insurance, the Public Trust, and the Advances Department. I am not a land agent. In my opinion the rentals that have been obtained in the past by the City Corporation under the present renewable-lease system have been on the low side. Higher rents have been obtained by tender for land on the Reclaimed Land. Until the Leaseholders' Association was formed we had no trouble. We were getting tenders of £8, £9, and £10 a foot. Mr. Izard paid £9; £8 was paid for the next section, and £8 for the next. For the King's Chambers land £10 a foot was paid. £10 a foot was paid for the Hotel Windsor section, and £12 for the "Byko" corner. In those cases we had no troubles with Courts or witnesses, or anything of that sort. Quite recently I have settled up four or five cases myself without any Court at all, and I got excellent results. For a fifty-years straight-out lease I have got from £4 to £6 a foot. For the section opposite the Wellesley Club and the one behind it, Sections 127 and 128, we got £4 a foot and £6 a foot. This was arranged practically by agreement, but actually by tender. We let the people know what the upset would be and they tendered accordingly. The term was fifty years without compensation, but there was a covenant to put up a building at £4,000. Bethune's property, Sections 159 and 160, were fixed by the valuers at £2 4s. and £2 11s. 6d. respectively. Dalgety's land, just across the street from the Wellesley Club, sold for £200 a foot. Then there were two sections sold recently facing Customhouse Quay, adjoining Messrs. Levin and Co.'s property, at £200 a foot, though the Government valuation was £100 a foot. I do consider it would be an advantage if the tribunal were changed. Two of the Courts only, to my mind, have been satisfactory: one was presided over by a Judge and the other by Mr. Fell. The value of freehold land on Lambton Quay between Woodward Street and Kelburn Avenue ranges from £350 to £500 a foot. You can get nothing under £350, and the corner section at Kelburn Avenue is £500 a foot. £400 a foot was paid for the bank-site beyond Whitcombe and Tombs. I think if a Judge of the Supreme Court were appointed to fix these matters it would be far more satisfactory. I believe there would be fewer cases sent to arbitration, as it would tend to settlement between the parties. I arranged the ground-rent of the Working-men's Club at £6 10s. a foot, and I advised the Council to allow me to settle the Royal Oak case myself. The Council agreed, and I got a very fair rent. I got 4¼ per cent. on the capital value, which was, I think, £28,000. We fixed £250 a foot for that part, which is of full depth. I believe now that it is under the market value, but if I had gone to Court I would not have got nearly the value. Then, a couple of months ago, I arranged the lease of a piece of land in Wakefield Street. I reckoned the land was worth about £90 a foot. I took £15 off that and fixed the ground-rent at £3 a foot, which is 4 per cent. The land was advertised, and we had one tender, which was accepted. You cannot purchase any land in that neighbourhood for under £100 a foot. The Union Company paid about £110 for their corner.

2. *To Mr. Blair.*] In arriving at my rentals I do not take as the basis the capital value. I have not taken anything like the capital value. I make a considerable reduction on the capital value. In one case I took £15 off £90.

3. *To the Chairman.*] I do take the capital value as a sort of starting-point.

4. *To Mr. Blair.*] I make no deduction for the fact that the tenant gets no compensation for improvements. Possibly a prudent man would take that fact into consideration. To my mind, to a man in business these Corporation leases are a long way ahead of a freehold. The ground-rent is a mere bagatelle. I do not suggest that a man who can manage his business well and profitably should be charged more rent than the man who cannot do so, but to the ordinary busi-

ness man the rent is a mere nothing. At a meeting of the Council yesterday I recommended a sixty-three-years lease in three periods of twenty-one years. I recommended there should be an increase of 25 per cent. for the second twenty-one years, and an increase of 50 per cent. for the third period.

5. *To the Chairman.*] I do not think there is any chance of the tenant being saddled with a very heavy rental towards the end of the period, because Wellington values have never gone back. I realize that the same does not apply to all towns.

6. *To Mr. Milne.*] I would not exact a higher rental from a publican than from other people. The rent is irrespective of the use to which the land is put.

7. *To Mr. Blair.*] As a business-site I should say Kirkcaldie's was more valuable than the Royal Oak. I could not say how much more.

8. *To the Chairman.*] I consider the fourteen-years lease with perpetual right of renewal is preferable to a straight-out sixty-six-years lease. The twenty-one-years renewable lease is more preferable still, and twenty-five years more so. I suggested to the City Council that if a tenant at the end of a term considered the rent for the renewal lease too high and wished to go out he should be allowed 60 per cent. for his improvements. It is not suggested that the 40 per cent. should be deducted when the property is put up again. I do not think there is any danger of either side taking advantage of the other if there is a proper Court to fix a fair rent.

9. *To Mr. Thomas.*] With regard to my suggestion for a sixty-three-years lease in three periods of twenty-one years, I rather think the rent should be fixed for the whole term beforehand. I agree that if a sixty-six-years terminating lease were generally adopted there would be an inducement to the tenant to cease improving, and that would tend to retard the development and progress of the city.

10. *To Mr. Milne.*] The city rates on lands are considerably higher than they were when these leases were first granted.

11. *To Mr. O'Shea.*] I know of no case where the rentals fixed by any Court of Arbitration have been equivalent to 5 per cent. on the capital value. Sometimes they have not been more than 2 per cent.

JOHN PEARCE LUKE examined. (No. 3.)

1. *To Mr. O'Shea.*] I am Mayor of Wellington, and have been so for the past four years. Previous to that I was for sixteen years on the Wellington City Council. In connection with the city leases the Council is not at all satisfied with some of the awards that have been made in recent years, and is strongly of the opinion that the tribunal to which these matters are referred should be of a different character to that which has been adjudicating in the past. I think I am right in saying that the Council as a body hold the view that all matters of major importance should be decided by a Supreme Court Judge. That is to say, a Supreme Court Judge should adjudicate in all cases where the unimproved value is over £2,000. All other cases should be decided by a Magistrate. The Council is, of course, desirous that as many matters as possible should be settled by agreement with the tenant. There would be no suspicion of bias on the part of the Judge, and when a few cases had been adjudicated upon it would establish a basis of settlement. It would tend to uniformity, and fewer cases would be brought before the Court. The Council is also of the opinion that the renewal periods of the leases should be extended from fourteen to, say, twenty-five years. There is also the alternative of offering the leases for sixty-three years, with two revaluation periods. With regard to compensation, the following is the resolution adopted by the Council: "(*a.*) The tenant to be granted the option, if he does not desire to take up the renewal at the valuation fixed, of receiving 60 per cent. of the value of the building as fixed by the Court in default of an agreement. (*b.*) Where the lease contains a covenant for the erection of a building to the approval of the Corporation the Council may insert a compensation clause which they consider suitable." Personally I would not be in favour of making the term longer. I think sixty-three years is quite long enough, with two renewal periods. I think we shall get a much better rental if there is a longer period of security and some compensation for the building at the end of the term. The committee of the Council has recommended that the present tenants be given the option to convert to the alternative terms, but it has not been before the Council itself yet. No doubt the committee's recommendation will be accepted. I think a great deal of the present trouble will vanish if the personnel of the Court is altered as we suggest. I do not think the trouble has been really due to the tenants being called upon to pay more rent. They must expect to pay more rent when there is a tremendous rise in values throughout the city.

2. *To Mr. Milne.*] I think it would be a very good thing if the matter of revaluation were taken in hand some six or nine months before the expiry of each term. In fact, I advocated that some time ago. I think it should be done twelve months beforehand, so that the tenant may know what the conditions are to be. As it is now he gets only a few days' notice, practically.

3. *To Mr. Blair.*] I did not suggest that the tribunal should be so altered that a Judge should always be the third arbitrator. I prefer the Judge alone. I do not suggest that there should be a statutory alteration to that effect unless the tenants are in agreement with it. I do not think there would be any advantage in giving the Council the right to lease for a hundred years if it thought fit.

WELLINGTON, WEDNESDAY, 17TH JANUARY, 1917.

MARTIN MAXWELL FLEMING LUCKIE examined. (No. 4.)

1. *To Mr. O'Shea.*] I am a barrister and solicitor practising in Wellington; I am a member of the Wellington City Council, and am a member of the Leaseholds Committee of the Council. The subject-matter of these leases has been before that committee for some time. There exists a strong feeling on the committee that the Council is not getting the best rents under the existing conditions.

2. *The Chairman.*] Do you mean under the terms of the lease that are granted?—Yes; and under the existing powers for granting fresh leases, and the methods adopted for arriving at the rentals on renewals. I am not referring to the details of the leases, but I think the opinion of the Council is that the present terms of renewal are too short, and that the methods of arriving at a valuation of the rentals for renewal periods are expensive and unsatisfactory, and the result is that the Council is not getting the renewal rent that it is entitled to expect.

3. The terms of the lease which we have before us are that it is for fourteen years, and that in the event of the tenant finding the assessed rent on renewal too high he has either to elect to pay that higher rent or forfeit his improvements?—Yes.

4. There is no provision by which he can surrender and get the value, either fully or to a certain extent, for those improvements—that is, under the terms of the lease: is it with those conditions the Corporation are not satisfied?—The Corporation would not be satisfied, I think, to agree to the tenant having the right to throw up his lease and get the valuation for the buildings which he had erected on the site, because if the rent did not suit him on any renewal period the Corporation believes that if such a clause were inserted the Corporation would find itself with all the worst-built and obsolescent buildings—built by the tenant to suit himself. At the end of fourteen, twenty-one, or twenty-five years, owing to the method of construction and the class of buildings, and possibly an alteration in the use to which the buildings in the neighbourhood are put—it having been changed, perhaps, from a warehouse to a shop area, and the building having been erected by the lessee as a warehouse—the result would be that in all these cases the Council would be left with all these obsolescent buildings.

5. Does not the whole position come to this: that in the last year of the current term the Corporation says to one of its tenants, "We give you the first offer of your lease for another twenty-one years at so-much; will you accept it or not? If you are not willing to accept it, then we will take over your buildings." Is not that what it practically comes to? They propose 60 per cent.?—Yes; that is what in effect would be the result of that proposal.

6. When you say the Corporation is not satisfied with the existing conditions you must put aside the lease?—Yes.

7. And the conditions under which you do not get the rent must be something outside the terms of the lease—that is, the tribunal?—The shortness of the term and the class of tribunal.

8. The shortness of the term you must put aside. It is your own fault if you do not get the full rentals, because you have given such a short term?—We are not blaming the lessees for that at all. We want legislation to give us power to materially extend the term—to twenty-five years at least.

9. What do you consider a defect in the conditions? If the conditions are unsatisfactory—we do not want to consider the question of the terms of the lease—but what the conditions are, independently of that, which are unsatisfactory?—The effect of having the rental fixed by tribunals differently appointed, consisting frequently of almost an entirely different Court, has frequently resulted in very inconsistent awards—so I understand—I am not acquainted with the details of the figures, but I understand that very inconsistent and different classes of awards have been made for premises similar in value; and the feeling of the Council is strongly that in all cases there should be a standing tribunal presided over by a Judge of the Supreme Court in cases where the property concerned was over a certain value, and presided over by a Magistrate where it was under a certain value.

10. The Corporation itself is in the habit of appointing one particular individual, is it not, who is the same in all cases?—Not invariably, but as a rule.

11. In the case of a Court you cannot say which Judge you will have or which Magistrate; that will always be a variable factor—you do not get continuity even with the Supreme Court?—We know that; we cannot ask the Legislature to nominate the Judge or the Magistrate. We appreciate the fact that Judges and Magistrates, accustomed to weighing evidence, and by reason of their training and constant practice, will ultimately arrive at a general standard in dealing with the cases which come before them which will at least give us some assurance that the same principles will be applied in each case that comes before the Court.

12. You have in your mind a tribunal consisting of a Judge and two people pulling in opposite directions?—No; the Council was strongly of opinion that they were quite prepared to leave it to a Judge or Magistrate alone.

13. No experts?—No; because the experts, as your Honour knows, are just counsel on the Bench for the time being to all intents and purposes. The work they do can equally be done by counsel appearing before the Judge.

14. You will never be able to get mathematical accuracy in the matter of rents—it is a question of opinion in all cases; but if the principles upon which they are to act are supposed to be in the minds of the Judges or Magistrates, cannot we lay them down beforehand and put them in the lease? Would not that serve all purposes as a guide for the valuers?—I would not like to express an opinion upon a question of that kind. The difficulty would be that you would be legislating now for what people would have to guide them when considering a matter twenty-one years hence.

15. I thought the idea was that the principles could be laid down so that you would know twenty-one years hence what was going to be your position?—I do not want to suggest for a moment that a Judge would be in a better position than any arbitrator to predict what was going to be the condition of things twenty-one years hence; but when the twenty-one years arrived he would be in a better position, in our opinion, to say what would be the proper rent payable than arbitrators who are composed almost entirely of business men—who must necessarily have large business interests, and who are much more closely associated with the lessees, and who are more or less unconsciously biased in favour of the lessees.

16. Might not that be suggested of a permanent arbitrator, say, for the Corporation?—There is the arbitrator on the other side. If you appoint business men you are always going to have the same objection. It is a question of the exercise of judicial functions, and we think that a man with judicial training, with absolutely no possibility of any bias one way or the other by reason of business relationships or otherwise, would in the nature of things be much better fitted to give judicial and fair consideration to these matters than business men who have not had the same training in considering and weighing evidence. The suggestion of the Council is that the parties should have the right to agree, if they can agree, on the rent; but if they cannot agree a simple application can be made to a Judge or Magistrate, and a decision could be given with far less expense and loss of time than is the case at the present time.

The Chairman: It would all depend upon the number of witnesses that each side calls. If you call experts they charge perhaps five or ten guineas apiece for giving their evidence.

17. *Mr. O'Shea.*] The arbitrators charge ten guineas a day at least, and there is an inducement to keep the thing going. There is one question that I would like to ask the witness: supposing these matters came before the Supreme Court, would not an absolute principle as regards value be set up that would practically settle things after a few decisions?—I feel sure there would, because there would be two or three decisions given by Judges or Magistrates, and they would probably be referred to, and a standard or rule would be adopted which would be a guide for future arbitrations.

18. *The Chairman.*] That is where the difficulty, it seems to me, would come in; at least, the point is this: if it is possible to lay down a standard rule governing all cases, or under which the value would be arrived at, why cannot that rule be stated in the leases?—I think the difficulty occurs there that all sorts of conditions might arise between the time of the lease being granted and the time of the expiry of the twenty-one years—difficulties that could not possibly be provided for in such a document.

19. *Mr. O'Shea.*] Take Featherston Street, for instance: supposing a case was taken to arbitration in regard to a property there, and the whole thing was thoroughly threshed out and a value was fixed for the lease, could not all the other leases in Featherston Street be settled practically on that basis without going to a Court at all?—That, I presume, could be the case if the other leases fell in about the same time, subject, of course, to the question of the suitability or the obsolescence of the buildings, which is a thing over which the Council at present has no control. One of our difficulties is that on granting a lease the lessee covenants to erect a building of a certain value, but as to the nature of the building and its suitability for alteration we have no control whatever; and the obsolescence of the building which has resulted in numerous instances might very materially depreciate the rent of the first renewal period, and that has been largely due, perhaps, to the lack of foresight displayed by the original lessee in not having erected a building suitable for alteration. The Corporation has no control over that.

Mr. Thomas: Could we get a return showing how the values of freehold sections to the lessors and the rents compare, showing what rate per cent. they bear to the freeholds, and how they compare at the renewal periods?

The Chairman: It strikes me that the values of the freehold sections would be no guide at all. I think the freehold of the business quarters of Wellington must be of a fictitious value, because there is so much leasehold. I am referring to the business area.

Mr. Tripp: If you are going into that we will want to go into the whole question of the freehold valuations.

The Chairman: My view is that the freehold value in the business area of Wellington, where these leases are, has no bearing on the question, because I think a man will pay a fancy price to get a piece of freehold surrounded by leasehold land.

20. *The Chairman* (to witness).] It seems impossible, according to your view, to lay down any abstract principles on which the valuation is possible: you say the conditions are changing?—I do not say it is impossible, but I say it would be impossible to lay down rigid lines in the existing leases which would be a complete guide to valuers in the future. Some abstract principles might well be applied in some instances, but you could not rigidly confine them within the four corners of a document when it was to bind them in action twenty-one years hence.

21. I suppose what we ought to get are the valuations made after the decision of the Court of Appeal, because the valuations before that appear to have gone on a wrong principle, and they would be of no value to us; it is only the ones that may be assumed to have gone on the right principle that can be of value—that is, since the year 1912, I think. Do you think it would be an advantageous reform to exclude lawyers from the arbitration?—They have done without them in some places; I think it would be a good plan.

22. What is your objection to having three valuers instead of three arbitrators and all this expensive apparatus? Why not have two valuers, who must appoint a third man as valuer—some one who is a professional valuer—I do not mean a land agent, but a person whose business it is to go about the country and value?—It seems to me that the Corporation finds that it was closing its own mouth to leave this matter entirely in the hands of experts, who might or might not be giving a satisfactory decision; it would be contrary to all arbitrations.

23. It is only in recent times that it has become arbitration; it used to be in many places simply a question of valuation, and there was no arbitration at all?—I am not able to give an opinion about a matter of that kind, but I think the Council's view about the matter is that the values and the amounts at stake are too large to leave the matter only in the hands of valuers over whom they have no control, especially in view of the fact that business men in the city must necessarily be more or less unconsciously biased in favour of business men who hold these leaseholds.

24. *Mr. Milne.*] I suppose you will admit that the real reason for this inquiry is that the lessees consider that unprofitable leases are being forced upon them?—We are not advocating existing leases of fourteen-year periods and renewals.

25. I mean with regard to high rentals?—That is not the only reason, because we consider, on the other hand, that we are losing very materially owing to the rentals being fixed too low.

26. I suppose you will admit that if the burdens of the lease are increased any excess of the burden must necessarily fall upon the lessor?—If you make the leases unsatisfactory you will get less rent.

27. Do you think that any excess of burdens on leases must fall on the landlord?—Yes, sooner or later, because the lessees will not pay the rent.

28. It has been stated that the rates have increased: the rate is a burden on the lease, and therefore any excess in burden must ultimately fall upon the landlord?—The rate struck by the Corporation has not increased at all in effect during the last eight or ten years, but values have increased. The values have increased because it is assumed that the earning-powers of properties have increased, and the rentals that the lessees get from subtenants have increased also. One of the chief difficulties we have to contend with here is that of rating on the unimproved value; it is utterly unsound; the whole of the city is rated on the unimproved value.

29. You say that the Council are not receiving a fair rental. I suppose the tenants, on the other hand, state that they are not receiving a fair return because they are not paying fair rentals?—It is difficult to say. It would be a very difficult matter to say how much it had materially affected their business.

30. As to the sixty-three-years lease and the provision that after the first twenty-one years the rental is to be increased at the rate of 25 per cent., and after the next twenty-one years—at the end of forty-two years—the rental is to increase 50 per cent., the assumption is that the land is to continue increasing at that ratio?—I presume that is the only assumption upon which such a proposal can be based. As far as I am personally concerned, and as far, I believe, as the members of the Leasehold Committee are concerned, they have never suggested any definite percentage of increase.

Mr. Milne: It was stated by the Mayor yesterday that he thought he was speaking for the Council.

Mr. O'Shea: He was speaking for himself on the sixty-three-years lease.

31. *Mr. Milne.*] He said he thought he was speaking also for the committee. (To witness) What is your view?—No; he could not think that, because we as a committee have never agreed to a percentage. I think the figures quoted are much too high. I am quite sure the Leaseholds Committee never seriously considered those figures.

32. Do you think any sane man would be prepared to advance money upon it?—I am not prepared to say I would. I think that was a statement made entirely on Mr. Luke's own responsibility.

The Chairman: It seems to be a sort of rule of thumb. It is utterly out of the question, in my opinion. I recollect that in 1895, when there came to be a revaluation of a large number of leases in Dunedin, the total rentals by valuations were reduced from £12,000 to £9,000, so that there was a reduction of 25 per cent.

Mr. Milne: And in other cases I know there have been reductions instead of increases—general reductions.

Witness: The committee of the Council fully appreciates that. There was a discussion at the committee as to adopting some method that would get rid of the expensive arbitrations, and then it was suggested that there might be a percentage increase, but the amount was not agreed upon.

Mr. O'Shea: I was present when this question of the increase was brought up, and the committee decided that it would be better not to make any recommendation on that question at all.

The Chairman: I think that is only a matter of opinion really.

Mr. O'Shea: I think the Commission may take my opening statement as the official statement.

33. *Mr. Milne* (to witness).] I suppose you consider that the tenant has a right to some return on his money that he has invested?—Undoubtedly; and it is to arrive more or less at a balance between the two that we desire that a judicial tribunal should be appointed, because we consider that a judicial tribunal, being accustomed to weigh evidence, is the best qualified to arrive at a fair decision.

34. Have you considered the position as between the leasing body and the tenant who is expending his money on these improvements, &c.? I mean to say that the Council has made no sacrifice, while the lessee is making that sacrifice?—Of course these matters have to be taken into consideration, but I have not learned of lessees who have made specific sacrifices.

35. Do you think if they were not making sacrifices they would be calling out in the manner in which they have been calling out?—I do not know; it is a quite natural feeling amongst people generally to try and get something for greatly less than its value.

36. Do you think there is no reason for all this agitation?—I am quite prepared to agree that there are several things creating the trouble: one is that the leases are granted on too short terms.

37. One lessee gave evidence yesterday that he was not getting a payable return?—I have no doubt that a man who puts up a two-story building on Lambton Quay has himself to thank for it.

38. *Mr. Blair.*] You say that there is taken into consideration what the tenants have been receiving from the properties: you think it is right that that should be done?—I suppose the arbitrators do so. I have not been present at the arbitrations, and do not know what they do; but I have no doubt that those facts are placed before them by the lessees.

Mr. Blair: What I suggest actually takes place is this: that the Council calls a number of witnesses to say that the value of the land is so-much, and that a fair proportion of the value of the land is so-much, and they say that should be an indication of the value of the rent.

The Chairman: Have we not got what is done in the pamphlets of Mr. Morrison, in which he states all these factors on both sides?

39. *Mr. Blair.*] Those are the later cases. (To witness) Did you ever read this book? It was a communication from the Leaseholders' Association to the committee, written in 1914. We made a suggestion to the committee that they should alter their lease, and it was stated by Mr. O'Shea yesterday that they disapproved of the lease?—As a matter of fact I think it was common ground that the Council desired to see the term of the lease made longer, and that there should be a less expensive method of arriving at a valuation.

40. We suggested this in 1914, and we heard yesterday that our suggestion had been adopted?—We were of opinion that the term of the lease is too short and ought to be lengthened.

41. *The Chairman.*] You concede that some alteration in the term ought to be made, and that it is exceedingly desirable—which everybody recognizes—that the expense of these valuations should, if possible, be modified?—The whole crux of the thing lies in these two matters from the point of view of the Council.

The Chairman: And the other point is, what provision ought to be made for ensuring valuation in the event of a tenant finding the rent assessed at too high a point.

ARTHUR RICHMOND ATKINSON examined. (No. 5.)

1. *Mr. O'Shea.*] You are a member of the City Council, and you are chairman of the Leaseholds Committee?—Yes.

2. You have occupied that position for some years?—Yes, five or six.

3. I take it that the Council is dissatisfied with the present conditions of assessing the rentals of the leases?

4. *The Chairman.*] In the first place, take the term of the lease—fourteen years: the Corporation considers that it would be more advantageous to both sides to have twenty-one years?—Yes, more advantageous to us, because more advantageous to the tenant.

5. What are the other conditions in regard to which dissatisfaction is felt?

6. *Mr. O'Shea.*] The tribunal?—That is the point that weighs strongest with myself personally, and I think it weighs with the whole Council. I am entirely dissatisfied with the present tribunal.

7. *The Chairman.*] Can you account for the fact that this system of leasing prevails in other places where no such dissatisfaction exists?—I am inclined to think that, if the issue had once been as keenly fought and sides taken as here, the same difficulty would arise; but I am not sufficiently familiar with the conditions.

8. In Dunedin, as I understand, they have not this cumbrous system of arbitration, but it is referred to three valuers—that is, one appointed by each side, and those two valuers appointing the third. This dissatisfaction that exists in Wellington has not been found to exist there: can you give any reason for it?—I think the values probably have been a good deal more uniform in Dunedin than they have been here in recent years. There has been a general steady advance, with great fluctuations.

9. I suppose the increase in value has surprised everybody but the freeholders?—Yes.

Mr. O'Shea: I would like to point out to Mr. Atkinson that in Dunedin the decision of the assessors is not final—it goes to auction.

The Chairman: In Dunedin, although it goes to auction, it is very rarely that any one ever bids above the upset.

Mr. O'Shea: Still, it is there.

Mr. Thomas: It enforces the valuation.

Mr. O'Shea: It is in the mind of the valuers all the time.

The Chairman: That may be one factor, certainly.

10. *Mr. O'Shea* (to witness).] The Council suggest a Judge of the Supreme Court as arbitrator?—Yes.

11. What are the reasons for the suggested change?—The reasons are in the defects of the present system—the want of certainty; the want of any fixed principles; the want of a reasoned award; the entire want of continuity about it; the limited nature of the panel. This objection grows more and more each year—the fact that a large proportion of the panel for one reason or another is biased, and that the bias in a large majority of the cases is against the Corporation; the demoralizing, unbusinesslike, entirely unjudicial character of the proceedings. This summarizes in a general way the Council's objection.

12. Do you think it would reduce the expenditure if the matter were brought before the Supreme Court?—Yes.

13. Supposing three or four cases were to come before the Court, do you think there would be sufficient indication of the attitude of the Court to practically make settlements satisfactory?—That is so, and I think from the beginning, if it were once attached, as it were, to the Supreme Court, we should have the same principles upon which the Court has built up the body of the common law applied to this small matter. One decision would be a guide in respect to others. At present we are not given the reasons upon which a decision is based, and each party strives to get a better judge from his own point of view the whole time. I think it is demoralizing to both sides, and it is undignified for a public body to be engaged in such cases.

14. *The Chairman.*] Where the matter came before the Court there would be the fees of counsel and the expenses of witnesses, just as in present arbitrations: that would not remove the cost, would it?—It would depend, no doubt, on the discretion of the Court. I expect the Court would not allow the witnesses to be multiplied along the same lines unduly.

The Chairman: I do not know that it would be practicable to confine the witnesses on either side to two. In several compensation cases that I have been trying in Auckland each side agreed to call only two valuers, and I think the Court derived as much benefit from that as if there had been twenty.

Mr. O'Shea: We have no objection to such a limitation being imposed.

Witness: I think the probability is that general lines being laid down, and the general attitude of the Court becoming known, would reduce the contentious margin very much.

Mr. O'Shea: That is all the evidence we have available. I desire to call Mr. Morison later.

JAMES BALLANTYNE MACEWAN examined. (No. 6.)

1. *Mr. Blair.*] You are managing director of J. B. MacEwan and Co. (Limited), and I think your company owns an interest in a city leasehold?—Yes.

2. You have devoted a considerable amount of attention to these leases, and have considered them from a business man's point of view?—Yes.

3. And you are aware that there is a great divergence between the amounts suggested as fair rents by the Council and the amounts suggested as fair rents by the tenants?—Yes.

4. And that divergence has caused acute discussion at times?—Yes.

5. To what do you attribute the great difference in the views held by the city as compared with the views held by business men generally?—I would say, in the basis of calculations as to the leasehold value, to its proportion as compared with the freehold.

6. Perhaps it would assist us if you would indicate generally how you as a business man would set out to calculate the value of one of these leaseholds from a question of renewal?—I think it is very difficult to place the position more clearly or fairly before the Commission than as set out in this printed pamphlet which has been submitted.

7. *The Chairman.*] The brown book—the printed brown book?—Yes; I think it would be difficult to set out more clearly or more soundly the general position. It appears to me that the relationship between the Corporation and the leaseholders is a unique and peculiar one. It may be said that there is a partnership; it is at least a joint interest.

8. That perhaps might be said of all relationships between landlord and tenant?—Yes, sir. It appears to me that there is one form of leasehold which might always be satisfactory, or nearly so, and that is when the owner of the land is also owner of the building. The second form of lease would be for a long tenure, without compensation possibly, but with some safeguard as to right of renewal.

9. *Mr. Blair.*] You mean to protect the goodwill of the man?—Yes.

Mr. Thomas: For instance, the tenant has no prescriptive right, but a sort of first refusal after reassessment.

The Chairman: A long tenure, with the first offer.

10. *Mr. Thomas.*] It is considered to be a new bargain: "We are selling this new lease at so-much; you can have it if you like." That is what is in your mind?—Yes.

The Chairman: Would not that be met by a provision to this effect: that on the expiration of the term they are to have a fresh offer; if that is refused then the Corporation would not relet without securing from the incoming tenant to the outgoing tenant the value of his building?

11. *Mr. Thomas.*] It is a long lease without compensation?—As to short leases without compensation, there are many objections to it on both sides.

12. *Mr. Blair.*] You say it is not satisfactory so far as rent is concerned: how is it not satisfactory in that respect?—The constant disturbance, the insecurity, and the speculation as to what the future rents will be. I claim that the owner of the land in a city like this, and such as the Corporation is to-day, must by right of their position always be in the most favoured position. They own the land. Their risks are less than those of the leaseholder. I submit that thus in all cases of leasehold the owner of the land has a preferential position in the transaction. I think it is a well-established practice between business firms and their clients that there must be confidence and a feeling of fair play, and that the principals will always give their clients treatment such as will continue that feeling of confidence between the two interests. I submit that as between landlord and tenant the onus on the part of the Corporation is greater than it may be between a business man and his client. In business operations I think it is also well established that, if a firm were acting as trustees with certain interests, the officials administering the trust would have definite instructions that the interests of the leaseholders—the interests

of their clients—must always be very carefully and favourably considered. We have heard a good deal in the last day or two and on previous occasions about the T. and G. case. I only bring this in to demonstrate my point. I submit that amongst most business firms, if the T. and G. had been a client, at the end of a lease, when they could not come to an agreement about renewal, the firm would have said to their clients, "We will give you—although we are not bound to—the valuation for your buildings; you have been our client for many years." I claim that a relationship does exist in business firms. Therefore why should it not exist between the Corporation and the leaseholders, whose relationships are greater? Take the City of Wellington. It may be said that in the administration of their functions as trustees their officials may be overzealous. It may be claimed by the leaseholders that they are mistaken in their basis of calculations. If either of these suppositions are correct, is it not possible that the interests of the city will suffer as well as the interests of the leaseholders?

13. *The Chairman.*] Perhaps that may suggest an answer to some extent of what we have been endeavouring to ascertain: how is it that things have gone on so well in Dunedin?—I was just coming to that point. In commercial life certain commercial relations and understandings may exist and run on for years without any disturbance, but owing to something unusual occurring those relationships may be disturbed, and it may end in a severance of their business relationships. In regard to the leasehold position which we have to-day, I frankly admit that when we secured our present premises we did not study the conditions of these leaseholds. I am also prepared to admit that if I had studied them I might not have found any great objections to them—no more than any other business man may have found at the time. That is only a generality, of course. But there has been a development in the last few years, and I think it is remarkable that such a great difference in views should exist among intelligent men, all well trained in their own sphere. I am not at the moment strongly objecting to our present position—that is, the terms of our present position—but our position as it is different from others. At the end of our present lease we will be faced certainly with the necessity of renewing our lease on whatever terms may be offered to us or of letting it lapse. In that case we will have a building not up to date, but which will be perfectly sound. It is a wooden building; no doubt the quality of the timber when it was first erected was probably better than anything you can get to-day. I am only submitting these details to show that in the administration of its trusteeship on the part of the Corporation the difficulties of the tenant are always considerable; there is the liability to disturbance always existent. Therefore the leaseholder or tenant should always have favourable terms. We do not ask for any favours, but we say that ought to be the policy of the administration. Then the question of finance is always very important. A business firm never knows—that is, on the average—whether it will be necessary in the near future or in the distant future to enter into financial obligations. Business people wish to operate on a basis of security which will reduce as far as possible the chances of disturbance or uncertainty.

14. What you want is to get something that if it is necessary can be pledged for a reasonable amount?—Yes.

15. *Mr. Milne.*] Tangible security, in fact?—Yes. I think the feeling of most of the tenants at the present time is strongly along the line that if they could relinquish to-day they would go in for a freehold.

16. *The Chairman.*] But there is not much freehold available, is there—that is, in business quarters?—It is limited possibly. I think the relationship between the landowner and the person who puts up a good building should be such as exists, I understand, in Dunedin to-day, and I do not see why it should not exist in all the centres. It is a question of fair treatment and consideration of the person who has to take great chances, and who is liable to the greatest disturbance. There is no advantage surely to the city if they obtain high rentals for a few of their sections and have the others lying idle. The policy of the Corporation should be along the lines of fair rentals; to keep the confidence of their tenants they should have a feeling of stability of tenure; and as a result of a policy of this nature good will would result. Whosever fault it may be, I repeat that in Wellington to-day the feeling is a strong one. I think it is possible that under a leasehold with unfavourable conditions the leasing-value of the site might be a debit.

17. *Mr. Blair.*] You mean that a lease might be so framed that the covenants might be so onerous that instead of paying the landlord for it he ought to pay something for it to be taken up?—I explain it in this way: It is practically impossible for a firm which occupies its own buildings to say what they can afford to pay for a lease; but, if any one with trust funds or with money for investment erects a building to let, I claim that you practically have to start the calculations as to the value of the ground rental from the top, not from the ground: you have to calculate what is the cost of the buildings. The Corporation is always placed at an advantage. When the lease is fixed they are secured for the term. There is no disturbance as far as they are concerned; there are no anxieties as far as they are concerned. But at the end of fourteen years the tenant has his building: he has the uncertainty of what he will be required to pay for the new term; he has no compensation. Under present conditions the tenants should receive the greatest possible consideration within the four corners of the Council's trusteeship. The interests of the Corporation and the interests of the leaseholders are so clearly allied that every effort should be made to guard against any feeling of antagonism between the two.

18. *The Chairman.*] Can you suggest a method of doing that without altering human nature?—I think that possibly the ideal lease would be one where the owner of the land is the owner of the building. Where that is impossible then we have the long lease.

19. *Mr. Thomas.*] You like that in preference to the perpetual right of renewal?—Yes.

20. Assuming that the longer period that the Council is willing to go is twenty-five years, does your objection not diminish?—The objection diminishes in proportion to the length of the lease and the conditions of the compensation.

21. *The Chairman.*] What do you say the lease should be on your principles: what should be the length of the term; what provision for valuation, if any, ought to be inserted?—I suppose the No. 1 proposition we can leave out—that is, where the Corporation erects the buildings. The No. 2 is the long lease, with a first offer, without compensation. But I would add as a rider to that that in all fairness, where a firm has by their efforts and buildings and citizenship helped to advance the interests of the city, it would be a fair condition or understanding that at the expiration of that long lease their interests should be protected in a fair manner.

22. How would this work, in your opinion: at the end of the twenty-one years, if the tenant does not wish to take the lease because he thinks the rent is too high, that then—not that the Corporation should be called upon to pay the 60 per cent., but the lease should be put up to auction, so that anybody can buy it subject to the incoming tenant paying the outgoing tenant the value?—I do not like it; I do not like the disturbance. At the end of twenty-five years you might be quite willing to have it auctioned, or you might not wish to be disturbed. What would be the safeguard for the tenant if there were no purchaser? The uncertainty is its black mark.

23. I do not see how you are to get freedom from disturbance unless you have a lease for a hundred years or something of the kind. You want to have an option or something of the kind?—That is only what I would call a goodwill option—a goodwill clog.

24. What do you say is the best kind of lease?—I would say the No. 2.

25. Supposing the No. 3 were adopted, what do you say as to the method of securing the valuation—do you agree with this 60 per cent.?—I cannot say that I would agree to it. I would say, if you have twenty-five-year terms, that 10 per cent. would possibly protect the city from any one who might be trying to get out of their buildings without good cause—without what might be termed legitimate cause.

26. You want to have a fixed tribunal, knowing what the tribunal is to be?—Yes; we say, a business man.

27. *Mr. Blair.*] You say that having a business man there may result to the advantage of the city?—Yes, that is quite possible.

28. *To Mr. Blair.*] As to the length of a lease, I think a great deal depends on the type of building. If you put up a strongly constructed building of brick or stone its life will naturally be a long one, whereas if a wooden building is erected its life will be shorter. My idea is that the Council should be empowered to grant leases up to ninety-nine years, and the term of the lease should then be left for negotiation between the Council and the tenant. I should also like to see the Council empowered to grant the best terms possible—the better the terms the better the rent. I consider that in fixing the rent what is termed "obsolescence" should be taken into account. There is always the risk of being called upon to alter one's building to meet changed conditions, and expenditure is thus incurred. In the case of a freehold obsolescence does not operate in the same way. In the case of one of these city leases, owing to the premises, by reason of changed local conditions, coming within the shop area, the Council might put up the rent considerably at the end of fourteen years, and as the tenant cannot convert his building into shops he will have to pay the extra rent without getting any additional return. As an example, Messrs. Murray-Roberts and Dalgety's occupy similar buildings in Featherston Street, but one is on a freehold section and the other on a leasehold. Now, if Featherston Street becomes a main-traffic street, as is likely, it will not make any difference to Dalgety's, which is a freehold, but Murray-Roberts may find their valuation and consequently their rent very much increased. That is what we mean when we speak of the risk of the leasehold. I am not able to say how the lease is regarded for borrowing money upon, as I have no personal knowledge of that.

29. *To Mr. O'Shea.*] I agree that if there were some kind of permanent tribunal to deal with these revaluation cases there might be greater stability. I would have objection to the rent being fixed by a Supreme Court Judge in default of agreement between the parties, or, at any rate, I would prefer that it should remain as it is, subject to the appointment of the third arbitrator by the Supreme Court. I consider twenty-five years is a fair term for a renewable lease to give stability of tenure. I purchased my lease, and I paid £4,000 for the building. It has been valued at £4,000 by our own valuer.

GERALD FITZGERALD examined. (No. 7.)

1. *To Mr. Blair.*] I am an Associate Member of the Institution of Civil Engineers, a Fellow of the Institute of Architects, and a Fellow of the Accountants Society. I have been concerned in the management of trust estates for about twenty-four years, among them the Levin Estate, the Pharazyn Estate, and some twelve others, also a good many more which have been wound up. I have been frequently engaged as a witness, an assessor, and as umpire in various arbitrations on land valuations, engineering matters, and so on. I have made a study of the Corporation leases. I was third arbitrator in connection with some leases in or about Victoria Street.

2. *The Chairman.*] What principles ought to be adopted at arriving at the annual value of a lease from the Corporation?

3. *Mr. Blair.*] As regards that I think Mr. Fitzgerald's views altered at a certain period?—In the case of the Hunter Street valuations the arbitrators were invited to form their conclusions on the freehold values. If therefore the view adopted was not satisfactory it was the fault of the Council in the way in which they presented the case to arbitration. My opinion has always been that the result of that arbitration was a complete fiasco.

4. *To Mr. Blair.*] The matter had not been threshed out at that time. Nobody seemed to understand it. I was never consulted as third arbitrator in subsequent cases. Third arbitrators are never reappointed here. By some means or another the trend of the third arbitrator's mind seems to become known, and as the result of that one party or the other would object. Though I have not acted as an arbitrator for either side in any subsequent cases I have been called as a witness in some. In these cases the Council always demanded a rent which the tenant thought was exorbitant, while the tenant always expressed a willingness to pay an amount which the Council could not accept. There was so much difference between them to begin with that arbitration was unavoidable. In all recent cases the Corporation has asked that the rent should be assessed as a percentage of freehold value, and the tenant has always replied that they were not dealing with freehold value—that there was no relation between the two things.

5. *To the Chairman.*] That was before the decision of the Court of Appeal, I think. As to the correct basis upon which to work in arriving at a fair rental, undoubtedly there must be some relation between the rental and what the land will produce. We are obliged to look at the question upon the hypothesis that the land is vacant, and that we are to have the opportunity of putting it to some use. The only use we can make of city land is to put upon it some building which would produce a revenue, and the only way we have of estimating the revenue is by letting the property. We know then pretty closely what we can get for vacant premises. That being so, we must find out the cost of the building, all the incidental expenses, including fire insurance, earthquake insurance, upkeep, depreciation, and so forth, and we know, subject to vacancies, what the building will return us. It will show what reasonable rent we ought to pay. It is quite immaterial whether we occupy a part or the whole of the building ourselves, or whether we let it to somebody else; the method of estimating is precisely the same.

6. *To the Chairman.*] There is no actual standard building on which to estimate the cost the tenant must incur and upon which his revenue is to be calculated, but the question often turns upon the use of lifts. It is understood, I think, that it does not pay to put up more than a three-storied building without using electric lifts. If a man goes to the expense of electric lifts he feels he should put on a story or two more to warrant the expense of the lift. The choice, I understand, usually lies between three stories or five to seven. I think the Council is entitled to assume that you must put up the most productive building on the land, and one suitable to that particular locality. In my freehold calculations I have always taken 5 per cent. as the basis of interest on capital expenditure.

7. *To Mr. Thomas.*] I have never been able to work out what allowance off the freehold value should be made to harmonize with the leaseholder's interest.

8. *To the Chairman.*] If a tenant is subject to a new valuation every fourteen years he will not care to risk putting up a good building, as he might be pushed into the position of losing the whole or part of it. His building is in jeopardy from the day it is finished. It is practically not his building at all; it belongs to the Corporation.

9. *To Mr. Blair.*] I made careful calculations of what these properties produced, and compiled the statement which I now put in. [Statement put in.] This was compiled in connection with the last arbitration case, I think. As the figures show, the Union Company only reaps a profit on outlay of 0·7 per cent., but they are to some extent to blame for that, as they have rather wasted their money in marble staircases and things of that sort. The average profit on outlay would be about 4 per cent. These figures were put in in answer to a suggestion that there should be another material increase in rent. It is true Messrs. Hall and Knight were getting a percentage of 7·9, but theirs is the most cheaply constructed building of the lot. It has a great deal of accommodation at very little cost, but the building will not last. There was no suggestion made before the arbitration as to the incorrectness of my figures. When the award was made there were some slight increases in the rentals. George and Kersley's was reduced; one was kept the same, and all the others slightly increased. As will be seen by reference to the foot of the table, no deductions are made for obsolescence, agents' charges for collecting rents, cost of arbitration proceedings, and several items which ought to be charged. Obsolescence, for instance, is a serious item. The street opposite the Post-office is gradually becoming a shop street, and all the buildings there which have not already been altered will have to be altered soon. From seventy to seventy-five years is generally regarded as the life of a brick or stone building. At the end of that time it is best pulled down to make way for something else. If the conditions of the lease were improved it would certainly have an effect on the rent which the city would obtain. Improvement in the conditions of the lease must in my opinion take one of two forms: either a renewable lease for some more reasonable term, with compensation for improvements, or else a sufficiently long term to enable the tenant to write down the value of his building until the residual value is negligible.

10. *To the Chairman.*] I think myself the building that goes on the land should be subject to the approval of the Corporation, seeing that they may become the proprietors of it. I quite agree that the tenant should not have the right to throw up his lease at the end of fourteen or twenty-one years, and leave on the hands of the Corporation a building which has become unsuitable to the neighbourhood. The test of public auction should, I think, be applied. If I as tenant am dissatisfied with my rent it seems to me that in order to have the chance of recouping my outlay I should have the test of public auction, subject to the condition that the purchaser should pay to the tenant the value of the improvements. At any rate, I should not like the term to be as short as twenty-one years unless the tenant is going to be offered some compensation. I should not feel justified in putting up a building of any great value on the land if I were to be subject to eviction without any compensation at all. With a short term my effort would be to get off with the cheapest building possible. Of course, if the rent is reasonable the tenant will want to continue for another twenty-one years. If the tenant considers the rent too high, and

the Corporation has to take over the building at a valuation, I think the valuation should not exceed the cost price, less proper depreciation for the term of years. That would prevent any very excessive price being obtained for the building. My method of valuing is to proceed on that basis. I take the cost price of the building and write off from that a certain amount for depreciation for the years it has been standing there. In that way I get the value of the building as it stands during its lifetime. My experience is that valuations by builders are invariably over the mark. Closer examination usually discloses something in the way of depreciation which they have overlooked.

11. *To Mr. Thomas.*] I do not think it is possible to establish any fixed ratio of rent to capital value when conditions are so varied.

12. *To Mr. Milne.*] I agree that short-dated leases are rather out of date now. They may have been less objectionable when it was customary to erect buildings of shorter life. For such leases as the Corporation are granting I think a fair term of years without compensation is something which approximates to the life of the building itself. I should put it at from seventy to seventy-five years.

13. *To the Chairman.*] No money is ever lent on these Corporation leases because the liabilities are too great. The lenders might become the owners. I consider the rents and the terms generally demanded by the Corporation are most unreasonable. I cannot account for the fact that there have been no complaints by tenants in Dunedin against the terms imposed by the Corporation there. Possibly they have agreed to work on a more reasonable basis there. I am aware that the auction system is objected to here because a tenant might be outbid by a newcomer and might so lose his goodwill in the place, but I am of the opinion that the difficulty is greatly exaggerated. I have always held the view that a man who has established a satisfactory and permanent goodwill in a shop could take that goodwill to almost any part of the town he liked, and if he vacated his premises a year or so before his term ran out no competitor would be able to take over his goodwill.

14. *To Mr. Thomas.*] I certainly think the revaluation should be made some twelve months before the end of his term, so as to give the tenant time to make his arrangements and so protect his goodwill.

15. *To Mr. Blair.*] My impression is that in some previous cases the whole contention of the Corporation was based upon freehold value. If, however, Mr. O'Shea says it is not so I will not contradict him. I consider that the prices given by tenderers in open market are a fair test of what should be paid for leasing land. There should, however, be certain safeguards. An upset price should be fixed, and the interests of the Corporation should be protected. Speaking generally I do not like the idea of Corporations making private agreements to lease. I think it is open to abuse, and without stringent safeguards it ought not to be permitted. When I was in the Public Service we never liked to deal privately with land. We always, for our own protection and for the protection of the State, made the transaction public.

THOMAS SHAILER WESTON examined. (No. 8.)

1. *To the Chairman.*] I am solicitor to the Wellington Harbour Board. The Harbour Board has had five classes of properties. First of all there is the Loan and Mercantile site. That property is bounded by roads on three sides, so that it is practically one block. Just a small portion of it is owned by the Government. We leased that property to the Loan and Mercantile in 1888 under the provisions of the Wellington Harbour Leasing Act, 1886. Within six months prior to the determination of the first twenty-one-years term of lease a valuation was made of the buildings and also of the ground-rent calculated on the prairie value. Then the property was put up to auction at the upset rental fixed by the valuers as being the rental fixed on the prairie value, with the condition that if anybody other than the Loan and Mercantile or the lessee became the purchaser of the new lease then he had to pay to the original lessee the value of the improvements as fixed by the valuer. It is very like the Dunedin Corporation leases. No doubt it was borrowed from Dunedin. But in order to safeguard the Board in the event of a low ground-rent being fixed the Board has a right, if it so desires, to purchase the improvements at the valuation fixed instead of putting the place up to auction. They can say, "We will not grant you a renewal; we will buy the improvements from you at full valuation." There is only the one lease with those conditions. Of course, sometimes Harbour Boards have to lease a site which is suitable for one or two people or companies, and consequently when fixing the rent for the renewal of that lease there is practically no competition for that site owing to the nature of the buildings that have been erected upon it. For instance, Borthwick's freezing-works are erected on some land leased from the Waitara Harbour Board. You could not arrive at the value of that property by putting it up to auction, as nobody would compete against Borthwick. No one wants that class of property except a freezing company. Similarly in this case it is only a big corporation like the Loan and Mercantile that would want such a big building and such a site. The Hunter Street endowment was leased under that Act, but as it is now vested in the Wellington City Council we are not concerned in it. Then, when we were going into the question of constructing a dock at the Te Aro end of the town we acquired what is known as the Grainger Street block. Grainger Street was part of a slum area, and we thought the best thing to do was to acquire the whole area and lease it. It is now let on lease, and the area is now largely occupied

by the fruit-marts of Wellington. Those sections we leased under the Public Bodies' Leasing Powers Act, 1887. We leased them in 1903 for a term of twenty-one years, with perpetual right of renewal every fourteen years after the expiry of the first twenty-one years, subject to a revaluation by three persons. There was no compulsion on the tenants to take a renewal, but of course they lost their improvements if they did not. I may say the reason why we departed from the Loan and Mercantile form of lease was that the business people of Wellington wanted to have a fixed right of renewal with arbitration. They did not want to run the risk of having the rental fixed by the arbitrators increased by auction. The Grainger Street tenants had previously held Corporation leases. These leases do not fall in until 1924, so that there has been no opportunity for complaint yet on the part of the tenants. In fact, the Loan and Mercantile is the only lease which has been renewed. There were no legal proceedings in that case. The two arbitrators met and appointed a third man, and we heard nothing more about it until we got the award in. There was some dispute, I understand, with regard to the prairie rental, but not as to the value of the improvements. The rental fixed was at £800. All our other leases were under the Public Bodies' Leases Act of 1908. Under section 5 of that Act we have very wide powers. We hope, of course, that we shall not have the same difficulties that the City Council have had. The sites leased by us do not come so much within the speculative area as do some of the sites held by the City Council; and we think that, perhaps with the exception of Grainger Street, the character of the neighbourhood will not change very much during the periods for which the buildings last. In Grainger Street itself there are some fine buildings, and even there it is not so likely to become a shop area. Under the Act of 1908 the Board had power to give a straight-out lease for fifty years without compensation for improvements and without right of renewal, but after careful consideration they adopted the form giving twenty-one years to start, with renewal periods of fourteen years. So far as we know all the tenants prefer that form.

2. *To Mr. Thomas.*] The only experience I have had personally of the fifty or thirty years' terminable lease is in connection with the New Plymouth High School. There the Board granted originally leases for long periods at a very low rental indeed, in order to give the tenants an opportunity of bringing the land into cultivation. Those lands, which are on the Waimate Plains, have increased enormously in value, and all the time the tenants have been paying a mere nominal rental for them. Those were thirty-year leases, and until the term began to draw to a close the tenants had not a word to say—they simply paid their small rentals and were well contented; but when the leases were coming to an end an agitation started, and finally, when political parties were fairly even, they managed to work upon the Legislature to pass an Act under which we as Governors of the New Plymouth High School had to give to the holders of those leases the right of renewal. I know the Board considered it had been robbed by the Legislature of some thousands of pounds. Very much the same kind of thing occurred in connection with some Maori reserves under the West Coast Settlement Act. I acted for the lessees in that case. They were allowed by statute to convert the old leases into new leases with rights of renewal. In Taranaki there is a quantity of land held by the Education Boards, some of it town land. In connection with those lands the Hon. Mr. Samuel drew up a form of lease which became fairly popular. It was a rather ingenious form of lease, and if the Commission could get a copy of it I think it might be useful. It was drawn under the Act of 1887, and there was perpetual right of renewal. At the end of a term the lease was put up to auction at an upset rental, but then the property did not become forfeited if the original lessee did not take it up, I think, for a year afterwards. There was a provision, I think, that it should be put up again at the end of a year at some other rental. Some of those leases have been coming in lately in Taranaki, and we have found that the system of fixing the rental by arbitration has worked very satisfactorily. I think the Commission will be able to get a copy of Mr. Samuel's form of lease from Messrs. Govett and Quilliam, solicitors, of New Plymouth. With regard to the Wellington City Corporation's properties, which are in the heart of the city, the majority of the disputes arose during the period when we were undergoing a depression. The depression started at the end of 1908, and for some years the value of Lambton Quay property has been affected by the speculative element. It may be that the Wellington City Council at the start stressed too much the percentage on capital value, forgetting that that capital value contained a fair amount of speculative margin. On the other hand, when the leaseholders came together probably they were somewhat too keen, as others have been. Certainly I think no one can complain of the more recent valuations. In a place like Wellington, where so many properties are owned by the City Council and other local authorities, it is difficult to get men to arbitrate who are not in some way interested in leasehold properties. That is why, I take it, Mr. O'Shea is emphasizing this point about a Supreme Court Judge. As to the policy of the Harbour Board in drafting their leases, they have as far as possible consulted the wishes of their tenants. If later on they find the form of lease can be improved I am sure they will be quite willing to improve it.

3. *To Mr. O'Shea.*] We have practically the same form of lease as the City Council. I did not hear any exception taken to either the Harbour Board's leases or the Corporation's perpetual-renewal lease before the Leaseholders' Association was formed. The Hunter Street endowment, when it was owned by the Harbour Board, was let on the same method of leasing as obtained in Dunedin. I cannot say whether, before the land was transferred to the City Council, the Harbour Board, at the request of the tenants, granted the form of lease which is now so much objected to.

WILLIAM FREDERICK WARD examined. (No. 9.)

1. *To the Chairman.*] I am a solicitor practising in Wellington. I represent here to-day the Wellington Hospital and Charitable Aid Board, as well as the various Church of England Trust Boards. Most of the Hospital and Charitable Aid Board leases are of residential properties—almost entirely so. I have been in the firm of Quick, Wylie, and Ward only some nine years, and as far as my experience goes nearly all the freehold property let many years ago was leased on a forty-two years lease, or, rather, twenty-one years, with the right to a further twenty-one years without compensation for improvements. When the second term of twenty-one years began the custom generally was to fix the rental at 50 per cent. increase on the rental of the first term of twenty-one years. Most of the land was on the hills around Wellington, and in those days difficult of access. Very few of the leases have fallen in up to the present. Some of the lessees who wished to preserve their improvements applied to the Board, and they have been granted renewable leases under the Public Bodies' Leases Act. They had to surrender their old leases in order to do that. There was a revaluation of the ground rental before the new term started. There have been no complaints in my experience with regard to those Hospital and Charitable Aid Board leases, nor has there been any case referred to arbitration. With regard to the Church leases, the Church does not lease under the Public Bodies' Leases Act. It generally gives a forty-two years lease, with revaluations of ground-rent every fourteen years. That applies at any rate to the city properties. Most of the Church's property is residential, and in those cases there is a renewal at a stipulated advance.

2. *To Mr. O'Shea.*] The renewable leases which were converted are practically the same as those granted under the Wellington City Leasing Act, but we have certain clauses devised to keep out slums, and so on. Mr. Carter may be able to tell you how many people converted; I should say about half a dozen. I have no doubt a great many will when they are near the end of their term. I remember Mr. Robertson, Mr. Millward, and Mr. Tripp converted.

3. *To the Chairman.*] When we offer one of these leaseholds which has not been occupied by a tenant previously we put it up to auction at an upset ground rental.

FREDERICK JOHN CARTER examined. (No. 10.)

1. *To the Chairman.*] I am the Diocesan Treasurer. I look after the Church of England trusts. We have certain endowments which are let. The leases are granted for either sixty years or forty-two years. With the sixty-years lease there is a revaluation in each twenty years, and for the shorter lease of forty-two years there are two revaluations at fourteen-years intervals. We have had no complaints from any of the tenants in regard to the terms of those leases. The leases are all fairly recent, and we have only had so far one or two revaluations. The valuing is done by two valuers and an umpire. There is no calling of witnesses or anything of that kind. I cannot say that the buildings on the land are kept in good repair towards the end of the term of lease; there is generally trouble then.

WELLINGTON, THURSDAY, 18TH JANUARY, 1917.

The Chairman: I have drafted the following clause, which I would like the parties to consider:—

"If any determination, whether of the rent or of the value of the buildings and improvements, is that of two only of the arbitrators, by reason of one of the arbitrators dissenting, either party may appeal to a Judge of the Supreme Court in a summary way. The appeal shall be based on such of the materials before the arbitrators as shall be presented by them to the Judge. And for the purposes of such appeal the arbitrators shall be competent and compellable witnesses as regards the grounds and reasons for their determination and dissent. No other evidence shall be adduced on appeal save that of the arbitrators, unless the Judge shall specially require any witness who was before the arbitrators to be examined before him on any particular point. Upon such appeal the Judge shall decide whether the determination appealed against is fair, and, if not, he may fix any other rent which he finds to be fair, not exceeding the higher and not less than the lower of the valuations made by the majority of the arbitrators and the remaining arbitrator respectively. The Judge shall fix the costs of the appeal, and may order the costs to be paid by one party to the other, or make any other order on that subject."

I would like the parties to consider that, and see if it will not meet both sides—meet the idea of the tenants for a business tribunal and the others for a Judge. It may serve to fix principles. If it is known that the arbitrators have to present reasons for their calculations they will have to find reasons and be able to demonstrate that they proceeded on correct principles. I would like the parties to consider this. I have not discussed it with my fellow Commissioners; I have not had an opportunity of doing so.

Mr. Thomas: That is very much on the lines that were running in my own mind, only I was thinking of two valuers and an umpire—that where two agreed that should stand.

The Chairman: There is no umpire under this form of lease, but there may be under other forms.

Mr. Thomas: In leases under the Municipal Corporations Act.

The Chairman: This provides that instead of a clause providing for an umpire there should be just three arbitrators and an appeal to a Judge where there is a disagreement. I should like the parties to consider that, because it may meet both sides.

Mr. O'Shea: I think it would go a long way towards a settlement. I will put it before my Council.

The Chairman: It will have this effect: that these valuers will have to proceed on something like right reason, because they know they will be overhauled if they do not, and then by making them compellable witnesses on both sides the whole of the matter can be threshed out before the Judge. The expense of calling fresh witnesses is done away with, so that each side will have to see that it gets all its evidence before the arbitrators, and the appeal is only to lie where there is no concurrence. Of course, it may mean that either the Corporation representative or the tenant's representative, if he is not thoroughly conscious of his duty, may stand out in order to get an appeal. Of course, that is not proper conduct on the part of any arbitrator.

Mr. Tripp: I think legislation should be provided for due notice being given. There should be some protection in the case of a tenant failing to give notice of intention to claim renewal.

The Chairman: I remember a case where a man had gone on for some years before proceedings were taken for determining the question. It came before the Court, and in consequence of that there was a form devised which is now to be found in the Public Bodies' Leases Act—a provision that if things are not done up to time that shall not matter. In one of the forms of lease that I have seen it is provided that time is the essence of the contract. That, I think, is a most iniquitous provision, and it is put in without any tenant knowing what the meaning of it is. It prevents any relief in equity where there has been a fault which is quite excusable. We have the power to grant relief even with respect to options, and it might be that relief could be obtained under that provision if the time was not duly observed.

Mr. Thomas: Would it answer if the leasing body should give the notice?

The Chairman: The tenant has to give his notice.

Mr. Thomas: The leasing body has its machinery to keep a check on all these things, but where you get to smaller people they do not keep the close businesslike touch with these things. It should be provided that the leasing body should give notice of the time for revaluation within twelve months of the revaluation.

Mr. O'Shea: We do remind them in Wellington, but it would be an intolerable burden if the duty were put on us.

The Chairman: What I have found is this: that you have got to be more particular with regard to private individuals than in the case of a public body. A public body is amenable to public opinion, and if they were to take advantage of some technicality it would go far to destroy the value of these leases; and it has never been considered good policy to be strict in that respect. It is in private cases that you are apt to be tripped up for want of observance of technicalities, but in cases of public bodies there has not been the same trouble, unless they should have some legal adviser who can never see anything beyond a technical point.

Mr. Milne: Does your proposal apply to Wellington only or to other towns as well?

The Chairman: My idea is that this is a clause that should not be applied to residential leases, and that in the case of a residential lease auction is the best, because there is no goodwill to save.

Mr. Milne: I really think that one of the principal causes of difficulty in Wellington is the abolition of the auction clause, because that has been the safeguard down South.

Mr. Tripp: We have a lease which is not an auction lease, but we can put it up to auction ourselves. In the case of the D.I.C. one of their leases is an auction lease. I may point out, however, that if a firm like Anthony Hordern wanted to come in here it would pay such a firm to pay several thousand pounds to run up the price of the lease and get the goodwill of the business.

Mr. Milne: That only applies to leases held by drapers.

Mr. Tripp: It applies to a lease in the same way held by a merchant.

Mr. Milne: There is not the same competition.

The Chairman: The auction is to protect the local body really and not the tenant. The objections to auction are not applicable so much to residential or farm leases. There there is not so much a question of goodwill. It is only in business premises that the question of goodwill can crop up. Under the Public Bodies' Leases Act the tenant has the option; you may have a clause in the lease which gives him the option of having an auction or not. With amendments, I do not know that the city should not adopt the provisions; they would give them wider powers than they have got under the Municipal Corporations Act.

Mr. Thomas: I think that in cases where a tenant is dissatisfied with the rent at which he may be assessed—even by three arbitrators in agreement—in cases where he is faced with the question of either submitting to what is to him an intolerable rent or throwing up the place, he should be enabled to have some test of the value of the arbitration.

The Chairman: I do not see how that would test the value of the rent, because if there was no bid it might be because the rent was too high, or it might be because everybody sympathized with him and would not bid against him. There is a sort of camaraderie amongst these leaseholders very often. We know that each arbitrator considers that he is to a certain extent representative of the man who has appointed him, and he knows the views of his client or appointor; and if the other two are going to fix a rent which the tenant says he cannot pay then his arbitrator will object, and there will be then the right of appeal. If all three agree I think the man must stand by the conduct of his arbitrator.

Mr. O'Shea: We make a point of not instructing our arbitrator at all.

The Chairman: I am afraid that is a counsel of perfection that is not followed by all tenants. I confess that I do not approve of valuation twelve months beforehand; the buildings may go out of repair.

Mr. Thomas: Under existing conditions the incoming tenant has to pay for any improvements on valuation. If there were the deterioration that has been referred to the incoming tenant would say, "I won't give that price."

The Chairman: If a man says he does not want a renewal the proposal is that he gets 60 per cent. He is not bound to take the lease on the renewal. We have had a certain amount of discursive discussion during the last two days. I want, if possible, to go on the lines of the inquiry that we have to make. Certain leases are objected to: we want to know who those lessees are.

Mr. Blair: We are not asking for any relief, your Honour.

The Chairman: If that is cleared away so much the better.

Mr. Blair: From a remark of your Honour as reported in the newspapers it would seem as if the lessees wanted to get something from the Council that they ought not to get—that they were a little bit greedy.

The Chairman: I was not speaking in regard to this particular case. I did not intend that as any considered judgment.

Mr. Blair: What we want to make clear is this: As far as the lessees are concerned, and the subsisting leases are concerned, we do not ask for any alteration which the Council will not give us fully and freely. We do not ask that the Council should be compelled to give us anything, but what we do say is that the Council should be empowered to make a better lease, and then leave it free to the Council to offer it to us or give it to us, and leave it to us to negotiate. We say the Council will be enabled to get better rents with better leases. The question as to whether new leases will be substituted for the existing leases may be safely left to private negotiation between the Council and the lessees.

The Chairman: The Council has power, subject to a special resolution, to reduce rents, and it may, under the Public Bodies' Leases Act, accept surrenders and grant new leases. You will get under that opportunity of relief, if you negotiate with the Council, quite as much as by any Act of Parliament.

Mr. Blair: It cannot extend to the present term, and they cannot give us compensation. If the Council were empowered to give us a lease providing for some reasonable compensation we feel assured that that would make the greatest possible difference to the Council. We are interested in this matter as citizens as well as lessees, and we do not think it is right that the existing conditions should be interfered with in any respect, whether with respect to the tribunal, or the term or the tenancies, or anything else. We say, "Frame a better lease, and leave it to private negotiation between the Council and the tenant; and we have no doubt as a business proposition it will appeal to the Council; and we have no doubt that better leases will be substituted to the mutual satisfaction of both parties."

The Chairman: What you really want is this: an Act of Parliament which will give, amongst the other options of lease which exist at present, power to the Council to lease in the form *x*, and there will be power then for the Council to exchange any existing Wellington lease for a lease in the form *x*, and that form *x* will be supplemented by statutory provisions providing for an appeal. It is quite clear that you cannot by private negotiation create a right of appeal to the Judge: it must be by Act of Parliament. So that there would be supplementary provisions in that respect. The only point now that seems to be at issue between the lessees and the Corporation —assuming that this suggestion of appeal is accepted—is the question of what proportion of valuation should be payable by the Corporation.

Mr. O'Shea: We are quite prepared to leave that to the Commission.

Mr. Blair: On that point we suggest 10 per cent. off—that is, 90 per cent. The position is this: Supposing the compensation to be paid were fixed at 50 per cent. or 60 per cent., we say that the greater the compensation that you can fix the greater the rent that you are going to get. Therefore the suggestion is that it is desirable, for the purpose of making the lease appeal to business men, that the compensation should be made as great as possible, having in view the fact that adequate protection should be given to the Council to see that the compensation clause is not taken advantage of in order to foist on the Council a lot of useless buildings. So that we are virtually at one on that point.

The Chairman: I think you had better give us some evidence with regard to that. We need not go into the question of the fourteen years as against twenty-one years any more. I think the Commission are agreed that fourteen years is out of the question. As I say, the main point is to safeguard the Corporation and at the same time do justice to the tenant in the matter of this valuation.

Mr. O'Shea: I might point out that it is only on rare occasions that compensation will be claimed. The tenant's interest in the property is generally a valuable one, but there has to be a very large margin left in cases of men who want to get out of business.

Mr. Milne: With regard to the valuation to be inserted in the whole of these leases it would be only right to consider this point: if the whole of the lessees were to accept the compensation, where is the Council to find the money to pay them?

The Chairman: I think if the Corporation is to pay compensation they should get twelve months in which to pay it, paying 5 per cent. interest on it in the meantime. That would enable them to sell any property that came into their hands. The incoming tenant would have to pay the Corporation the valuation. I think they must have twelve months from the time the tenant decides that he does not want the revaluation.

Mr. Milne: It appears to me that if that provision were inserted many Wellington tenants would be inclined to take advantage of it.

Mr. O'Shea: There would be none.

The Chairman: The Corporation should not be bound to pay compensation on all buildings. We will say that a merry-go-round were put up. It must be a building that is of service, and that it approves of. The tenant would know that before he put it up. Or take the case of a church. In some cases the result would be that the Corporation would have something that it could not sell except as a hall. I remember a case of that sort happening.

Mr. Thomas: There is a difficulty in the compensation clause in this way so far as new leases are concerned—I mean in regard to old buildings which have reached a condition of obsolescence by reason of the progress and transition of localities.

The Chairman: I take it the Corporation will not give a man a new lease on those terms if it is a building of that sort. Say a tenant comes forward with an old shanty, the Corporation will say, "We won't pay you for a building like this 60 per cent. of its value."

Mr. Thomas: The lessees could not look for compensation unless the buildings were approved of by the Council

Mr. O'Shea: The difficulty could be got over by leaving the matter open, leaving the terms of compensation optional.

The Chairman: Have you got any unoccupied land which is to be put up? In that case you will have to set forth what your terms are going to be. Have you got any considerable block unlet?

Mr. O'Shea: About six sections.

The Chairman: Would you be able to let us have a plan, so that we may know what you really own and what you do not?

Mr. O'Shea: Yes; I will send for a plan at once.

Mr. Thomas: Are there any outstanding leases in suspense pending this inquiry?

Mr. Blair: Yes.

The Chairman: It has all come down now to the simple question, what percentage would be fair?

Mr. Blair: We say that, if the Council ask that the subsisting leases should be altered or that the tribunal should be altered, we strongly object to that; but, with that exception, practically the Council and we are to all intents and purposes agreed. We both agree that the present lease is not a lease that appeals to a business man. We ask that the Council be empowered to make leases that will appeal to a business man—leaving it to the discretion of the Council to say whether they will grant those leases on those terms.

The Chairman: It will be for the city to say whether it will accept the suggestion made this morning with regard to the appeal to the Judge. That will give the business man and the Corporation the tribunal which they consider should be appointed. The city could get power to give the most liberal leases with the view of getting the best rent.

Mr. Tripp: We represented to the City Council in 1913 or 1914 practically the suggestion we are doing to-day.

The Chairman: I read those letters. The Harbour Board then agreed, but the City Council did not. Now you consider that they have come round to your view of it.

Mr. Milne: They have fallen in with your views in everything except the value of the rentals they are exacting.

The Chairman: There is one other point I was going to suggest—namely, that in this form of lease, if it is adopted, instead of saying "fair annual ground-rent," we should adopt the definition given by the Court of Appeal. That will be a guide to the valuers. The Court says "such as a prudent tenant would take"; and I think possibly it might be added "and as a willing landlord would be prepared to give," because that is generally the form adopted in providing for a matter of that kind. At any rate, it might be sufficient to follow the definition of the Court of Appeal. That will at once put the valuers upon the track. And as I understand that the object of having this tribunal suggested by the Corporation is so that there shall be something like principles adopted in the decisions, and something like uniformity, that will be one means to that end possibly. You might consider these suggestions, and then we can have them discussed later. Now we will hear what evidence there is.

WILLIAM FERGUSON examined. (No. 11.)

1. *The Chairman.*] You are a civil engineer, residing in Wellington?—Yes.

2. You acted, I think, in some capacity in determining the rents on behalf of the City Corporation between themselves and their tenants?—About two years ago I acted as arbitrator—chosen by the Court, I think; as neither side could choose an arbitrator the Court chose me, and I acted, I think, in three different cases in respect to seventeen or eighteen different sections.

3. We do not want to know anything about any individual case, but what we want to get at, if possible, was what general principles were adopted in endeavouring to arrive at the rent. There was at one time a contention that the rent should be on a certain percentage of the capital value. That was corrected by the Court of Appeal. We have it that the Corporation uniformly brings forward the capital value as a prominent factor in this scheme for the rent that it asks. What one wants to get at is, in the determination that was arrived at on that occasion, what the general principles were by which the rent was arrived at?—I can only answer for myself. There were the two assessors on behalf of the Corporation and two assessors on behalf of the tenants. How they arrived at their figures I have no means of knowing. I took up the position at first that I was an arbitrator, and tried to bring them to an agreement, but that was impossible. It was then pointed out that I was not only an arbitrator but a valuer. I then determined to value from the evidence before us upon the principle which you yourself quoted a few minutes ago—that is, what a prudent tenant would give and what a prudent landlord would accept.

But I found great difficulty. In my mind the tenants fell into three classes. There was the landlord who had used his buildings purely for letting purposes; there was the landlord who used the buildings partly for the purposes of his own business and partly for letting purposes; and then there was the landlord tenant who used the buildings entirely for his own business. With respect to the landlord who let the whole of his premises, the question became one of evidence entirely to determine what his incomings were and what his outgoings were. The difference between the two is the amount which he had, and it was clear that he could not pay more than that amount as rent or his object in taking the premises would be gone. Then the question came as to what were the incomings and what were the outgoings. That is a question there was a certain amount of difference upon. The incomings could be arrived at fairly well: the rents were so-much if every room were let. Then there was the percentage due to empty buildings and due to bad debts, and a certain expenditure that was necessary. I was able to arrive at a clear decision as to what amount ought to be allowed for those purposes. The question of rates was decisive; the question of land-tax was decisive. Then came a question about which there might be a certain doubt—namely, fire insurance. I deemed that a prudent man would probably allow for fire. Probably a prudent man would allow for the risk of loss of rents in case of fire. If his building were burnt down and had to be restored the fire insurance would not cover that, and he would have to insure his income. That seemed to be a reasonable thing. Then there were other matters that were not so clear, such as earthquake risks. I do not know that I ought to give you my decision——

The Chairman: No.

Witness: You merely want a general statement. Earthquake risk, I think, is a matter of greater doubt as to whether it should be allowed or not. There is a risk in those cases where a tenant has to restore. I do not know that a prudent tenant would ordinarily insure against earthquakes, but I think it is one of the elements that has to be considered. If he did not insure the probable reason is that the charge for insurance against earthquakes would be so high as to be prohibitive. At the same time I think that is an element which ought to be considered: that is one of the elements. Then there would be the public-risk element, if the building has a lift particularly. There is the public risk. There are cases where he has the maintenance of passages and staircases, and there is the possibility that an action might be brought against him, and it is a reasonable thing to think that a prudent tenant would consider the question of insurance against public risk. That was one of the elements which I had to consider. Then there is the depreciation and obsolescence of the buildings during his term—that has to be considered. Then there are repairs and maintenance: evidence was given to the arbitrators as to the amount which these average. Those things all had to be taken into consideration. I think that probably covers all the various things one had to consider. A good many of them were doubtful; a good many were absolute, and others were in doubt; and you had to strike a happy mean. Then the balance left was the maximum which a man could pay the Corporation. That is in the case of a straight-out letting business. Where a man owned—as many of them did—the ground floor for his own business, and let the superfluous buildings or rooms, I had to look at it in a different light. We were told that we were to look at it as if the buildings were absent, as if the ground were vacant, and a man building there were to get the best return for the fourteen-year period. Therefore I had to look at the matter in this way: Would the tenant have done better by building within the limits of the restrictions of the lease a building simply for his own purposes, and not build for and run any risks of letting to subtenants? I spent a lot of time over one typical case, and I came to the conclusion that it was a toss-up whether he would have done better simply by building for his own requirements and no more, or build, as he did, a larger building. I came to the conclusion that I could assume that case to be the case of all. Therefore we were brought back to considering how much a man in his business could afford to give for his rent. We had certain evidence in regard to some of the cases, and I had to form a judgment as to what was a reasonable rent to allow—what a prudent tenant would allow.

4. *Mr. Thomas.*] You found as to the two alternatives you had to consider that it was very nearly a toss-up between them?—Yes, in that particular case.

5. *Mr. Milne.*] How did you ascertain how much he could afford to pay for his own rent?—That is a difficult thing. There was some evidence given as to what would be given in similar cases.

6. *The Chairman.*] That is, as to similar places which were let?—Yes; but that dealt with the second class. Then, as to the third class—the class where the buildings were entirely used by a man in his own business—where there was no letting: both were cases of drapery establishments. Evidence was given as to what wholesale drapers could afford to give per square foot or per square yard in other parts of the town, and I had to arrive at a reasonable deduction as to what was reasonable.

7. *Mr. Thomas.*] Practically on the same principle as you assessed the tenants in the second case?—Yes, except that it was more difficult; and in both cases it was complicated by the fact that they were adjacent to a large building used by the same tenants. Therefore they were part and parcel of the same establishment, which made it a more difficult thing to deal with.

8. *The Chairman.*] By that process each of the tenant's rent was assessed with reference to the class of buildings that was actually on the land, the class of buildings actually on the land being taken as the test?—That was one of my difficulties, and it is one of the difficulties in connection with this system. It is a question of what a prudent tenant will give. A tenant is not going to take up a lease of this class unless he has got some reason for taking it up, or something he wants to do with it. A man does not go into this kind of speculation simply for the purpose of building unless he has got a clear idea of what he is going to do with it, and we must assume that he used it in what he considered the best way.

9. It would be almost fanciful to assume that each piece of land was to be put to the best use by the same class of buildings. The ideal building would not be the same in all cases?—No; and in two sections alongside each other it would not be so. A section might be used for retail purposes, and a section down the street could only be used for wholesale purposes.

10. And wholesale dealers might not object to be next to each other, but two retailers in the same business would probably object?—They might or they might not. I do not think so. I think you see that in Cuba Street. The tendency is the other way, I think.

11. Two grocers together?—Not grocers perhaps; but these were drapers.

12. *Mr. Milne.*] Will you tell us about obsolescence, which we have heard so much about?—That depends on the terms of the lease.

13. It is stated that if a tenant puts up a building which he considers suitable for his own purposes, and it is discovered at the termination of the lease that the ground is suitable for different purposes, that that tenant has a rent forced upon him which may compel him to pull down that building and erect a new one. We will put it in this way: that it is possible that a man who has taken a lease fourteen years previously may not be in a position to erect a new building; therefore he is placed in the position that he is obliged to forfeit his improvements, although he may have exercised what he deemed to be foresight in the matter; but he is compelled to put up a new building which he is not able to pay for. Therefore he is deprived of his building, or he is subject to a very much higher rental which he can ill afford to pay. You have told us how you formed your opinion, and that his rental is the difference between his income and his expenditure. If the rental is placed at such a high figure that his expenditure is greater than his income, then his proportion is of no value to him?—He has lost all he put into it. It was shown in the evidence, I think, very clearly that owing to improvements and the improved demand the older buildings were being left, and the buildings without lifts were being left for buildings which had lifts; that the buildings which had small rooms, or were built with wood or plaster and wood rooms, that the tenants were giving them up; that the rents for them had dropped, and there was distinct obsolescence. I think a great deal of that has arisen from the false policy, or want of policy, on the part of the Council in allowing the sections to remain so small as they have throughout Wellington, not only the leasehold but also the freehold sections. A great many sections have been cut up in the past into very small fractions. Therefore it is not possible to build economically. What I mean is this: if you have a small section you have to waste a large section for your area in order to use the whole of it. If you have a lift or staircase it takes up a very much larger portion of the area than if the section is two, three, or four times as large. If these sections had been on a larger scale originally I believe the people could have built much more economically and with better results. As to the rent, I think there has been a great want of foresight and management in city estates.

14. *The Chairman.*] The size of the section is, of course, a material factor for the prudent tenant to consider?—Not only depreciation, but the rent which he can get. The suggestion that everything is to be done on the unimproved value is utterly absurd: it cannot be. The whole of the evidence led by the City Council was entirely on the question of the capital value.

Mr. O'Shea: That is not correct. I have evidence here to show that the test in our case was the rentals in the open market.

The Chairman: Mr. Ferguson's impression was that it loomed largest.

Witness: And they kept on pointing out the large amounts which had been paid for freehold properties. That was continually brought up. We asked them to get information for us as to what the terms were for these freehold properties. We asked both sides for that, but were unable to get the information.

15. *Mr. Milne.*] Have you any idea why you did not get that information?—I believe it was because the interest return was so small that it would show the value of the land. That was the deduction I necessarily drew. The position appears to me to be that the valuer values for taxation purposes, and he puts a certain sum on this for the unimproved valuation. It does not matter to the ratepayer or the taxpayer whether it is a large or a small valuation until he sells, because if it is a low valuation the rates and taxes he has to pay are on a higher ratio; if it is on a high valuation then the rates are necessarily on the lower. In Wellington I believe they have increased the unimproved value to more than the intrinsic value of the land, and that is a portion of the difficulty.

16. To put it bluntly, the tenants and people of Wellington did not want to show their poverty—that is, their poverty in regard to the small income they were obtaining from the improvements effected?—There is no doubt whatever there is an inherent desire in human nature to have your own bit of land. A man likes a freehold. Therefore he will buy a freehold, and give a large sum for it, knowing that he is not going to be subject to the constant worry every fourteen years for renewal. That is one of the points I omitted to mention. It is not a large element, but it is worth mentioning. Terms of eleven years and eleven years and a quarter were the terms of the leases I had to deal with. At the end of that time they had the expense and worry of further investigation. It does not seem to be much, but when you come to work it out it comes to a certain amount.

17. *Mr. Thomas.*] You alluded to freehold and freehold values: were you able to deduce any fixed principle in regard to the relationship between the rental values asked and the freehold?—I am afraid I could not do that. The only thing I did was this: I worked it out on an area basis, and I found that on an area basis a freehold property cost much more than a leasehold. There is also this question: a man may have built up a business in a place; if he has got his freehold he gets the benefit of that. He knows there is no possibility, like in the case of the Harbour Board leases, of some one bidding against him.

18. *Mr. Milne.*] There is another feature: the larger institutions will not look at a leasehold?—There was a case of one firm that had sent over instructions to their local branch here not to think of taking up a leasehold, but to buy a freehold at all costs. That is a strong feeling. Therefore the freehold is not a fair comparison for a leasehold property alongside of it. The fact is that the leasehold property is depreciated at once to a very material extent—I cannot say by how much, but it does depreciate it.

19. You say you have known of cases within your experience of instructions of that nature being sent to pay even double the value of the freehold?—I would not fix the amount, but the instructions were to buy a freehold.

20. Therefore you think that taking a freehold as the basis is unfair to a tenant to fix a rental on with regard to these purchases?—Yes, absolutely.

The Chairman: The Court of Appeal says it shall not.

Mr. O'Shea: The Court of Appeal says that is not the way to fix it. It did not say that ought to be excluded.

Witness: And it was not excluded in my consideration. I have the fact that the assessors for the Corporation fixed upon certain rates which appeared to be based, from the evidence given by the Corporation valuers, according to a percentage upon the unimproved value.

21. *The Chairman.*] It would seem as if the only way to remedy these complaints on the part of the leaseholders is to do as is done in Ireland, and allow the tenant to convert and obtain the freehold?—Or the reverse, if the Corporation could own all the buildings.

22. *Mr. O'Shea.*] It would be the best thing if the whole of these endowments were sold and the Corporation would get so-much money. It would more than compensate for the unearned increment that is coming to us in the future?—Of course, if it were not for the mismanagement of the public body, the risk of which is very great, it would be better for the corporate body to own the whole of the buildings, because they can borrow money at a lower rate of interest than an individual can; but then there is the risk of mismanagement on the part of the local body, which is sometimes run by politicians.

23. *The Chairman.*] If the Corporation owned the buildings the ratepayers would be so numerous and influential that they would elect Councillors who had agreed to reduce their rents, and you would never be able to manage it. I do not know whether in the course of your investigations you were able to come to any conclusion as to the benefit of this renewable lease over a lease for a long term—say, sixty-six years?—I would not like to express an opinion on that. I have not discussed this matter with anybody here at all, and I have not studied the matter from that point of view. I would not like to express an opinion, and I do not like to express an opinion unless I am fairly satisfied.

24. One of the questions that we are asked to consider is whether the system of valuation is satisfactory in its application. By that system I understand it to be a system of three arbitrators. From your experience on that occasion what conclusion would you form?—I think it entirely depends on who the arbitrators are. I would not choose lawyers under any consideration. I would cut them out at once. I should choose three business men who would look at the thing from a practical point of view.

25. Your view is that fourteen years is too short?—Yes, I think fourteen years is too short.

26. The only other question now that is troubling us is this: a tenant may on the revaluation find that the rent is, so far as he is concerned, extravagant—is more than he can pay. He is not bound under the provisions of his lease to take up a renewal—it is optional with him. So he considers whether he will drop the lease, but then he forfeits his building. The suggestion is that in cases like that, if he does forfeit his building, the Corporation should pay him a certain amount of valuation for the building. That, it is said, will give him a more marketable article in his lease, something he can raise money on to a certain extent, and that would be fair; and that the interests of the Corporation would be safeguarded by not giving him the full valuation, but only a percentage. Have you any views on that subject that would benefit us?—I think if that is done you should have the approval of the Council in the first instance to the lease and to the class of building which should be erected, because it is clear that a tenant might erect a building for his own specific purposes which would be valueless, or comparatively valueless, for any ordinary purpose. A man might have a special business; he might put up a printer's machine-room, or something of that kind, which would be of no value to the class of tenant who would be likely to take up a building in that district.

27. Assuming it to be within the power of the Corporation to grant an exchange for the existing lease, do you think it should be in the option of the Corporation to refuse the exchange if they thought the building was unsuitable?—I have not thought that matter out very carefully, but I should think not. I should think that if under the provisions of the lease the tenant has erected a building he certainly is entitled to be considered—to be compensated—in the event of a new lease: they have got to accept the buildings which are now upon the ground.

28. But some buildings may be of a character that would cast a liability upon the Corporation. Take a wooden building, for instance: it might suit the tenant to throw up his lease to get the value of the wooden building?—The wooden building would have been erected under the existing by-laws and with the consent of the Council at the time, and if it would suit the tenant to throw it up it would be because there was no more value in it.

29. He would throw it up in order to get the valuation from the Corporation?—The valuation of a wooden building of that class would be practically nothing. A couple of buildings were removed in Manners Street recently—the police-station and the old fire-brigade station—and their value was £10, or something like that. I take it that at the commencement of the lease you would determine the then value of it.

30. *Mr. Milne.*] You think that if the Corporation or lessor did not object to the building at the time of its erection he would be entitled to the improvements at the end of the term?

The Chairman: The Corporation, knowing that it was going to be saddled with the valuation, would say to the man that he must put up a building that is suitable.

Mr. Thomas: At the time they converted and take up the new lease then the Council would settle all these terms. That would be one of the factors in the bargain.

Mr. Milne: At the end of the term the Council might justly say that the building was out of date and of no use to them, but the tenant may consider that it is of some value to him, and he would say, "You took no exception to the building when it was being erected, therefore I am entitled to claim compensation—to claim my value instead of yours; I am entitled to some consideration; there is a value in the building." But the Council assumes there is none.

Witness: The value and suitability of the building would have to be determined at the commencement of the term. If it were not suitable then I take it the Council would not consent to the new lease.

31. *Mr. O'Shea.*] Or covenant to pay compensation?—Yes.

32. *Mr. Thomas.*] There is one thing that is likely to cause a great deal of friction and difficulty at the end of the term, that is this obsolescence—not of depreciation in the building itself—that is the tenant's risk—but the obsolescence which arises by reason of an entire change in the character of the locality. Is not that likely to arouse a good deal of difficulty and feeling?—A change in a locality is, as a rule, an improvement.

33. There are warehouses that have been built at great cost—excellent buildings, and good for the purpose for which they were put up—a warehouse for which they would get their money back, and probably more, because it could not be replaced at the present value; but owing to an alteration in the centre of gravity of the trade of the city the building would be unsuitable?—I do not call to mind any case where a warehouse has gone out of date.

34. *Mr. Milne.*] Has it not been stated in evidence that a three-story building in the centre of the city is out of date and that a five-story building is necessary?

The Chairman: If you go above two or three stories you must provide for a lift.

35. *Mr. Thomas.*] A tenant might find himself in this position: that through this alteration in the character of the locality his land has increased very much in value, and he might put up expensive buildings, but by reason of the alteration in values it might be a case of scrapping: on what sort of fair basis could you value that place for improvements for compensation?—It is a debatable question. Take some of the buildings on the Hunter Street endowment. Take the Queen's Chambers, put up by the late Captain Williams—a two-story building; no one would now think of erecting a two-story building on such a site. There is a case where in twenty-five years the building is obsolescent.

The Chairman: If 60 per cent. were paid on the value of that building the probability is it would be pulled down.

Mr. Thomas: For a building under those conditions they would only pay its scrap value.

The Chairman: There is nothing to say it is to be the scrap value; it is the valuation of the buildings and improvements—what it would take to erect, less depreciation.

Mr. Thomas: Would it be that value or its obsolescent value?

36. *The Chairman.*] Take the instance which has just been given of the three-story building. If he asked for a new lease in the form which may be recommended by the Commission, and he was refused because his building was not worth more than the material for removal, would he not have a grievance?—It is no doubt paying, and it was a suitable building at the time it was erected; but it is a site for a four-story building, and four stories would probably be erected on that land now if it were vacant.

37. *Mr. Thomas.*] I think the statement was made in evidence that Featherston Street really is threatening to become a retail centre?—That was mentioned in the evidence before the arbitration inquiry.

38. That gives a very good case in point in regard to which I was hoping to get guidance from you. A man goes to that street, which is largely occupied by warehouses and offices at present, and he puts up a building which is approved by the City Council as being suitable under the conditions of the lease. He leases the land for twenty-five years, and at the end of the twenty-five-year period it comes up for revaluation, but at that time it has become a retail locality. What sort of a basis of valuation would arise there?

Mr. O'Shea: There is no danger of that now, because the buildings that are being erected are easily convertible from one form to another. Most of the big buildings are merely shells, capable of being altered in any way.

Mr. Blair: I would like your Honour to ask Mr. Ferguson this question: As to what basis they assessed the rents on when a building was an old building or was not suitable for the site—that is, when they were arriving at the rents? I want to ask him what process he followed when it was a case of an old building on a site—what sort of building he assumed to be on the land?

Witness: I do not remember such a case of obsolete buildings. There were examples brought before us of buildings from which they could not get the full return owing to the size of the land, but I do not remember an actual case of an obsolete building, to be pulled down, that came before us. I may say that I checked the whole of my work by the area basis in order to determine whether the maximum was being got out of the land.

Mr. Blair: That is what we mean.

Witness: I checked it by the freehold land not only in the immediate district and in other parts of the city, but by the position and by contiguous sections, and I added for corner sections double light and extra position. I checked the whole of my calculations by that, and the assessors

for the Corporation in making their calculations could not have taken in the returns; they must have based their decisions as to rental upon a percentage on the unimproved value. They seemed to be working in a vicious circle—first getting an officer to fix the unimproved value for rating purposes, and then they came along and said, "Here is the unimproved value; that is not too much, because the freehold value is so-much for sections alongside, and we have not overcharged"; and from that the rental was arrived at. They did not inquire whether a prudent man building for his own purposes or on any reasonable basis could get a reasonable return from it.

39. *Mr. Blair.*] You assumed the maximum return that could be got from that land—the mere fact that a man was not getting the maximum did not matter to you?—That is so. Right through, except in three cases, I think, out of eighteen sections, my figures were higher than the figures of the assessors for the tenants.

40. *Mr. Milne.*] In the case of No. 2, where a tenant was building for his own purposes and for letting as well, you stated that you calculated how much he could afford to pay for his own rent—the proportion?—What I did was this: I took a business; I took the accommodation which he had for his business, and I calculated what a building would cost approximately for that purpose to comply with the city by-laws and the conditions of the lease; and I then determined from it whether he would have made more by simply building at a minimum expenditure of capital for himself, or whether he did better by putting up a three-story building, with a lift, and for letting purposes; and I found from the evidence that it did not matter much one way or the other—that as a prudent man it did not matter to him whether he put up a three-story building and let part of it, or whether he put up a one-story building for his own purposes. Therefore I think we are indebted to him for putting up the three-story building.

41. *Mr. O'Shea.*] Was there any evidence tendered on behalf of the City Council as to the rents paid by tenants who tendered in the open market?—Oh, yes.

42. Was not that the main evidence tendered?—It was a portion of the evidence.

43. Did not that show that your estimate of the incomings and outgoings was wholly illusory?—You produced no evidence for that statement. It was constantly said by counsel for the Corporation, "Oh, you are on the old racket; can't you give us something new?" There was no criticism of the facts brought forward by the leaseholders.

44. *The Chairman.*] Mr. Ames took the value of the freehold and deducted so-much per cent. from that, and then found the percentage—that seemed to be his method?—Five or six values were produced. I tabulated the whole of them, and they were all based on the same method. I spent a lot of time and took a great deal of trouble over the matter, and got very little thanks for it.

The Chairman: After what we heard this morning the tenants ought to be very greatly indebted to Mr. Ferguson for the trouble he took.

Witness: And the Corporation; because I arrived at what I considered to be a fair thing, and I got it as closely as I could.

The Chairman: We have had an exceedingly clear statement of principles from you, for which we are very much indebted to you.

Mr. Tripp handed in a return showing rentals and areas of sections, and Mr. O'Shea handed in a map showing the leasehold lands held by the Wellington City Council.

ALEXANDER GRAY, K.C., examined. (No. 12.)

1. *The Chairman.*] You have acted on various occasions as arbitrator in determining rentals between the Wellington City Council and its tenants?—Yes; I acted as third arbitrator in a number of cases.

2. In the course of which—acting in that capacity, and also in the course of the practice of your profession—you were enabled perhaps to form some opinion as to the merits or demerits of the present form of lease granted by the Wellington City Council?—Yes. I do not profess to pose as an expert in this matter, although I have been engaged as an arbitrator on several occasions; and I also acted as counsel for the Corporation in some of the cases when the matters were contested very keenly. As I have said, I do not profess to pose as an expert. I thought the leases were unsatisfactory chiefly in this respect: that periodical revaluation of rents leads to considerable disturbance and disagreement. Whether or not that can be said to be counterbalanced by the fact that the tenant is not obliged to expend the whole of his capital in freehold—that is to say, that he can use it in the erection of buildings—I am not prepared to say. I still think that a lease for a fixed term—a long term—would be better from the point of view both of the tenant and the lessor than the present system of lease in perpetuity, or lease with perpetual right of renewal and periodical revaluation of rent. These leases, I think, are the outcome of an agitation on the part of the tenants, many of whom, or their predecessors, had the first leases from the Corporation in 1872. Those leases were for a period of forty-two years, the rent increasing by some fixed proportion at the end of the first twenty-one years. I am not aware that those leases were very unsatisfactory. As a matter of fact, you know very well that a very large amount of progress was made in buildings on the Reclaimed Land under those leases. The buildings put up in those days were considered to be substantial.

3. That was under the forty-two years lease without valuation?—Yes.

4. *Mr. Thomas.*] A wooden building?—In those days it was considered that a building of a more permanent character was unsafe.

5. When you suggest the practicability of a long-term lease do you suggest a fixed-ratio increase of rent, or a flat rent, or revaluation at any period?—I think revaluation, because suppose land-values fell it would be unfair that the tenant should be compelled to pay a higher rent during his second period than he paid during his first period. But I think the Commission might very well consider the experience of the past—what has happened both here and in other countries where leases have been granted for long terms, such as sixty-three or ninety-nine years. They seem to work out on the whole very satisfactorily.

6. *Mr. Milne.*] Have you had any experience of the London lease?—No.

7. *The Chairman.*] Of course, we have here a place in the making, in which it is impossible to determine what the future will be: that might differ from a well-settled place, where they can forecast the future for a longer period?—No doubt. I understand they have long leases—sixty-three years, perhaps even longer—in Sydney, which is not very much older than our own city.

Mr. Thomas: There are not many ninety-nine-years leases in New Zealand.

Mr. O'Shea: I have the report of a Select Committee of the House of Commons which inquired into the English leases in 1891.

The Chairman: That would be valuable.

Mr. O'Shea: There is a rather valuable statement by Mr. Fletcher-Moulton.

8. *The Chairman.*] He is quite an authority. (To witness) Your view is rather in favour of a long lease?—Yes, sir.

9. What period would you consider would be a proper period?—Sixty-three years, I think, in three periods of twenty-one years each.

10. *Mr. Thomas.*] With three valuations?—Yes.

11. *Mr. O'Shea.*] If the Council were to make the renewal period twenty-five years instead of fourteen years, would that do: they are willing to do that?—That is to say, a certain term of twenty-five years, with perpetual right of renewal for another twenty-five.

12. Yes?—There is no doubt that the present method is unsatisfactory. I think there might be some system devised by which the system of revaluing could be altered. Whether or not another kind of tribunal should be set up I do not know. Here in Wellington there has been no fixed principle; there has been no continuity of ideas. You very often have different assessors.

13. *The Chairman.*] You will get different Judges in the Supreme Court?—No doubt. I see it has been suggested already, and I think there is something in the suggestion, that Judges of the Supreme Court would at least be judicial, and you might sooner or later expect some principle to be set up. At any rate, a Judge would give his reasons, which the arbitrators do not do.

14. It is suggested that, with a view to meet both sides, this might be done: One side, the tenants, desire arbitrators, and the other side, the Corporation, desire a Judge, or in certain cases a Magistrate; and to meet both sides it is suggested that where the three arbitrators disagree—that is, where there is a dissentient—either side may appeal to a Judge on the materials that were before the arbitrators, so that there is no occasion to recall all the evidence again; and that the arbitrators shall be compellable witnesses to disclose the reasons for the conclusion they have arrived at. Do you think that a scheme of that sort would meet the objections?—It seems rather cumbrous.

15. How does it appear cumbrous, coming before a Judge, and in perhaps three or four hours threshing out what the rent of a tenant should be?—They would have to do that on appeal.

16. Simply on the materials the arbitrators present?—The Judge would have to read all the evidence.

17. Simply what was presented on both sides. They would eliminate the immaterial. Would it not tend to compel the arbitrators to give some reasons for their conclusions?—If that was made a stipulation, of course, they would have to do it.

18. *Mr. Milne.*] In assessing the rental at the end of every twenty-one years, under a sixty-six-years lease, do you think the rentals of the succeeding period of twenty-one years should be based chiefly upon the results of the previous twenty-one years—that is to say, if the tenant for the previous twenty-one years had been obtaining a large return on his outlay, that for the succeeding twenty-one years he should pay a greater rent; if, on the other hand, it has proved to him a very bad lease, and he has been making very small returns on the outlay, do you not think that for the succeeding period of twenty-one years, under these circumstances, the rental should be lessened instead of increased—that is to say, that the results of the previous twenty-one years should be the guiding principle in fixing the rents for the succeeding period?—You are assuming that he is a good business man and has been running his business properly. I think there is a good deal in that suggestion, assuming he is a good business man; but if he is a careless man he might succeed in getting the renewal period fixed at a low rental and then sell out at a considerable profit.

19. *Mr. Milne.*] If it is a leased property and is bringing in a rental the lessor could very easily estimate the income derivable from the property; the expenditure, interest on outlay, &c., could very easily be ascertained?—Yes; but it is hard to say that you are going to base your new rental entirely upon the results of his business. Take the case of a highly prosperous business, bringing in a very large return: it might be very unfair to compel the lessee to pay a largely enhanced rent because he is making so much out of his business.

20. There is another point: have you any idea of the proportion rents should bear to income?—No, I cannot say I have. These matters were excluded from the consideration of the arbitrators in the cases in which I was concerned. We were faced with the decision of the Supreme Court—the Full Court—in the D.I.C. case, in which it was said that the valuers must assess the land on the prairie value—as prairie land—and exclude from their consideration the value of the buildings on the land; they were not to take into consideration the nature of the business or anything of that kind, but merely what a prudent tenant would give as rent for the land.

21. He would give a certain proportion of his income—he would not give it all?—That must depend largely on the nature of his business.

22. Do you not think the results of the previous years should be taken into consideration in fixing what is a fair rental for the succeeding period of twenty-one years?—It should be, but I do not know that it should be the chief element. I do not know what the gentlemen who are in a large way of business and making very handsome profits would say to it.

23. It would be more difficult in the case of a tenant occupying premises for his own use; but in the case of a tenant who occupies premises for letting I do not think there would be very much difficulty?—It was suggested to us on one occasion that if there was the slightest hint of a question to a tenant as to what he was making out of his business he would say, "That is my business."

24. It could be ascertained?—I do not know that it could.

25. A proper valuer would require to know before he could fix a proper value?—Most tenants, I think, would refuse to say what they are making out of their business.

26. *The Chairman.*] You say you think the proposed tribunal rather cumbrous?—I meant that sort of system of appealing from the decision of two out of three arbitrators.

27. It is only where there is a disagreement that you would have to go to the Judge?—Yes.

28. Would you have the whole thing gone into again before the Judge, because one has to consider the question of expense?—No doubt. What material would the Judge have before him?

29. Exactly the materials that were before the other two arbitrators, and he would dissect the matters as laid before the two arbitrators and come to his conclusion, which would be not less than the lowest nor more than the highest?—He would have to consider the provision of the third arbitrator.

30. If it is possible to do it before a third arbitrator I cannot see why it should not be possible to do it before a Supreme Court Judge. Do you see any reason why it should not be done?—It could be done, but I had not considered it before your Honour put it to me; but it seemed to me to be cumbrous to give a right of appeal in that way.

31. Can you suggest any method by which the existing costs of arbitration could be reduced?

Mr. O'Shea: Supreme Court proceedings are much cheaper than any arbitration.

32. *The Chairman.*] I think it would tend to bring about uniformity, for the arbitrators would be compelled to give their reasons, and upon appeal those reasons would be canvassed, and they would lay down the grounds upon which their values were arrived at. The question of principles would be considered by the Court, and whether those principles had been properly applied. And a person would consider whether it was worth while appealing before he did so; but if it was an appeal in a summary way he would simply take out a summons and serve it on the other side, and the matter could be very inexpensively dealt with. However, you have not considered that, Mr. Gray?—No, I had not considered the matter before your Honour made the suggestion.

The Chairman: It is only put before the parties for consideration so far.

33. *Mr. O'Shea.*] The main contention that has been put forward by the Corporation, at least in respect to arbitration cases on leases in the past, has been what people have given by tender for leases in a similar position?—That has been one of the contentions. I know of cases where rents have been fixed by tender or by agreement, and where these have been used by the Corporation in connection with arbitration cases.

34. If the tribunal proposed by the Corporation—that is, a Judge of the Supreme Court—were to sit and determine these matters, do you think there would be many cases going to the Court after a few cases had been dealt with? Do you think it would tend to agreements being come to between the parties?—I think the confidence the public have in their Honours would help the idea that a few cases settled by a Judge would settle the thing. I should suppose that if a Judge, after hearing all the evidence, fixed a certain rental for a certain street he would be laying down a standard for that street.

35. Do you think that proceedings in the Supreme Court would be as expensive as they are before arbitrators? In your experience which is the cheaper?—You would get rid of the arbitrators' fees.

36. You agree with me that arbitration is a thing to be avoided?—In such cases it is.

37. *Mr. Blair.*] Supposing the tribunal is altered, would you consider it fair to force that alteration on objecting lessees—holders of existing leases: would you make it applicable to subsisting leases if the lessees were not agreeable?—I do not see that there would be any unfairness in it. If the tribunal was one in which the public have confidence what objection would there be to it?

38. *The Chairman.*] I am afraid the lessees have not that confidence. They pin their faith in the business man, and would exclude lawyers and land agents?—The difficulty in getting business men in Wellington is that most of the business people are personally interested in the matter.

The Chairman: The main point in my mind, and I think it is the same also in the case of the other Commissioners, is, What is the proper arrangement in the event of a tenant throwing up a lease in respect of a valuation?

Mr. Blair: Yes.

The Chairman: There is the suggestion on the one side of 60 per cent. and on the other side of 90 per cent.

Mr. Blair: The main point as far as the tenants are concerned is that it will only apply to new leases. We are quite prepared to concur if the Court considers that 60 per cent. is necessary to protect the Corporation—well, 60 per cent. it should be; but we think that probably 60 per cent. is too much. Possibly 10 per cent. may be too little, but I think the Court should say that 10 per cent. would protect the Corporation; but we consider that there should be proper protection as far as the Council is concerned.

SIDNEY KIRKCALDIE examined. (No. 13.)

1. *Mr. Blair.*] You are a member of the firm of Kirkcaldie and Stains (Limited), and your company holds one of the Corporation leases?—Yes.

2. I will not bother you with regard to the leases generally, except upon one point: What is your personal view as to what sum would be necessary as a fair protection to the City Council in the event of the Council agreeing to a compensation clause—what proportion of the value of the improvements should be paid in order to ensure that the Council shall not be unduly burdened with bad properties?

The Chairman: And give the tenant some return?

Witness: I assume that the values of the properties at the time the valuation was made had nothing to do with the prime cost of the buildings. I think you would have to give above 60 per cent. to make it a fair and reasonable thing. A deduction of 40 per cent. over a twenty-one years period might be perfectly reasonable off the prime cost, but not twenty-one years hence. I should say you should give more than 60 per cent.—perhaps give up to 80 per cent. on the assessed values.

3. *The Chairman.*] The point is as to the position in the case of an obsolete building. Take that building that was instanced this morning—a two-story building that was built some time ago: if that lease were thrown up would not the Corporation have to pay for something that would simply have to be removed?—No, because, as I understand the position, it is not proposed to saddle the Corporation with any of these buildings unless the Corporation agrees with the tenant that it will accept a surrender of the existing lease and will not grant a renewal.

4. That applies, of course, to existing leases; but I am speaking now of old buildings that were at one time first class, but in the course of twenty-one or forty-two years they have ceased to be first class and have become obsolete. What proportion do you think the Corporation should be obliged to pay to prevent being saddled with an obsolete building?—As I have said, 80 per cent.

5. *Mr. Blair.*] You have made certain inquiries with regard to the terms of leasing in Nottingham?—Yes.

6. The reason you have selected Nottingham is because you have correspondents there?—Yes. I have received this letter from a personal friend living in Nottingham:—

"*Notes on the System of granting Leases of Land in Nottingham.*

"The Corporation of Nottingham have for many years past disposed by public auction of portions of their corporate estate on lease. The term of years as a rule has been ninety-nine. The ground-rent, of course, has varied according to the position of the site and whether it has been for business premises or for residential purposes. In cases where land has been let on lease for business purposes as much as 7s. 6d. per square yard ground-rent per annum has been obtained, but for residential purposes the average has been about 4d. per square yard.

"As the town has extended land on the outskirts has gradually been developed for building purposes, and portions of the corporate estate have from time to time been laid down and offered on lease for ninety-nine years.

"The system of disposing of land on building leases has been in operation in Nottingham for more than two hundred years past. The Corporation have never entered into any covenants for the renewal of leases on the expiration of the terms. They have, as a rule, taken over the leaseholds and let the buildings thereon to the then existing tenants, on yearly tenancies, at the full rack-rentals. The lessees of the land have always paid the rates, taxes, and insurance, and other outgoings, during the term of the lease, and entered into covenants to keep the buildings in a proper state of repair, ordinary wear-and-tear excepted.

"I desire to point out, however, that the system of leasing land is becoming very unpopular with us, as the majority of people prefer to own their own freeholds. Then again a lessee of property for a limited term of years has very great difficulty in borrowing money on the security of the same, and this no doubt depreciates the value of the leasehold. I enclose a print of the conditions of leasing of the land above referred to, together with a plan, also a print of the form of lease.

"1. In the first place, the conditions that pertain with you differ entirely from those pertaining here. In the matter of length of lease, there is no such thing here as a lease for fourteen or twenty-one years, with right of renewal, subject to readjustment of ground-rent. Nearly all our Corporation leases are for ninety-nine years, and in some cases for 999 years, making it in the last case practically freehold. This is for the lease in chief from the Corporation. It does not preclude the chief lessee subletting on a short lease if he cares or can do so. If the chief lessee leases land he may put on it a building which he may lease to a tenant for any number of years they may agree upon, and the rent is also, of course, a matter of agreement between themselves. Beyond passing the plans of the building to be erected and drawing the ground-rent as agreed in the chief lease the Corporation has nothing to do with the lessee. The terms of the leases are such as are agreed upon between the parties concerned. We know nothing of short Corporation leases, nor such action as you name—if the lease is not renewed the lease and the building upon it are offered by auction in two lots—nothing of the kind is done here.

"2. This leads to the answer to your second question: 'Are the ground-rents of such leases [ninety-nine years in our case, remember] such that a business man would undertake to build upon to be assured of a fair return?' And remembering the terms of the lease the answer is Yes; and it has always been done. But I am assured that it would not be done if the term of lease were only fourteen or twenty-one years. The time would be considered altogether too short. As a matter of fact, in our case, if a lease of ninety-nine years has half-run its course, a man

will hesitate to rebuild or reconstruct without seeing the Corporation with the thought of getting the unexpired portion cancelled and a new lease issued (perhaps at a higher rental) in consideration of his doing such rebuilding or reconstruction.

"Of course you will remember that your conditions and ours are absolutely different. You are a young country, with expanding towns and land still virgin, and perhaps unreclaimed. Every yard of our land is plotted and owned and expressed in title-deeds, many of them going back for generations. Remember the Corporation of Nottingham is rich in Corporation estate compared with most, and even the Nottingham Corporation is not the only lessor in the city by a very long way. You write as though the Wellington Corporation was owner of all Wellington. It is not at all parallel with Nottingham if that is so.

"Therefore I do not see how our practice will help Mr. Kirkcaldie and those agreeing with him. Evidently your Government thinks to avoid some of the blunders the Old Country has made through not getting a share of the increment coming to landowners through growth of cities. But it would seem from what you write that they may be making blunders of another sort, and fettering or hampering business by seeking to take too much of the increment. At any rate, short leases such as you instance seem to me to give no security to an investor. He just begins to get a return for his enterprise in fourteen or even twenty-one years, and the possibility is that he will be the loser.

"It ought to be possible for some method to be adopted that will give a fair share both to the private investor and the Corporation or Government. For, although the growth of a city brings increased value to land apart from the landowner, yet unless the owner and business men generally are enterprising and industrious such increase will not be permanent. You ought therefore to tax the landowner on proved increment, but in fairness and strict justice, so as not to cripple his enterprise and industry."

I may state that the rent we are paying for our London offices is lower than the rate at which we are leasing similar property in Wellington.

7. *The Chairman.*] To my mind the values are simply an outrage in some parts of New Zealand. Every time a property changes hands the land agent thinks he is justified in giving a turn to the screw and putting so much more value on it. (To witness) Could you tell us this: Suppose it is provided that 80 per cent. of the valuation is to go to the tenant who is throwing up his lease, what percentage upon the value of the rental obtainable under the existing lease should be added? The lease would be morth more, I assume?—It would be worth considerably more, but I would not like to hazard an expression of opinion as to the amount.

8. One has to consider the matter not only from the point of view of this particular district, but we are asked to lay down some principle that will be applicable generally, and I wanted to see if this new form of lease was likely to produce any increased rental to the borough?—It is suggested that it would give the Wellington City Corporation the power of discussing with their tenants anything with respect to the new form of lease.

9. Your view is that a lease of that sort should command a higher rent than the existing form of lease?—Yes.

10. *Mr. O'Shea.*] How many leases have you taken up—this renewable lease?—Three of them, covering seven sections.

WILLIAM JAMES HARLAND examined. (No. 14.)

1. *The Chairman.*] You are in charge of the securities in connection with the Australian Mutual Provident Society, Wellington?—Yes.

2. Has any policy been laid down with regard to lending upon Corporation leases?—Speaking generally we look upon them unfavourably, as we do on all leaseholds, particularly short-term leaseholds, for the obvious reason that if the borough got into difficulties we could not realize.

3. The Wellington City Council lease provides, as you know, for renewal at the option of the lessee: has that come under your consideration?—We have had that before us.

4. Is there any special defect in the lease that you could put your finger upon?—The short term principally. There is only one term that is certain; the other term is not of much use to us.

5. As you say, you do not lend on them, but there may be leaseholds which you would regard as collateral security or something of that kind?—We have taken leaseholds as collateral security, but we do not take them into consideration in the security.

6. *Mr. Thomas.*] You do not take any leaseholds?—No.

7. *The Chairman.*] However good they may be?—No; but we have done so.

8. Probably under stress?—Oh, no.

9. *Mr. Milne.*] How did you happen to take them?—We took them a great many years ago.

10. *Mr. Blair.*] Formerly the Australian Mutual Provident Society did advance money to leaseholders in Wellington?—Yes.

11. You have lent money on the Glasgow lease, have you not?—Yes.

12. Has there been any definite change of policy with regard to lending money on the Glasgow lease?—They are looked upon with disfavour now. We would not consider them now. It was not until the question of renewal came up that this question came up.

13. It was after you found out about the renewals?—It was not exactly that, but that subject arose. It happened to come under discussion, and we took a different view.

14. *The Chairman.*] You found out that they were not so good as you thought they were?—Yes.

15. *Mr. O'Shea.*] As a matter of fact you changed your policy about the time the Leasehold Association was formed?—No, it was before that.

16. *Mr. Thomas.*] The objection of the society is to leases in general?—Yes, particularly short-term ones.

ERNEST LIDDLE examined. (No. 15.)

1. *The Chairman.*] You are secretary of the Equitable Building and Investment Company, Wellington?—Yes.

2. Does your company lend on leaseholds?—No. I have just heard Mr. Harland's evidence, and I practically reiterate what he has said.

3. The general policy of your company is against leaseholds?—Yes.

4. *Mr. Thomas.*] Does your policy extend to leasehold property of all descriptions?—No, we lend on broad acres.

5. *Mr. Milne.*] Have the high rentals fixed by the Corporation anything to do with your objection?—It all bears on it.

WELLINGTON, FRIDAY, 19TH JANUARY, 1917.

WILLIAM MOUAT HANNAY examined. (No. 16.)

1. *The Chairman.*] You were formerly connected with the Railway service in New Zealand?—Yes, for many years.

2. And since then you have devoted yourself very largely to valuations?—Yes.

3. You know the form of the Wellington Corporation lease?—Yes.

4. We may take it, I suppose, that you agree that fourteen years is too short a term for renewal?—That is so; there is no doubt it is much too short.

5. Next as to the form of the tribunal. Of course, you know the suggestion on one side which would practically do away with all work on your part as a valuer so far as city leases are concerned. I would like to have your views on that point, as unprejudiced, as I am sure you will give them?—I have no hesitation whatever in saying that if any lease could be suggested that would be acceptable without any revaluation it would be the very best thing that could be done. In my experience during the last five years the real troubles have been that the tenants were faced with indefinite rentals every few years. If the Commission could suggest some means whereby there should be no revaluation, so that from the beginning of the lease it should be automatic—an automatic increase, or no increase if it were a shorter lease—I believe the Corporation would get very much better value for the sections. Certainly my occupation would be gone.

6. Your opinion is all the more valuable because of that. What you would favour would be a reasonably long term?—I would favour one of two things: either a lease of fifty years—a flat lease without any revaluation whatever, and that I admit would not be a suitable lease in the centre of the city, because that would probably mean at the end of fifty years leaving dilapidated buildings; but certainly for many Harbour Board leases of outlying sections I think that would be the best—a fifty-years lease: that is about the life of wooden and iron buildings for storage purposes. For the city I am inclined to believe in a lease of seventy-five years, which is the average life of really good buildings, such buildings as are now erected in the centre of the city, with two breaks at twenty-five and fifty years; and that the renewal lease should be at a fixed amount or on a percentage—that is to say, when a tenant took his lease or tender the lessee would know exactly what he had to pay for the whole term of the lease.

7. If it were an automatic rise—say, of 25 per cent.—then a tenant would reckon what he had to pay as an addition to his present rental?—That is so; but from a Corporation point of view I think it would be a mistake to make it 25 per cent. I think it should be less than that, because if you make the increase too great you simply suffer in your initial twenty-five years. A prudent lessee will consider that in his tender.

8. *Mr. Thomas.*] What would be a fair rate of progression: have you arrived at that?—No, I have not.

9. That is a difficulty?—Yes, it is very difficult.

10. *The Chairman.*] One has to provide for the contingency of a fall in values in a particular neighbourhood: there may not be a fall generally—Wellington may go ahead, but a particular quarter may depreciate in value?—That is quite conceivable, but if a lessee understands that the rental shall not be less than the initial rental and not more than the percentage, as I have already stated—of course, the Corporation might gain in some cases where there has been a fall in value in a particular district; but, on the other hand, that is an ordinary risk that a lessee might be expected to take.

11. *Mr. Thomas.*] Would there not be the possibility that a statutory maximum increase might be regarded as a direction practically that it should be increased by that amount?—Not necessarily, I think, because if the increase were 15 or 25 per cent. that might be made the maximum, and if the Corporation and the tenant cannot agree as to the minimum—the minimum being not less than the original—then the Corporation would at a valuation have to take over the property, and if the range of increase was not too large the strong possibility is that they would agree.

12. That would involve a revaluation at each period?—Not a revaluation, only a reassessment as between the owner and the lessee.

13. Then you would not want a tribunal?—No, I would not have a tribunal.

14. *The Chairman.*] Making them come to an agreement by force: if the landlord thought the rent the tenant was willing to give was too low, then he must take the building; but supposing it were the other way about?—The tenant must continue to pay the original rent even if he thought the rent should be less. He is committed to the seventy-five years at a minimum rent. I said seventy-five years because that is about the life of a building now.

15. We have heard that in England and America from sixty-five to seventy-five years is treated as the life of a building?—That is so, although in American cities they do not last so long.

16. *Mr. O'Shea.*] Seventy to eighty years in the United States?—The average life of a building in New York is about fifty years.

17. *The Chairman.*] They pull them down immediately they find they can put up something better?—Yes.

18. We might, I think, get from you in a particular case a statement of the principles that you consider are to be followed in reassessing a town site—I am not speaking of residential areas or anything like that, but a business site. We have on the one side the plain contention—not now insisted on by the Corporation, but it may be treated as an element—that you take the capital value and then find what the annual value is. The suggestion is whether one has to find in that case the annual value before determining the capital value. It is useless paying money for a piece of land if you are not to make interest out of it, unless there is some side purpose to serve?—My first valuation was made more than five years ago, and at that time the basis of valuation was pretty obscure—that is to say, the evidence led in that case was almost entirely on the capital value; and I think I may say that the decision in that case was largely based on the capital value. After that there was the Court's direction; and perhaps I might shorten my evidence by saying that I pretty well agree in respect to my basis of valuation with the basis stated by Mr. Ferguson in his evidence yesterday.

19. That will serve our purpose: you take a particular piece of land and see what can be made of it?—The real difficulty that Mr. Ferguson had was in a case of revaluation in respect to the premises persons had for their own use.

20. *Mr. Milne.*] You think it is proper that there should be an increment in the rental at every period of rest during the currency of a long lease of less than 25 per cent.?—Yes, I think 25 per cent. is too high. In leases in the Old World where there is a rest-period it is very rarely that it is more than 5 per cent.

21. You will not fix any percentage, although you say that 25 per cent., in your opinion, is too high?—If I were asked to fix the percentage it would be 15 per cent.

22. Do you not think in these periods of rest that the relations between landlord and tenant should be reconsidered—that is to say, that the result of the previous twenty-one years should be taken into consideration when fixing the rental for the succeeding twenty-one years—that is to say, if a tenant has had a good bargain during the previous twenty-one years, then he ought to pay an increased amount of rental; if, on the other hand, he has had a bad bargain and made a loss by his improvements, the rental should be reduced in order to give him a fair margin for the succeeding twenty-one years?—No doubt there is something in that; but, as I say, the trouble that has affected the lessees here has been the absolute uncertainty as to what the result of the arbitration will be. Although I have acted in many cases I admit that it has been very unsatisfactory to the lessees, and to the Corporation, probably, because nobody could forecast what was likely to be the rental for the succeeding period.

Mr. Milne: That is not surprising, because you cannot look into futurity. I know the custom in the South has been to take into consideration these facts.

23. *The Chairman.*] The man who comes into the valuation on renewal is generally not the person who took up the lease originally?—No doubt that is so.

24. So that the element of personal compensation does not come in in most cases after twenty-one years?—That is so.

25. The original tenant has perhaps in some cases gone through the Bankruptcy Court?—Yes, perhaps.

26. *Mr. Milne.*] Is not that proof that the landlord is getting more than he is entitled to?—Not necessarily. I think, in answer to Mr. Milne, and with my knowledge of Oamaru many years ago—I fancy the rentals were fixed very much too high, and some kind of relief was absolutely necessary.

27. Do you not think the position in Wellington is somewhat analogous to the difficulties there?—I have been a Wellingtonian for many years, and I am not going to foul my own nest. But I do think that a few years ago there was a very much mistaken idea as to land-values in Wellington.

28. We will take Dunedin: are you aware that the conditions of valuation in Dunedin have been similar to those I have stated?—No.

29. You do know that the leases in many cases in Dunedin have been largely reduced on revaluation?—No.

The Chairman: In 1895, when a great number of the Corporation leases in Dunedin fell in, the total income from rents was reduced from £12,000 to £9,000.

Mr. Milne: Yes, I am aware of that. The Dunedin people have taken up a good sane position in regard to the matter, but the Wellington people have not done so, hence the trouble here.

Witness: I do not know what they would say if you proposed that the rentals that the Corporation have been getting for the last twenty-one years should be reduced.

30. *Mr. Milne.*] What the Corporation would say would be immaterial; but I would like your opinion as to whether that would be a fair and reasonable way of fixing the rentals: instead of fixing increments of rental, whether we should consider the desirability of looking into the relations between landlord and tenant for the previous years, and thus regulating the rental for the succeeding twenty-one years?—By arbitrators?

31. No, but that would be the basis of the matter?—No doubt there may be something in that; but my experience here is that this arbitration has been a terrible nightmare to the lessees.

32. Can you tell us whether people who have part of these leases have made very large profits by their subletting?—I should say not. A few days ago one of the lessees told me that he was prepared to sell his property for what it cost.

33. He was prepared to make a sacrifice in order to get rid of his lease?—Yes. Mr. Ferguson said that many of the sections are far too small. I am sure that is one of the difficulties here. 30 ft. by 70 ft. is far too small, and some of the sections are awkward shapes, and much space is sometimes wasted in order to get light.

34. *Mr. Thomas.*] Can you tell us whether the freeholder under similar conditions is in a better position than the leaseholder in the matter of net returns?—No; I should say, speaking generally, that the freeholder who now buys in Wellington is not getting the return for his capital that he should have. I should think that is the case; in fact, I know that in some instances it is the case.

35. If the prices which we are assured are the present realizable values for the freehold are correct he must be getting considerably less return than the leaseholder?—Yes, I should say so. We had it in evidence in respect to one of the largest insurance companies that the total rentals did not give them any return for their ground at all.

36. Paid interest on the buildings only?—Yes.

37. *The Chairman.*] I suppose it is the fact that many of the freeholds are held by banking companies or other institutions not so much for what they can get out of them as to have a permanent resting-place, and sometimes for advertisement?—No doubt that is so.

38. *Mr. Milne.*] The man who spends his money on buildings is entitled to some profit?—I consider that he is entitled to more than he is getting, because, after all, the freeholder is sitting back and doing nothing, and it is the exertions of the lessee that are increasing the value not only of the individual property but also of the properties adjoining. Take Kirkcaldie and Stains and the D.I.C.: they add largely to the values of properties round about there; and the landlord has been sitting perfectly quiet and getting what is called the unearned increment.

39. *The Chairman.*] It is the lessee who parts with the capital and who runs the risk?—Yes.

Mr. Blair: Mr. Hannay's argument is illustrated very much better by the Fruit Exchange.

40. *Mr. O'Shea.*] I take it that in making the suggestion as to the 15-per-cent. increase you are looking at Wellington properties?—Clearly.

41. And you are speaking from your knowledge of Wellington and your certainty that such a lease would be suitable for Wellington?—I would not use the word "certainty."

42. But as far as you can be certain?—That is so, clearly.

43. You would not suggest that that would apply to Dunedin?—No, I do not know sufficient about Dunedin.

44. *Mr. Thomas.*] In this system of adjudicating upon renewal rents it is suggested that there should be arbitrators coming before the Judge and certain witnesses who may have been before the arbitrators. How many competent witnesses do you think should be necessary to get at the crucial points, with the view of limiting the cost of these inquiries? I suppose all these witnesses are entitled to professional fees?—In the last case I think we sat for a week, and I think if parts of the evidence had been dispensed with it would not have affected the result. Two or three witnesses on both sides were important, but other evidence was sometimes simply repetition.

45. In your experience how many witnesses would you consider in a practical way enough to settle a point?—I should say two or three witnesses on either side.

46. It would not create the possibility of injustice if the number of witnesses were limited to four?—No.

47. *Mr. Milne.*] You think that the Wellington City Council for all these years has been sitting in its own light in granting such short leases?—Yes, I do.

48. That is one of the factors that has caused dissatisfaction?—Yes.

49. The granting of short leases and the disturbance?—Yes, that has largely affected it.

50. What do you think their idea was in granting these short leases?—I have no idea.

The Chairman: The Presbyterian Church used to grant leases for fourteen years at one time—it is not an unusual thing—with perpetual renewals. And the Sinking Funds Commissioners' leases were for fourteen years, but those are farm lands.

Mr. O'Shea: The tenants were quite willing to accept these leases.

Witness: The tenants really did not know what they were accepting. It was only some five years ago that they began to realize the danger.

51. *Mr. Blair.*] You are aware that there has been a great difference in the amount claimed by the Corporation and the amount claimed as fair by the tenants?—Yes.

52. Has that difference been due to the parties valuing on different principles?—No doubt it has been largely. If the basis of the valuation is absolutely made clear I do not think there would be so much difficulty with the revaluation.

53. You do not anticipate any real difficulty with regard to the valuation if the principle that we suggest is correct, as long as it is fixed?—No doubt that is so.

54. *The Chairman.*] In your experience as a valuer, and particularly in regard to these leases, where you and another have worked on the same principles, can you say whether substantially the same results have been come to—that is to say, whether the differences in values have been largely owing to an application of different principles?—Yes, I think that is so; the differences have arisen because of the basis of what was considered rental. I can say that in one case one of the arbitrators and myself arrived at practically the same conclusions—at practically the same rental right through. He did not tell me how he arrived at his conclusions, and I did not tell him how I arrived at mine, but we practically arrived at the same rental.

55. *Mr. Thomas.*] Could you lay down any broad principle as a basis for valuation which is applicable in a general way—I suppose not?—No.

56. *The Chairman.*] Can you improve on the prudent man?—No, after all it must come back to that.

57. *Mr. Milne.*] Can you tell us whether some of the valuers appointed have any principles of valuation at all?—No, I could not say.

ALFRED DE BATHE BRANDON examined. (No. 17.)

1. *To the Chairman.*] I was at one time the owner of one of the original Corporation leases. In 1879 my father and I acquired a Corporation lease. We paid a premium for it, and put up a building on it. The lease had then about thirty-eight years to run, it being a twenty-one-years lease, renewable for a further twenty-one years with a 50-per-cent. increased rental, but absolutely to end at the end of forty-two years without any rights on the part of the lessee. Some fifteen years ago there were proposals made to the lessees to exchange these leases for renewable leases such as are being issued now. Agreeing to an acceptance of the new lease involved an increase in rent to the tenant for the residue of the term, and at the end of the term he would be entitled to a new lease on a valuation to be determined; and, I think, on an undertaking on the part of the tenant to erect new buildings, then there would be in the new lease periodic valuations. I went into the matter as carefully as I could, using tables of values, and so on. I had a capital expenditure on the lease which would absolutely cease at the end, which would have to be written off at the end of forty-two years. So I made the calculations as to the rental I was then paying, and considered the advantages, if any, that I would get at the end of the time. I concluded that there was nothing in it for the tenant, and I did not take up the new lease. At present I am a yearly tenant of the Corporation for the old buildings. I wrote a letter over the initials "B.B.," giving my ideas on the principles of valuation, which letter I respectfully submit to the Commission. [Letter handed in.] A further conclusion that I came to was that between the lessor and the lessee there should be an unchanging contract—that is, when the contract is entered into the rights of the lessee should be absolutely determined, and he should know to what extent his liabilities under the contract run. If the lessee has anything in the nature of an advantage in the lease, such as a covenant for renewal or a covenant for payment of improvements, that is or should be to a certain extent capable of valuation by the tenant; but if the advantage that he is to get is to be determined in an artificial manner, such as arbitration or auction, he cannot say whether or not he will get the benefit of those advantages. If at the auction a competitor bids a higher rent than the lessee thinks himself competent to give, then he loses the benefit he had in the right of auction, and the lessor gets the benefit of it in taking the whole of the increased rent. That is to say, a tradesman establishes a goodwill for a particular class of business on a particular site; the lease is put up to auction in the terms of the covenant in the lease; a competitor in trade who is content to make 5 per cent. instead of 7½ per cent. profit bids a higher rent than the original tenant feels he is justified in giving: the new man gets the lease, and the lessor derives the whole of the benefit from the goodwill created by the tenant. Those were the principles which led me to refuse to take the lease with the renewable clauses. My own opinion is that any lease should be of a sufficiently long term to enable the expenditure by the tenant in the beginning to disappear during that term, without any variations, which after all depend upon the state of things just for the time being.

2. *Mr. Thomas.*] And at a fixed rental right through?—Yes, at a fixed rental right through. If there is periodical revaluation of the renewal it may be either at a time of depression or of inflation: if it is made during a period of depression the lessor suffers, but if it is made during a period of inflation then the tenant suffers.

3. *Mr. Milne.*] You believe that the principle of inserting increments of rent during the currency of the lease to be unsound?—Yes.

4. And that people who are lending money on these leases would regard these increments as a blot on the lease?—Yes.

5. Do you not think that some arrangement could be made whereby if the tenant had made a bad bargain the results of his operations during the twenty-one-years period should be factors in order to regulate the rentals for the succeeding twenty-one years?—I am inclined to think that it is a matter of contract from the beginning: you make your contract and have to stand to it.

6. You consider that the reason for the trouble existing in Wellington is that the tenants have been suffering great hardships in connection with these leases?—The tenants have been suffering hardships in this way: they do not know how much to charge their business during the year in order to meet the real position, and if they want to raise money on the security of their leases, the term of the lease being so short, there is no security for a mortgage. The ordinary conditions are that money is lent for a given term, as it goes on so the security becomes more and more wasted, and if within ten years of the end of the term he has to sell the mortgagee will not be able to find a purchaser, because the purchaser who could afford to give the value of the buildings would require them for a continuous business.

7. You have told us that you had one of these leases, and you have divested yourself of it?—Yes.

8. You regard it as of no value?—My contract came to an end, and I did not seek any other contract than a yearly tenancy. My building, as I have often said, is a standing monument of the disadvantages of the leasehold tenure.

9. You consider that a prudent business man would have done exactly what you have done?—Prudence is a matter of degree.

10. *Mr. O'Shea.*] If the term were extended to a straight-out term of fifty or seventy-five years—a renewable period of twenty-five years—would that be a suitable lease to lend money on?—With periodical revaluations?

11. Twenty-five, or fifty, or seventy-five years straight out?—They would be good securities at the beginning of the twenty-five years, but as the term approached for a readjustment of the rent the security would become less and less valuable.

12. Supposing, in the event of the tenant refusing to take up the lease on renewal, he was entitled to 60 per cent. for his improvements?—That would be fair, provided that the principles on which the building is to be built are stated in the contract. Speaking generally, the more certain the contract the more valuable it is as a security.

CHARLES JAMES STANTON HARCOURT examined. (No. 18.)

1. *To Mr. Tripp.*] I am a member of the firm of Harcourt and Co., auctioneers, Wellington, and gave evidence in most of the arbitration cases which have been heard in Wellington in connection with the assessment of the rentals of the City Corporation leases. I prepared the tabulated statement showing the rentals and areas of sections handed in by Mr. Tripp to the Commission yesterday. [Witness indicated the bearing of the details as set forth in the tabulated statement.]

2. *The Chairman.*] You heard yesterday the general principles which Mr. Ferguson stated were adopted by him in arriving at the valuations and rentals: do you or do you not agree with those principles?—Those are the principles I have always given my evidence on.

3. You based your views as a witness upon the principles stated by Mr. Ferguson yesterday?—Yes, I have always given my evidence on that basis.

4. *Mr. Milne.*] And those are the principles adopted by Mr. Macintosh, Mr. Ferguson, and Mr. Hannay?—Yes. I do not know about Mr. Macintosh, but the results are the same.

5. Do you believe that the proper way to arrive at the real value is to take into consideration the result of the previous twenty-one years and form some opinion as to the results?—Not altogether that, because you may get two men alongside of one another, and one may have been a successful manager and the other an unsuccessful manager. The principle I have always gone on is that the rents must be assessed on the general average of successful management. If a man is unsuccessful he should not be let off; he should pay what an average successful man would pay.

6. *Mr. Tripp.*] Mr. Ferguson referred to the fact of the results, so far as many of the lessees are concerned, turning out so badly is because many of the sections are too small?—Yes.

7. *The Chairman.*] You agree that the sections are much too small?—Yes, for the development of valuations.

W. H. GEORGE examined. (No. 19.)

1. *To the Chairman.*] I am managing director of Messrs. George and Kersley (Limited), Wellington. I am the holder of three leases under the Wellington Corporation and three leases under the Wellington Hospital Trustees. I have turned the Corporation leases into renewable or perpetual leases; one of the hospital leases is a terminating lease. I have been intimately connected with the whole of this discussion from its very inception. I was present at the first leaseholders' meeting. I have maintained this position all through: that the private individual must subordinate his position to the public interest—I mean that the Corporation, being the freeholder, has a right to the unearned increment of the property it holds; but as a leaseholder in my relations with the Corporation I must say that I have a grievance. As things are at present there does not exist between the leaseholders and the Corporation that friendly relationship which Mr. MacEwan has stressed, and which I think is very desirable. There is no recognized medium of communication between the leaseholders and the Corporation. If I want to talk about a lease I do not know whom to go to. If I go to the Mayor I am referred to the chairman of the Leaseholds Committee, who is a busy lawyer, and I do not want to trench on his time. If I go to the City Solicitor, Mr. O'Shea, he receives me very graciously and tells me he will put my representations before the committee. But there is no way of getting a straight-out talk on the real difficulties of the position—to ask questions that I want to ask. My personal feeling is that this matter of dealing with property is essentially a technical and very intricate one, and I think it would be better if the business were in the hands of an independent board or authority, such, for instance, as the Public Trustee. There is a very large amount of leasehold property in the city held by the Corporation, by educational bodies, and by the Hospital Trustees. With all due deference to the present administration I must say that from my experience it has been unsatisfactory, inasmuch as one cannot get to close quarters with the administrative body. The members of the committee are City Councillors, and, with all due respect to them, most of them have had very little experience in dealing with big questions such as are involved in the handling of such large blocks of property. There should be some way by which the leaseholder can talk out the whole question in the same way as he could with a private landlord. Now he has to do everything in writing. My grievance in connection with the Hospital Trustees is that the clauses of the lease under which I am bound are permissive. I have asked for certain concessions which they could have given me, and which it would certainly have been to the advantage of the Hospital Trustees to give me; but they refused to give them, and they will not give any reason, and I cannot get any redress. That is not a satisfactory condition of things. Generally speaking, leasehold property has depreciated in the opinion of owners and investors generally.

2. *The Chairman.*] The business community?—Yes, I say that advisedly. There is the position, and I think it is largely because the property is not at the present time being handled by thoroughly experienced men. If there were a board composed, say, of Mr. Ames and two independent thoroughly reliable men of the type of Mr. Ferguson, or men of that calibre, there would be greater confidence. I have been following very carefully the proceedings of the Commission, and I think we are getting very much nearer to an amicable and satisfactory settlement than we have ever been before, and I am grateful as a leaseholder that this Commission has taken this matter up. My firm conviction is that the term of the lease should be the life of the building. In connection with the freehold there are two considerations: the first is the present earning-value of the land; the second is the probable prospective increase capitalized to the present-day value. Say I am a freeholder: I buy a block of land and pay £3,000 for it, and I put up a building worth £3,000, and that building lasts sixty years. What is the position? The building begins to depreciate in value; it is a wasting asset. At the end of sixty years my building is

wasted, but I have got my freehold, and it is worth double in value. The position is that when I pay £3,000 for the site I do not pay only for the present earning-value of it—what it can bring in in interest on the amount of the capital—but I am paying the present value upon the future prospective increase and profit. The present Corporation say, "We ought to have 5 per cent. on the freehold value." That is their ideal, but that is not a fair position.

3. That is, charging 5 per cent. on the prospective value as well, and without bringing it down to its present value?—Yes. Take our lease for forty-two years. When that lease was granted I think the rental was £25, which was 5 per cent. value on the then price. When they had an appeal the Corporation asked for something approaching £200; in other words, an increase of a thousand per cent. on the freehold value within forty-two years. We do not say that the next forty-two years is going to see an increase of a thousand per cent., but the freeholder—the man who holds the land—is on velvet all the time. He has a constantly increasing asset, whereas the leaseholder has a wasting asset. Then, in regard to the matter of finance, that is a great disadvantage to the City Council and a great disadvantage to the leaseholders. They have huge funds there, and they cannot advance on their own freeholds. It would be very greatly to the interest of the City Council, seeing that at the present time trustees are debarred from making any advance on these perpetual leases, if the City Council could advance up to 60 per cent. on their own freehold; it would be a benefit to them, and it would be a benefit to the leaseholders. It would increase the demand for these leases. As business men we do not want to put our money into property, but into business. When we want to put up a £20,000 building and ask a bank for an advance they say, "We do not like to touch leasehold." And the A.M.P. say exactly the same thing.

4. The city might show its faith in its own leasehold by advancing money on it?—I consider the city would increase the value of its leaseholds 10 per cent. by that simple method of procedure. And, with regard to these other bodies, there is great need that there should be some more businesslike method of procedure. In order to get the highest rental you must issue the lease with the least possible restrictions; let the tenant make as much and as free use of the property as though he were a freeholder. That is the drawback with regard to a great many of these leases issued, more particularly by Hospital Boards; there are all sorts of restrictions in the leases. The only restrictions necessary are those imposed by the City Council, and they are drastic enough; in fact, they are depreciating their own leases by such stringent regulations in regard to the buildings. That is affecting their own leases—the restrictions imposed by the City Council. The leaseholder ought to be able to do anything he likes in the same way as if he were a freeholder.

AUCKLAND, MONDAY, 22ND JANUARY, 1917.

HENRY WILLIAM WILSON examined. (No. 20.)

1. *To the Chairman.*] I am Town Clerk of the City of Auckland. Our present system of leasing is contained in the Municipal Corporations Act, section 136, subsection (1), paragraph (iii). We have been adopting that, I should think, for the past nine or ten years. There is provision that the lessee may either renew at the end of his term or have the lease put up to public auction. Before that our system was rather complicated, as we had taken over a number of legacies from the old Improvement Trust Commissioners which existed before there was a City Council at all. Those were leases or areas round Government House, Albert Park, Wellesley Street, Symonds Street, and others. Those leases were for periods generally of ninety-nine years. In some cases there was revaluation and in others not. Apparently the Improvement Commissioners had discretion as to the form of lease. In some cases a lump sum was paid down, giving the tenant practically a freehold for ninety-nine years. Then, coming to the city endowments, the leases were generally for thirty-three, fifty, or sixty-six years. In some cases there was no compensation for improvements, in some there was a third, and in others half. Generally the third applied to wooden buildings and the half to brick. The leases for the long terms without valuation worked out very badly for the Corporation. In the last ten years or so the tenant did as little as possible, and consequently the improvements were of very little value when the lease fell in. At the end of the term they had generally to be sold for removal. The tenant usually put up a building which would not last more than the term of the lease. A tenant in Ponsonby Road stated so to me openly. The term of thirty-three years with valuation has not worked satisfactorily. The valuation being only a small proportion, the people have not taken proper care of the buildings. The year before last a number of our leases in Hepburn Street fell in, and in most cases the houses required about £150 to be spent upon them before they were decently habitable again. The value of the houses themselves ranged from £150 to £300. These were, of course, residential sites. Then when a valuation is made the tenant, of course, wants full value of a new house. We pay for value of the house as it comes to us. From the Corporation's point of view the valuations made were always fair. We endeavoured to come to an agreement with the tenant first of all—that is, after the city valuer had given us a good idea of the value. If that failed the matter was referred to two valuers and an umpire. In most cases the umpire decided. It is generally a one-man valuation in the end. I think in some cases the umpire makes a separate valuation on his own account. Tenants who had become accustomed to the long lease are being gradually educated up to the Municipal Corporations Act form of lease. They, at any rate, ought to realize the advantage of getting full valuation. The lease that gives perpetual right of renewal was adopted some eight or ten years ago, and it is coming into favour as it becomes better known. The only disadvantage I can see with regard to it is this: that in the case of

suburban areas which become rapidly built upon the Corporation cannot alter the lay-out of the land or further subdivide it without some arrangement with the tenant. If the tenant at the end of the term of twenty-one years elects to go out the lease is put up to auction. The incoming tenant has to pay valuation for improvements. If the tenant desires to continue he can apply for arbitration as to valuation. The arbitration would in practice, I take it, be simply valuation. I cannot say what is the cost of renewing a lease, as we have not yet had any renewals. In the valuations I have had experience of the leases expired absolutely, or we bought out the tenant. We have had experience of the valuation of buildings. The cost used to be borne equally until in a particular case the umpire awarded two-thirds to the Corporation and one-third to the tenant. There was no provision in the lease that the cost should be equally divided. The cost of valuing buildings varied a good deal. Roughly the average cost may have been about £24. The amount seemed to vary according to the number of visits the valuers made to the property. The trouble was that the oftener they went to the property the more they disagreed. Sometimes the valuation claimed was only £10 more than we had offered to the tenant, so that if the cost to him of arbitration or valuation came to £12 he would lose by referring the matter to arbitration or valuation. While in Dunedin I had experience of the system of leasing there. They had generally what is known as the Glasgow lease. There was a valuation, and the lease was put up to auction. There was no power for the Corporation and the tenant to come to an agreement with regard to valuation. In Auckland we endeavour to settle privately in every case, but the tenants practically always decline the Corporation's offer. I quite see that in smaller boroughs the power to come to private agreements might lead to favouritism and abuse of power, but with a large body like the City Council there is not quite the same danger. I was for about twenty-one years in the service of the Dunedin City Corporation, and for about fifteen years I was in charge of the leases, so that all the renewals passed through my hands. I never heard any dissatisfaction expressed in Dunedin with the system of leasing from the Corporation's point of view, and I believe it was well favoured by the tenants themselves. As a matter of fact, the Presbyterian Church Board used to advertise Corporation terms because they were so well and favourably known. I have an idea also that there are private people in Dunedin who let their lands on Corporation terms. As to renewals, I can only remember some three or four leases that ever went out of the hands of those who desired to go on with them. Of course, if a tenant went out a little competition might ensue, but in my experience the auction system resulted in very little to the Corporation. If a proposal were made in Auckland that valuation of both rental and buildings should be made by a Judge acting with two assessors, who would decide upon evidence, I cannot say exactly how it would be received, but I think a great deal too much is expected from appeal to a Judge. Then, of course, if every borough throughout the Dominion could appeal to a Judge the appointment of more Judges would be required. My opinion is that business men, who are in the hurly-burly of the thing all the time, would be more suitable for the settlement of these valuations. Of course, one has to consider the personal aspect—that the business men are themselves interested to a certain extent. In leasing the lands in the first instance the Corporation fixed the rentals. I cannot say what system will be followed when there is a revaluation, as so far there have been no renewals. In fixing the present rentals the circumstances of the district have been taken into consideration. In the case of Ponsonby Road, for instance, the fact that it is fast becoming a business street would be taken into consideration. There to a certain extent the tenant is charged on the speculative value, but we shall get better rentals when the revaluation is made. In Hepburn Street, which is a residential area, the sections are leased purely as residential sites. We have practically had no experience yet of revaluing for renewals of rentals. In the event of a case of revaluation for renewal being referred to three arbitrators I do not think, in the event of the tenant being dissatisfied with the valuation, he should be allowed to set himself up as a Court of appeal, throw up the lease, and demand compensation for improvements. That would be an appeal against the very Court he had agreed should decide the matter. If the tenant's own valuer agreed that an excessive or unreasonable view had been taken by the tribunal there might be some right of appeal. In the case of Auckland I do not know that it would be a good thing to at this stage set up a fixed tribunal or a Judge to settle these valuations, as the additional cost might frighten the tenants and so depreciate the value of their leases. I think a decision by two out of three valuers should be accepted, and that there should be no appeal to a Judge unless, of course, something has been done wrongly. What we all aim at is to get buildings of permanence upon these leaseholds. In Auckland we have not the rating-on-unimproved-value system in operation, and we have to look to the rates as well. The better the building the more we benefit, apart altogether from the rentals. One of the conditions of our lease is that a building must be put up within two years from the time the lease is sold. We know, therefore, that in addition to the rent we can get a certain amount of rates.

2. *To Mr. Milne.*] I cannot say I think the length of a lease should be regulated to some extent by the estimated life of the building. I am not in favour of a long lease of, say, ninety-nine years without revaluations. Our colonial towns progress so rapidly that a man ought to have rebuilt twice over in ninety-nine years. In Auckland we are not now allowing buildings above 100 ft. high.

3. *To Mr. Thomas.*] In Auckland we make a stipulation as to the value of the building to be erected on the Glasgow lease. It is very reasonable—only £400 in the case of a brick building, for instance—but we get security for our rent at once. We only require that the land shall be used. We find our annual values are very much on a par with the Government values. We have reckoned that a piece of land should return at least 5 per cent. From the Ponsonby Road leaseholds we tried first of all to get 8 per cent. Three per cent. is not a fair rent for a lease that

is to run for twenty-one years, as it is bound to have a prospective value. We failed to get 8 per cent. for the Ponsonby Road sections, and we had ultimately to come down to 5 per cent. Our valuer is not also the Government valuer. I do not say that when a valuation is made there should be speculation as to future value. It should be the value on the date the valuation is made. I think a reassessment of the rent should be made at least three months prior to the termination of a twenty-one-years period of the lease. Twelve months seems to me to be too long a period, as in twelve months the buildings might be allowed to deteriorate.

4. *To Mr. Milne.*] If a tenant has had a bad time during his twenty-one years occupancy of the lease I do not think that fact should be taken into consideration in fixing the rental for the succeeding period. The tenant's business ability should not be a factor in fixing the rent. If, however, a lease has been taken up at an excessive rental I think the Corporation should have power, on application being made, to grant relief. Several such cases have been dealt with in Auckland.

JAMES HENRY GUNSON examined. (No. 21.)

1. *To the Chairman.*] I am Mayor of Auckland. My experience in connection with public bodies' leases relates more to Harbour Board interests than to city interests. The Harbour Board here is the public body in whom the fee-simple of the commercial area of the leasehold property is vested. The major portion of the most valuable city leases is vested in the Harbour Board and not in the Corporation. Prior to 1910 the Board leased under two systems. They were empowered at that time to give half-compensation for improvements at the end of the term. This the 1910 legislation nullified. The term before 1910 was fifty years, with half-compensation for improvements, but we leased also on another principle—a twenty-one-years renewable lease with revaluation, as prescribed in the Municipal Corporations Act. In 1911, when I was returned to the chair of the Board, the Board decided to abandon, except in the case of one or two residential properties on the northern shores of the harbour, the perpetual renewable lease in favour of a lease for a straight-out term of fifty years without compensation. During the whole of my term I strongly advocated that, and the Board adopted that policy and maintained it strongly. The rentals were, of course, a little lower than would have been fixed had the half-compensation clause been in. The Board followed my suggestion that as soon as possible we should fix the upsets on a basis of 4 per cent. of capital value, and that in the latter term of my chairmanship was always done. The general system now is a long term in preference to a perpetual renewal lease. This was brought about purely because in the judgment of the Board it was a better method both in the interests of the Board and of the tenant, particularly having regard to the fact that nearly, if not all, the Board's properties were within the confines of the commercial area of the city, upon which very valuable buildings would be erected. Fifty years was regarded as the probable life of a building, and a lease for that term would give time to any firm or company to establish sinking funds and wipe off their building. Such a system is essential for any soundly conducted business. Under the perpetual-lease system a tenant cannot do that, because he does not know what his rent for the next twenty-one years is going to be. I am aware that in Wellington and in Dunedin other systems are preferred, and I would not dogmatize. The progress of a city and the trend of values during recent years must be taken into account. I should have brought before the Auckland City Council the question of adopting the Harbour Board form of lease had their interests in leases been greater. With regard to the method of arriving at the new rentals at the end of a term of lease, I have had only slight experience in connection with the Corporation leases in the last two years, but I am inclined to think the valuation system is the better one—more equitable and satisfactory to the tenant and to the Corporation than the arbitration system, where a number of lawyers and witnesses are engaged. I think the 60 per cent. suggested by the Wellington Corporation as valuation for improvements in the event of a tenant being unwilling to continue for a further period is too high. I have always held the opinion that 50 per cent. under any conditions is ample. The rental at the outset could be adjusted accordingly, and the tenant would all along be aware of the terms. If too high a percentage were given for improvements it might lead to a number of obsolete buildings being thrown on the hands of the Corporation. It is practically impossible to force a tenant to keep his buildings in repair. You cannot dispossess a tenant in practice. Of course, with the half-compensation clause, the amount of compensation payable depends too on the condition of the buildings. The onus is on the tenant to look after his own interests. I think the Chairman of the Harbour Board will tell you that the Board has a provision in its leases that the tenant must put up buildings. In 1904 the Corporation leased some sections in Customs Street for a term of twenty-one years, at the expiration of which full valuation is to be given. Thirteen years of that period have gone, and in a few years the city will be in the position of having to give full valuation for the buildings on those sections. The buildings, as a matter of fact, are not worth anything, and we shall have to demolish them.

2. *To Mr. Thomas.*] It is true we only pay on present value, but you know what valuations are. With regard to the Harbour Board's fifty-years leases it is true that if there is a rise in values the tenant gets a substantial benefit, but I have always taken the view that while the leasing body must be protected the lessee is entitled to a fair increment: he is entitled to the benefit of the prosperity of the place to which he has been so large a contributor. We find fifty-years leases always saleable. The fourteen- or twenty-one-years leases no one will look at. They are afraid of the revaluation.

HAROLD DENNETT HEATHER examined. (No. 22.)

1. *To the Chairman.*] I am Chairman of the Auckland Harbour Board. The system of leasing the Board follows is to grant a fifty-years lease, with one rental throughout. At one time we used to have what is known as a Glasgow lease, but in 1912 it was decided to change to this fifty-years lease. In previous years the Board used to issue leases up to fifty years, and now the decision of the Board is that a fifty-years lease is the most equitable to the lessor and to the lessee. Several prominent business men have spoken to me about it, and they all seem to think a fifty-years lease gives them a better chance of forming their sinking fund and winding it up at the end of their term. When we let in the first instance, in order to arrive at our rentals we get valuers to make independent valuations. Those valuations are submitted to the Board, and the Board determines the rate at which the leases are to be offered. We believe that a valuation reckoned on the basis of 4 per cent. on the capital value gives a fair return. I have here a copy of our Glasgow lease and a copy of the present fifty-years lease. [Copies put in.] None of our leases have fallen in yet. Our Glasgow lease is different from the Dunedin lease. The tenant has the option of either agreeing with the Board as to rent or having the lease put up to auction. In the case of our fifty-years lease we do not feel there should be a revaluation in, say, twenty-five years in order to give us the benefit of any rise in values. We start off with a fairly good rental—at any rate, 4 per cent.—and, of course, the property reverts to the Board at the end of the term: then whatever buildings are on the property revert to the Board. The only leases of ours which have fallen in are twenty-one-years leases without renewal and without revaluation. The buildings on those leases were very inferior.

HENRY BEAUMONT BURNETT examined. (No. 23.)

1. *To the Chairman.*] I am Secretary and Treasurer of the Auckland Harbour Board, and have been so for the past six years. It is during that time that the long lease was adopted in preference to the renewable lease. But up to 1908 the policy of the Board was to issue long leases of from fifty years up to eighty-four years. From 1908 to 1912 the Board favoured the Glasgow lease. Then when Mr. Gunson, the present Mayor, was Chairman the Board went back to the fifty-years lease. Most of the leases prior to 1908 had the half-compensation clause in them. There are now only sixteen Glasgow leases in the city area, and not one of them is for a shorter term than twenty-one years, renewable. The Board's experience of the Glasgow lease has not, I think, been favourable. The Paterson Street leases fronting Victoria Park are all Glasgow leases, and we had very great difficulty in selling them. I do not think we get the same rental for these Glasgow leases as we should have obtained had we put them up for fifty years. The tenants themselves do not favour the Glasgow lease, as there is not the necessary security of tenure. It is much easier to operate on a fifty-years lease than on a Glasgow lease. As we have had no experience at all yet of leases falling in I should not care to express an opinion on the question of valuation as against arbitration. One disadvantage of the Glasgow lease is that if the tenant cannot agree with the Board as to the new rental, if he does not want to bid for it at the auction, and if nobody else bids, then the whole thing falls back to the Board. The tenant is only protected against the incoming tenant. If there is no incoming tenant the whole thing goes back to the Board. A great many of our older leases had half-compensation clauses in them. The Board had special powers in that respect under the 1885 Act, but those sections were repealed. In 1912, however, we got power to deal with the block opposite the Post-office. We have power there to agree with the lessees to surrender their leases for new leases up to fifty years, and the Board in that case can give half-compensation. That Act runs out this year. The idea was to bring the city up to date. Only two lessees have taken advantage of the opportunity offered.

2. *To Mr. Thomas.*] In the leasing of some land at Manukau we gave the option of a Glasgow lease or a fifty-years lease, with a building clause in it. In most cases they have taken up the Glasgow lease.

EDWARD RUSSELL examined. (No. 24.)

1. *To the Chairman.*] I am a solicitor practising in Auckland, and I have had a good deal of experience with regard to leases of land. I have been solicitor to the Auckland Harbour Board. In my experience, if you had properties of equal value and offered them for lease, giving the option of a Glasgow lease or a straight-out lease for fifty years, the fifty-years straight-out lease would command the higher rental. My reason for believing that is that the tenant would be able to arrange his finances better on the long-term lease than on one with an uncertain rental. Speaking from my own personal experience I should most emphatically say that mortgagees will lend more freely on the long-term lease than on the renewable Glasgow lease. The only experience I have had in connection with revaluation of rents is limited to the Charitable Aid Board leases, and in those cases I think the Board itself fixed the renewal rental. With regard to the case where the Board offered the alternative to the tenants of a fifty-years lease and the Glasgow lease, if I recollect aright, the tenants had to elect within fourteen days after the auction which lease they would take. Most of those tenants came to me in connection with the matter, and the factor that seemed to influence them in taking the Glasgow leases was simply that there was no obligation to build in that lease. If there had been no obligation to build under the fifty-years-lease system they would have taken the fifty-years leases.

2. *To Mr. O'Shea.*] I do not know that I have had any experience of arbitrations as to valuation where evidence is called, but personally I would prefer to have a Judge of the Supreme Court as against a layman to settle such questions. I do not know that a Judge would very soon be able to establish a standard of rent or of valuation in a city like Auckland, where there is such a great variation in the sites to be leased. Perhaps it might have that effect where the sites were adjacent to one another, but even then conditions vary.

FREDERICK GEORGE EWINGTON examined. (No. 25.)

1. *To the Chairman.*] I have been a valuer and estate agent in Auckland for the last fifty years. I do valuations for the City Council and other public bodies constantly. In the announcement in the newspapers about this Royal Commission on municipal leases it suggested that if the Municipal Corporations Act be not working satisfactorily what were the alterations that should be made? I do not say the Act is not satisfactory, and I make no complaints on my own or on my principals' behalf; but I respectfully submit a suggestion which perhaps may help the Commission if it be found that section 7 of the Municipal Corporations Act is susceptible of improvement. In section 136 (*b*) (i) it provides that the rent "be fixed by valuation of the land only, without regarding the value of any buildings or improvements thereon." From that it appears the valuers have to value the land as unimproved land, but there are instances where the land has valuable buildings erected upon it, and it cannot be reduced to unimproved land without first destroying many thousands of pounds' worth of buildings. Not only so, but the valuers have to imagine an unreal thing. They have to imagine that the land is unimproved, which is not the case, and they are led to consider what the land would realize in the market if it were for sale as unimproved land; and they are guided to a great extent by what similar land in the vicinity has recently sold for, and what it can be sold for and yield a fair and satisfactory return on when put to its best use. That may show that the land without improvements, when a buyer can erect what buildings he likes, may be worth considerably more than the same land is actually worth with the buildings already on it. It may be found, too, that if the estimated value of the land as unimproved be added to the present buildings, the lessor would claim a rental which would leave the lessee a mere trifle, or perhaps nothing, for interest on his improvements. Such cases may arise, and in my humble opinion the Reserves, Endowments, and Crown Lands Exchange, Sale, Disposal, and Enabling Act, 1898, meets such cases and secures justice to all parties. A section of this latter Act provides that when a lease is to be renewed there shall be two separate valuations. There shall be a "valuation of the then gross value of the fee-simple of the land." That valuation of the fee-simple includes the buildings. In his estimate of the fee-simple the valuer has to consider many questions—for instance, the earning-power of the fee-simple with the permanent buildings upon it; also what it would be likely to realize in the market if placed on it for sale at the present time with all its disabilities and potentialities, and what a careful investor with a knowledge of the property and money markets would be likely to give and be justified in giving for it as a safe investment. Having made his valuation of the fee-simple the valuer then makes a valuation of the buildings. The buildings are contributory to the income, so is the land, and in estimating the building the valuer would have regard to their state of repair and suitability for the position in the city and on land of particular value there. It seems to me that the method prescribed in the Reserves, Endowments, &c., 1898, statute may suggest to the Commission a way of preventing hardship or injustice if such cases have been brought under its notice. With regard to that Act the Hospital and Charitable Aid Board, which has really taken the place of the Public Trustee in the appointment of a valuer, gets a valuation made, and then it has the power under the Act, if the valuation is deemed too high by the lessee, to have this land put up to public auction with a reserve not higher than the amount at which the valuer has assessed it. So that it seems to leave the Board free to put it up at a lower sum and let the lessee bid if he wishes. Of course, there is great responsibility thrown upon the valuer, who has to value for the two parties. As to the system of taking a 4 or 5 percentage upon the capital value, I think in cities like Wellington and Auckland 5 per cent. is exceedingly liberal, because there is an increment value every ten years, and I think the landlord ought to be content with 4 per cent. I agree that if you could get an accurate capital value every time it would be the simplest system always to have a fair percentage on the capital value as the rent. That is what we have to aim at to a great extent. If the land and building is pretty well put to its best use then we are governed to a great extent by the return. It is true that, apart from speculative or prospective value, the capital value ought to be ascertained by what can be got out of the land by the best use of it, but many of the holdings are not put to their best use. The earning-power should be taken on a reasonably good building. Land next mine which has only a two-story building upon it has been sold at the rate of £600 a foot. It would not be fair to base the valuation of that property on its present earning-power. You would have to consider there is land in the vicinity selling for so-much. But there is no hard-and-fast rule to go upon in these matters. I quite agree with those who say that private arbitrations are very expensive and as a rule unsatisfactory. My experience is that the two arbitrators go as partisans to fight each other for his own principal, and they throw on the umpire the responsibility of deciding. In the case of private people leasing land my experience is that they do better by letting on long leases. It entitles the landlord to a higher rent, and it gives the tenant better security than does a Glasgow lease. He can borrow on a long lease.

2. *To Mr. Milne.*] The financial people will not lend money on leases where the rental is not determined. In the case of these Glasgow leases no doubt the periods of rest are there for

the purpose of adjusting the position as between landlord and tenant, but the Glasgow lease seems to keep people in a state of ferment, and a great many will not take it up because they are afraid of what may happen at the end of twenty-four years. I do not recollect any instances of rentals being reduced during a period of rest for the currency of the next twenty-one years, though it is quite possible something unforeseen might occur which might warrant a lower rental being demanded. If something unforeseen occurs during the currency of a lease, such as the removal of the seat of business by the deviation of a railway or a tramway, for instance, the landlord ought to have power to make some concession to the tenant. If he did not make a concession it would be a hardship, but I would not call it an injustice. It would be a hardship also to the landlord to have to greatly reduce his rent.

3. *To Mr. Thomas.*] In periods of boom such as at the time of the mining boom men were almost indifferent as to what they paid for properties. When rentals have afterwards fallen I do not think there has been any attempt to get relief from the leasing bodies. The tenants have stood to their bargains. But I have generally found public bodies are pretty indulgent as to payment of rents, rates, and so on. They will try to help the tenant to tide over a dull time.

AUCKLAND, TUESDAY, 23RD JANUARY, 1917.

HERBERT EARLE VAILE examined. (No. 26.)

1. *To the Chairman.*] I am a land-valuer in Auckland, and I am also agent, with my firm, for a number of properties. We have been carrying on business for many years in Auckland. We are valuers for the City Council. Our firm does the largest letting business in New Zealand. I am aware generally of the terms of what is called the Glasgow lease in its several forms. I think, speaking generally, the Glasgow lease—that is, the lease with perpetual right of renewal —is more popular than the long-lease system. I am speaking more particularly of business areas. A business is not like the lifetime of an individual: it may go on for ever. I am aware that the Harbour Board reverted, after a short trial of the Glasgow lease, to the long-lease system. Personally I cannot see any objection, when these leases are offered at auction, to giving the tenant the privilege of either taking a lease in perpetuity, with revaluation, say, every thirty years, or a straight-out lease of fifty years. I do not see any reason why that option should not be offered to the tenant. I do not think the one should bring in more rent than the other. I think the municipalities make a great error in not giving as liberal terms as possible, because everything possible should be done to popularize the leasehold system in the interests of those bodies. The lease is quite unpopular enough now. It is not very popular with people who lend money, and quite rightly so, because it is easy to imagine a point at which the leasehold becomes a liability, which in past experience has very often happened. A fourteen-years term for ground-rent to my mind is out of all reason, and my view is that even twenty-one years is too short. I believe that a Glasgow lease, revalued every thirty years, would be about equivalent to a flat lease of fifty years. In my opinion, by giving a revaluation every thirty years instead of twenty-one years, the public bodies would lose absolutely nothing. As regards the system of arriving at the rental in the first instance or on a revaluation, unfortunately in Auckland the practice with the Harbour Board, the City Council, and other leasing bodies has been not to have any definite system at all. Sometimes they employ us to fix the ground-rents; at other times they fix them themselves. I am absolutely convinced that there is no way of fixing ground-rental except by taking the fair market price of the land and taking a percentage on that. I have heard it suggested that one might take a piece of land, stipulate the style of building that should be put upon it, and subtract so-much per cent. on the building for collection of rent, cost of running a lift, insurance, taxes, and so on. Well, if they will let me do that I will undertake to prove that every piece of land in Auckland is absolutely worthless. I do not care what piece of land you show me, I will prove that the ground-rent is worth nothing. In attempting to place a ground-rental on a good corner section the first point to settle is what sort of building we are going to put up. If I were acting for the landlord I should say it was suitable for a hotel, or a picture-theatre, or something of that kind. The other man would say it was suited only for a warehouse. Then it is a matter of opinion as to the sort of building that should be put up. Then you could go on making up your charges until the ground-rent went up to £100 a year. You could easily wipe the whole of that out by saying, "In a building such as this the rent will come to £150 a year." You might say the gross rental would be £6,000 a year. Then one man would say, "I want to deduct 5 per cent. for collecting that rent—£300 a year." The other man might say he could get it done for 2 or 2½ per cent., and so you might be arguing for a week. There is no fixed percentage basis on which these deductions are made. With regard to the percentage on the capital value of the land that should be charged for rental, to my mind it varies according to the term of the lease. If the lease is for fourteen years I say it could not possibly be worth more than 2 per cent. at the very outside, because it is obvious when a man has to put his building up it is more or less of a speculative venture. If it is a large building it is twelve months before he gets it tenanted right through, and as he has not the faintest idea of what his next rent will be he has got to try and get as much of the value of the building back in fourteen years as he can, which is not much in the case of a good building. Then if the rent were revalued every twenty-one years I should say the ground-rental should be worth from 3 to 3½ per cent. But there another factor affects it to a slight degree, and that is as to whether you are letting a section on a large area of unoccupied land, or whether you are letting an established site. In no case should ground-rent ever exceed 4 per cent. unless the tenant has the right to purchase or something

like that. If you go beyond that you make the tenant pay interest practically on the future value. The landlord should not expect more, because he has his investment secure in a way no other security could be obtained. He probably gets a building worth more than the land on which it is placed. The tenant is so anchored that he must pay his rent, and the landlord's interests are better secured than he could get them by any other means. It is not subject to being paid off like a mortgage. It is a continuous and secure investment, and it is worth a lower rate of interest than any other you can think of except perhaps Government bonds. From the tenant's point of view he could not be called upon to pay more, first, because he is in the position of a man with a perpetual mortgage on his property which he cannot redeem. He would expect to pay a lower rate of interest than on a mortgage which he could pay off when he had the money. In that respect the Government Valuation of Land Act is based on absolutely false premises altogether. It is perfectly idiotic to suppose that the ground-rent of land is 5 per cent. on the freehold value, because since the colony was founded it has proved not to be so. In the case of land in Ponsonby Road recently we were unable to do anything with it until the rental was reduced to 2½ per cent. That was not a business site, of course, but where land is submitted to public competition it never brings 4 per cent. There is no other system of arriving at the rental value that I know of except by starting with the sound basis of the selling-value of the freehold at a low rate of interest. In arriving at the value of the freehold I would not be governed in any way by what appeared in the land and income assessment list. Frequently the values appearing there are arrived at by mutual agreement. In many instances owners have had their valuations raised to a most ridiculous extent for their own purposes, and they pay taxes upon those values. The idea is to give the land a fictitious value. The Government would not dream of lending money on their own valuation. It has always seemed to me that a sound conclusion as to the value of land can only be arrived at by experienced men who have some faculty for weighing one property against the other. It is of no use to quote a ridiculously high sale and make that the basis for other sales. There has not been much experience in Auckland of revaluation of rents so far as the municipal leases are concerned, but there has been plenty of experience in connection with private leases. In such cases the new rentals are arrived at either by valuation or by arbitration, but the most common method is by arbitration under the Arbitration Act, with the calling of witnesses, and so on. The cost of some of those arbitrations is terrific. There was one here recently at which we gave evidence, and the cost, it is reckoned, came to £150 a side. It went on for days and days, and whole strings of witnesses were called. I am opposed to the auction system when leases are being renewed. It is unfair to the tenant because of possible competition on the part of business rivals. A tenant who had established his business in a certain place might be ruined by some one bidding against him, out of spite perhaps. My own view is that by far the best method of arriving at these revaluations is to have a tribunal consisting of two permanent assessors for the whole Dominion, who would sit with a Judge, the idea being that those gentlemen should be absolutely dispassionate and unbiased. Under the present system of arbitration you find the people giving evidence divided into two factions, and I consider a tremendous disadvantage in the past has been having partisans on the Bench. Of course, the great difficulty would be to select suitable men. There would be the cost of travelling, of course, but if the thing were run properly the total cost would be ultimately less. I would give that Bench of three men power to limit the number of expert witnesses, say, to three on each side. It has always seemed to me turning the thing into a farce to bring in a horde of witnesses all saying the same thing one after the other, and without illuminating the subject in the slightest degree. And we have the experience of those absurd Assessment Courts, where the Government thinks nothing of bringing in a number of witnesses and smothering the objector, who has perhaps only one. If such a Court as I suggest were constituted I would not allow lawyers to appear as counsel for either side. I am quite sure the cross-examination of expert witnesses is farcical. If we had a Judge sitting with two practical business men—not men on the retired list, but people concerned in business transactions—they would come to a conclusion without all this cross-examination and badgering of witnesses. I would not have the two assessors Government officials, but men absolutely in business. They should be selected from different parts of the country, and absolutely free from bias, conscious or otherwise. They would have to be selected with great care. Surely such men are to be found. If they were men, say, of Mr. Ewington's character tenants and landlords equally would feel quite safe in their hands. I would make it a *sine qua non* that the two assessors were not only business men, but were thoroughly used to the valuing of land. They would be able to hear the evidence brought forward by landlord and tenant, and owing to their experience in that line of business they would be able to sift it pretty well; in fact, better than the umpire. The cost of such a Court would be so-much per day, and it seems to me the expenses could be borne in proportion by the local authorities and the tenants. But I would not confine the operations of a Court of the kind to municipal leases. I think all persons interested in leases might appeal to such a Court; in fact, such a Court might deal with other matters also with success.

2. *To Mr. Milne.*] I believe a good deal of the trouble that has arisen in Wellington and elsewhere in connection with leases is due to the very high rentals the leasing bodies have been demanding from their tenants, and it is a very shortsighted policy. I would say, however, so far as Auckland is concerned, I do not think there are any very excessive rentals being paid. A 4-per-cent. rental is about what the municipal and other bodies have aimed at, but they have not always got it. I certainly think the periods of rest in the Glasgow leases—every twenty-one years—should be utilized for reviewing the past and regulating the future rental. If the tenant has been a good tenant for twenty-one years, and during that time he has lost money, I think that

should be taken into account in fixing the rent for the future period as a matter of fairness. The municipalities make a great mistake in not doing all they can to satisfy tenants. It is inequitable to insist on an increased rental at every rest period, because one cannot tell what the future will be.

3. *To Mr. Thomas.*] The difference between the value of land which is only capable of being leased and the freehold is from 1 to 2 per cent.—that is, on the rental or interest value.

4. *To Mr. O'Shea.*] I think public competition by auction is a good test of value of similar leases in the same locality. Our experience in Auckland is that the tender system is not such a good test. I cannot say that I know of any cases in Wellington where the tenant is paying too high a rent. I have read the evidence in some of the Wellington cases, but personally I am not conversant with those cases. In reply to Mr. Milne I merely indicated that municipal bodies made a great mistake in demanding rentals which were too high.

WILLIAM JOSEPH NAPIER examined. (No. 27.)

1. *To the Chairman.*] I am a barrister and solicitor practising in Auckland. I have been practising here for thirty-three years. I am a lessee of the Auckland Harbour Board, the Auckland City Council, the Auckland Grammar School Board, and the Wellington Hospital Trustees. I am also interested in leases from the Wellington City Council. I was for nineteen years a member of the Auckland Harbour Board, and have been Chairman of that body. For a considerable period I was Chairman of the Finance Committee, and had a great deal to do with the administration of the leases. I was instrumental in introducing to the Board what was called the Glasgow lease. I notice that according to the newspaper report Mr. Gunson, the present Mayor, who was Chairman of the Harbour Board, has stated that the Harbour Board abandoned the renewable or Glasgow lease a few years ago in favour of the fixed long-period lease. That may be so. I believe the Board did decide to lease certain properties under the long-period system. That I consider was for the Board a retrogressive step and one disadvantageous to the public. I can give you concrete illustrations of that presently. It is now twenty-six or twenty-seven years since I became a member of the Harbour Board. At that time there were a number of old leases which I think had been handed over by the Provincial Government at the time of the abolition of the provinces, and those leases were for long fixed periods. Speaking from memory I think the term of those leases was sixty-six years. Those leases were disastrous to the Auckland Harbour Board. When the Provincial Government of that day leased them they were taken up at merely nominal rentals. In spite of the rapid growth of population and expansion of the city the Auckland Harbour Board will have to wait, even now, almost another generation before they will get any benefit from the increased value caused by that expansion. When I became a member I investigated these matters, and I came to the conclusion that, if the Board altered its system of leasing and went in for the Glasgow lease with fixed periods, the Board would become a wealthy body within the lifetime of living men. I brought this matter before the Board, and gave them certain data, with the result that the Board agreed to lease for the future under the Glasgow principle. There was one very choice piece of land which I for many years prevented the Board from leasing, because I believed it would be really the centre of Auckland. It adjoins the railway-station. We kept that piece vacant for many years. Ultimately there was a change in the personnel of the Board, and members generally got tired of seeing that piece vacant and they rushed it into the market. They would not lease it under the Glasgow conditions, but leased it for a fixed period. The place is now occupied by Endean's buildings. We leased that for £6 a foot. To-day you could easily get £18 a foot for that piece of land if it were vacant. I strongly urged the Board to lease that under the Glasgow principle. I pointed out that that portion of the city was going on by leaps and bounds. But it was leased for a long term—certainly fifty years. Then I object strongly, and I believe it is not in the public interest to lease for long periods with unaltered rents—a period of, say, ninety-nine years. In a young country like this—and, of course, my whole life practically has been spent in Auckland—where the growth is so rapid, it is unfair to the public that the land should be locked up and the owners prevented from getting a proper reasonable market value for generations. We know, of course, that the goodwills of these leases fetch enormous sums. Even in the case of vacant land I can give an illustration where before there was a stick put upon the land allotments leased by the Auckland Harbour Board not more than 50 ft. to 60 ft. wide fetched within three years £1,000 for the goodwill. Those were long leases on a flat rent. Then I think also local bodies are subjected to undue influence sometimes in adjusting leases—a power I think they ought not to possess. For instance, I strongly opposed, but unsuccessfully opposed, on the Auckland Harbour Board the revision of quite a number of the old provincial leases and some very early Harbour Board leases, where the members, no doubt for reasons which appeared to them good, wished to give fresh leases under that provision in the Local Bodies' Powers Act for the remainder of the term, and insert a clause giving half-compensation at the end of the term. The rents were almost nominal, having been fixed in the seventies. When that clause was put in those leases were freely negotiable in the city for £2,000 and £3,000 apiece, whereas without that clause you could not readily borrow money upon them. Now, in this way a burden of approximately £40,000 to £50,000 was placed upon posterity without a penny-piece of consideration, the plea of the members of the Board being that the general interests of the city justified it, because the tenants would be induced to put up a better class of buildings. But the fact remains that without any consideration the Board then handed over so-many thousands of pounds. My experience leads me to this judgment: that all local bodies should be confined

to one kind of lease—a Glasgow lease—and that the period should be at least thirty-three years. I think that would be fair to both parties. Twenty-one years in certain instances might be fairer, but there are many instances where it would not be quite so fair. Taking one thing with another my experience leads me to that conclusion. In a young country like this, where money is required for improvements, it would be better to have a small sum thirty years hence than a larger sum seventy years hence, because the money can be better utilized for the people. Then the Glasgow lease I regard as the fairest to both landlord and tenant, because if carried out properly that which belongs to the landlord always remains his, and that which belongs to the tenant always remains his. There ought to be full compensation, in my opinion—not half or a third—for the then existing value to be paid by the incoming tenant. If the existing tenant or a new tenant does not take up the lease I do not think the compensation should be paid by the Corporation or the Board. I think that would be too great a burden. I think the lease should be loaded with the assessed value of the improvements. Referring to what Mr. Gunson has said, I understand the Harbour Board have agreed to give leases for the whole of Lower Queen Street from about Quay Street to near the Union Company's shipping offices. I think that will operate injuriously to the public. The people have contracted or will contract, I understand, to put up taller buildings; but the arrangement made by the Harbour Board and by the Auckland City Council with those lessees across the street from the Town Hall is injurious to the public. You can have quite as good if not better buildings put up if the leases are offered to public competition. As to those shanties opposite the Town Hall, the leases have only five or six years to run. I think an injudicious thing has been done in the interests of the public to grant without competition long fixed leases, with fixed rents, for those places. I am entirely opposed to any interference by the Legislature with any existing contracts, even if they may have been imprudent. It seems to me that the confidence and security of the commercial world must be maintained, and it will have a very far-reaching effect if the Legislature should intervene in a contract and alter it. I believe the prosperity of the country requires that people should be held to their bargains. I hold that when tenants have erected large buildings and established offices in a particular spot there should be no risk of the Legislature interfering arbitrarily even on the recommendation of a Royal Commission, supposing such a thing were possible. There should be no interference with a contract already entered into. Then, in a Glasgow lease, I regard a provision for arbitration as essential. If you do not have arbitration, in my opinion it is not a proper Glasgow lease. What I mean by "arbitration" is this: that each party should appoint an arbitrator, and then those two combined should appoint a third. In such arbitrations I think witnesses should be called. I do not think there should be simply three valuers. Then I think the principle of readjusting the rent on the basis of 5 per cent. of the freehold value is fallacious. While apparently the local body may get more money, it will operate injuriously to the general interests of the city. I do not think it is a fair thing to say, "This land is worth so-much, and therefore the rent is to be 5 per cent. on that." You have to consider what amount a careful, prudent, experienced business man would give as a payable proposition for a piece of land by way of rent. He would have, of course, to erect buildings, otherwise it would be non-productive. Then I think that every man going in for a lease of land must provide, if he is prudent, a sinking fund, and I think the amount that ought to be paid to the local body should be a rent from which an allowance has been made to the man himself for sinking fund. You have to consider what you can let your shops and offices for, what the rates, insurance, interest, &c., will be, then what the deterioration and depreciation would be, and then whether at the end of the term the building would be practically unlettable or otherwise. In those circumstances, if you say the land is worth £100, and therefore the rent is £5, I think the principle is absurd. Theoretically it may sound all right, but in actual practice it is most pernicious. Referring again to arbitration, I think the umpire could very well be chosen by the two arbitrators selected by the parties concerned. I do not see that the State or any one else should appoint the third person. In my opinion, if that were so, it would not be true arbitration. As to the provision in the Arbitration Act that if the two nominees cannot agree the Supreme Court may appoint the third, I do not object to that in principle, but at the same time I do not think the Courts are really the best tribunal for fixing rent. I think a business man, provided he is experienced, is a much better man, because he goes more carefully into the figures, and he knows as a business man all the thousand-and-one things that have to come into consideration in conducting a business; and after all it seems to me a local body should only get something for its land which the tenant can reasonably and honestly pay and make a living himself. If local bodies seek to encroach upon the tenant's legitimate profits I think it will operate disastrously both to the local bodies and to the tenants. I do not favour the suggestion that the tribunal should be a Judge alone, with assessors, acting upon evidence. A Judge has not that close association with business that a merchant or a practising barrister has.

2. *To Mr. Thomas.*] I do not believe in private agreements between public bodies and tenants, even though they may be afterwards approved by a Judge or other tribunal. I believe in the breath of public opinion. In regard to Public Trust properties I think there should be free and open competition.

3. *To the Chairman.*] With regard to the Grammar School Board leases, they are bad both for the public and the tenant. They let the land for fifty years. They fix the rent for the first twenty-five years, and they say for the next twenty-five years it shall be so-much more. That is to say, the rent is actually fixed to the end of the period. Well, that is unjust, because that portion of the town may go down.

4. *To Mr. Milne.*] I agree that if a tenant finds he has made a bad bargain for the previous twenty-one years that fact should be taken into consideration by the arbitrators in fixing the rent for the succeeding period.

CHRISTCHURCH, THURSDAY, 25TH JANUARY, 1917.

HENRY HOLLAND examined. (No. 28.)

1. *To the Chairman.*] I am Mayor of Christchurch. With regard to the object of the inquiry, the difficulties that have arisen in Wellington and in other large centres are not nearly so acute in Christchurch, for the simple reason that we have very little freehold property within the borders of the city. The city lost all its endowments in the early days, and we have therefore no property for letting inside the city. But the city has endowments in various parts of Canterbury. Our custom in the past has been to call for public tenders for the purchase of leases, and apparently owing to strings being pulled the citizens have not got full value for their property in all cases. In one typical case down south we got 2s. 11d. an acre for twenty-one years, and the lessee about a year or fifteen months after he purchased it put some improvements upon it—I do not know how much—but he got £1,000 for the value of his interest in the property. The purchaser then, about nine months later, sold out again, and he cleared £500 for his interest in the property. It seems to me therefore quite evident that the citizens are not getting full value for the land. In another case at Bromley public tenders were invited for the purchase of a lease for five years. It was put up in two lots and let to two different persons, and the person who had had it previously agreed to pay £50 to the new tenant to cancel his lease. He has now got control of the lot, and has just recently sold it for £250. How to obviate that is a difficult problem, but we have decided that in the future we shall employ an expert valuer to value all leases that fall in, and that we shall put the property up at an upset rental accordingly. In addition to the private valuer's estimate we shall have the Government valuer's estimate, and in that way we shall be able to protect the interests of the citizens and get reasonable value for the properties as they become due. We have no leases granted with perpetual right of renewal. Our leases are for a fixed term, and we cannot interfere until the term expires. Before I became a member of the Council the term of lease was twenty-one years, but since then it has been reduced to five or seven years for agricultural and pastoral land. I think there is a condition that we take the improvements over at a valuation at the end of the term. I do not think we have ever had a dispute which has had to go to arbitration. We have been always able to fix the matter up amicably. I might mention another instance where the city has not been getting value for its property. We have a reserve of 100 acres at Rakaia. It was let by public tender for ten years at £10 a year. At the end of that term tenders were called, and the same person got it for an additional ten years at the same rental. Then it was renewed for two years at £15. The tenant complained that the term was too short for him to get crops off it. We went down and inspected the property, as we felt it was worth 6s. 4d. an acre instead of 3s. We invited tenders, and the same man offered 16s. an acre, and it was finally leased at 21s. an acre. The only experience I have had of the perpetual-right-of-renewal system with revaluation of rent was in connection with a property upon which the buildings were in such a dilapidated condition that the Health Department ordered some of them to be destroyed. That was a property belonging to the Church Property Trustees. The land was ultimately sold by auction by consent of the Supreme Court.

GEORGE HENRY MASON examined. (No. 29.)

1. *To the Chairman.*] I am Registrar of the Canterbury University College. The college has large endowments, but very little city or suburban property. We have no property at all within the boundaries of Christchurch, but there are some reserves which were set aside a good many years ago in some of the smaller towns, but in nearly every case, with the exception of Ashburton, the reserves were in portions of the township which at one time were expected to become the business portions, but which have not turned out to be so, and consequently they are of very little value. The one exception probably is a very good business site in Ashburton, and that is at present under a fairly long lease. At the time that was leased very little encouragement was given by the Board of Governors for improvements, and the result is that the building on that property has been there for a good many years. A few years ago there was an application on behalf of the lessee that a clause be inserted in the lease for compensation. It was agreed to insert that provided the plans were approved of. I do not know why, but they have never submitted plans. Evidently they have dropped the idea of building, and there is no provision in the lease at the present time for compensation for improvements. The Board, however, is quite willing to insert a clause for compensation at the end of the lease if they desire to rebuild. The lease is for twenty-one years. With regard to our country lands or suburban lands, the leases are for twenty-one years, the lease to be put up to auction at an upset price fixed by the Board. There is a clause in the lease giving the right to compensation at the end of the lease for all improvements that are approved by the Board. The Board does not require anything elaborate in the way of buildings, but they merely want some sort of idea of the class of building or improvements that are going on the land. A few years ago we had a little experience of arbitration in connection with revaluation of land and improvements: that was in connection with one or two of our farms in South Canterbury. The result was not considered very favourable to the Board. If there was a difference between the two arbitrators the umpire generally decided in favour of the lessees.

2. *To Mr. Milne.*] The lessee is generally satisfied with the valuer we appoint. If he is not satisfied with the one we first suggest we then suggest some one else. We do not attempt to arrive at the values by agreement. The Board has always reserved the right to fix the maximum amount of compensation that shall be attached to any one lease, simply to prevent any possible

chance of so overloading a small place that no one else has a chance of getting the lease. We get our powers from the Canterbury College Act of 1896. In the case of farm lands we do not allow valuation for grassing; for fencing and other such permanent improvements we do. In the event of a tenant desiring that drainage should be counted as part of the improvements for which compensation should be paid I have no doubt it would be counted. I think it is open to argument whether, if we allowed for grassing and other improvements, we would get any larger rent. We have some lands which in the opinion of the Board it is not desirable should be broken up.

CYRUS J. R. WILLIAMS examined. (No. 30.)

1. *To the Chairman.*] I am Secretary and Engineer to the Lyttelton Harbour Board. The Board has reserves—reclaimed lands—which it lets out on lease. They are in the nature of town properties. We at present lease under a modified form of Glasgow lease. The essential provision is that towards the end of a period valuers are appointed, one from each side, and they together appoint an umpire. These assess the annual rental value of the land, also the actual value of the improvements. At the end of the term the lease is offered at auction; the incoming tenant must pay to the outgoing tenant the assessed value of the improvements. The idea is that it shall be a perpetual lease. The basic idea appears to be that the original lessee, if he chooses to pay the assessed rental from time to time, shall continue in possession. We have added to our form of lease that the original tenant is to have the first offer of it at the newly assessed rental in order to incorporate what was thought to be the idea of the Glasgow lease into actual fact. Then we have made an express provision that if the tenant does not renew and there is no other bid he forfeits his interest in the improvements: he forfeits the whole lease. This form of Glasgow lease we have only adopted during the last two years. Previous to that we had twenty-one-years leases, with an arbitration clause, valuers, and all the rest of it. At the termination of the lease the landlord was to pay to the tenant the assessed value of his improvements. We found that a very disastrous form of lease. This land may fall in at the end of twenty-one years, and its value for the purpose for which it has been used for that time requires adjustment owing to changes in the character of the harbour or something, and the buildings are valued as a going concern. Probably the Board find their value is only worth so much brick and iron, and so on. Although they are valued against us as a going concern they are actually of no value to us whatever. The proposal of the Wellington Corporation to pay 60 per cent. of the value of the improvement in the event of the tenant not taking up a new lease I consider a mistake. I know the difficulty there is in devising a form of lease that will be satisfactory to the landlord and to the tenant. In these revaluations I think the question of the continuing use of the improvements should be taken into consideration. I might mention a specific case as an example: Some alterations required to a railway-station yard in Lyttelton meant that ultimately a store standing on one of our twenty-one-years leases would have to be abolished. When the lease fell in, however, in order to avoid paying an extravagant price for the store we have had to renew the lease. We are still faced with the difficulty, of course, but we hope the next valuation will not be so absurd. In any case, when we do decide to close down the buildings will be valued against us, and we shall have to pull them down. I think valuations of buildings at the termination of a lease must take such things into consideration. We have had our valuation done by valuers. We look with horror on the arbitration system, where you have the calling of evidence and that kind of thing. If there is to be arbitration I would prefer a Judge of the Supreme Court as the arbitrator. I have been a witness in arbitration proceedings, and I have seen the personnel of the arbitrators. I know something of the difficulties in getting arbitrators who are unprejudiced and unbiased, and I have come to the conclusion that in a small community like Canterbury it is absolutely impossible to get a competent arbitrator who is not concerned in the matter directly or indirectly or sympathetically, whereas in the case of a Judge you have a man whose decision is unbiased. But I think a tribunal of three valuers acting on their own knowledge, provided the principle upon which they are valuing is laid down by Act, is the simplest and cheapest to all concerned. Not long ago I sat on a Commission with the Chief Justice and another gentleman to inquire into certain matters connected with the Foxton Harbour, and I was disappointed to see the amount of paraphernalia involved in arriving at what Mr. Ferguson and I could have arrived at in about three days without any of that evidence whatever.

2. *To Mr. Milne.*] In assessing the value of the new rentals the valuers have to look ahead rather than backwards, though, of course, one must take into account what kind of a time the tenant has had in the past on his holding. If he has had a bad time I do not think his want of judgment should be taken into account.

3. *To Mr. Thomas.*] We used to assess the rental, on the renewal of leases, on the basis of 6 per cent. on the capital value of the land—that is, on the Government valuation. To get the actual capital value we added 20 per cent. to the Government value. It works out at about 6 per cent. on the Government value. I think 5 per cent. on the actual capital value is a more reasonable rate. Over a long period I think 4½ per cent. would be a reasonable rent. Even though the security to the landlord is excellent, I do not think he should expect less than the current rate of interest, and I think 4½ per cent. is a reasonable rate. At any rate, anything under 4 per cent. seems to me too low. The capital value must ultimately be based on what you can get out of it, and the test of what you can get out of it is auction. I do not think we have fixed our rentals too high, but the Government valuations are too low.

4. *To Mr. Milne.*] I cannot say whether or not the tenants have difficulty in borrowing money on these leases. Most of our tenants are people in a biggish way, and they have no difficulty in financing at all. This lease is generally a very small matter in their business. As to the question of what is a fair arrangement as between landlord and tenant, I have been puzzling over it for years as different leases fell in, but I have always been up against the provisions of the Act. I shall be very glad to think the matter over again and endeavour to find a solution. As the Commission desires it I will hope to submit my views in writing.

LEONARD AUBREY STRINGER examined. (No. 31.)

1. *To the Chairman.*] I am Town Clerk of the Borough of Lyttelton, and have been so for six years. The borough has certain reserves which it leases from time to time. We have one large reserve a portion of which is in the area of the town. It is mostly used as residential sites. Practically the whole of that is leased on the Glasgow lease system, term twenty-one years, with right of renewal, revaluation of rent, and compensation for improvements. If at the end of a term the lease is not taken up by anybody the improvements lapse. The conditions seem fairly satisfactory to the tenants. The only argument we have is about the rental. We fix the upset rental. None of the Glasgow leases have fallen in yet, so that I have had no experience of revaluation. We have not let for longer terms than twenty-one years. Then we have sites lower down on the waterfront, used for grain-stores, and so on. The old business sites are falling in one by one, and there is no compensation for improvements. There was one block which was renewed from time to time until it was no longer required for business sites; then we allowed a bowling club to take it up. That quarter had ceased to be a good business site. In paying compensation for improvements we simply compensate for the value of the buildings, and not for the business as a going concern. I do not think we are likely to be faced with the difficulty of having out-of-date buildings thrown on our hands, as wool and produce stores there are always likely to remain wool and produce stores. The Lyttelton Harbour leases for residential sites have been generally accepted as pretty good borrowing security. The Borough of Lyttelton intends to stick to the present system as long as it possibly can. It is known as the Glasgow lease system. In the case of the Glasgow lease we put the rental up to auction, with a stipulation that the purchaser must compensate the old lessee for the value of his improvements. We may have different valuers for the ground-rent from those we have for the buildings.

HENRY RAWE SMITH examined. (No. 32.)

1. *To the Chairman.*] I am Town Clerk of Christchurch, and have been so for some sixteen to seventeen years. We have only one building lease inside the city, and we have a piece of land let to a tennis club. The building lease is for forty-two years, without compensation, on a flat rent throughout. With regard to our country leases or reserves, I have come to the conclusion that the system of putting them up for tender without an upset price is not a good one. There has been a good deal of traffic in our leases. As an instance, we have a block of about 800 acres near Bottle Lake, close to the beach. It is nearly all sand. It has been let for years at £50. The last time it was put up there was one other bid of £52 10s. Hitherto the lease had always been taken by the man who owned the adjoining freehold. However, as we had another bid for the lease, we had to fence it off. I am told that yesterday the man who took up the lease sold the goodwill for £220. It is a five-years lease, with three years and a half to run. None of our land is let on the Glasgow principle. In some of our leases we provide that if the tenants erect buildings they shall be paid compensation at the end of the period. The leases generally run from seven to fourteen years. I have had no experience of paying compensation for improvements yet. Any buildings erected are subject to the approval of the Council. If compensation is paid it is to be at full valuation.

2. *To Mr. Milne.*] If there is fencing on the rural areas the tenants have to deliver it over at the end of the term in good order and condition, without compensation. We have assisted tenants to put up permanent fences, giving the wire or other material, and, of course, the fences are considered to be the Council's property.

3. *To Mr. Thomas.*] The tenants generally complain the leases are too short. In my opinion we should get better results for the Council if we granted longer leases.

4. *To Mr. Milne.*] We have three fairly good farms down near Methven, and they are fairly well farmed. We have a block of 2,000 acres near Geraldine, which has been divided into three lots. We used to let them for seven-year terms, but had to put the term up to twenty-one years. We then got better rents and better results. There has, however, been a good deal of traffic in them. The goodwill of one was sold for £500, and of the other for £100. In one case the tenant claimed he had improved the place considerably, so that it was not all pure increase in goodwill. Then the value has gone up since the lease was let. One of the places was badly infested with gorse, and the tenant had had to clear.

5. *To Mr. Thomas.*] The tenants of these leases are generally local farmers, who work them in conjunction with their own farms. It has been stated to me that the effect of short leases is to prohibit people putting homesteads on them.

6. *To Mr. Milne.*] I think the Council are beginning to find that the short leases are against their own interests. I do not think there will be any more short leases. In the Methven leases there is a condition that if there is cropping there must be rotation of crops. [Copy of lease handed in.]

CHARLES FREDERICK SMITH examined. (No. 33.)

1. *To the Chairman.*] I am Steward of the Church of England Property Trustees. The Trustees have land within the City of Christchurch. They have also suburban and rural areas. Practically all the town property has now been sold. There are just a few monthly and yearly tenancies pure and simple. We have some suburban lands leased on short tenure. As to the rural land, the present policy is to lease up to fourteen years or longer in special cases. The Trustees prefer to build and charge the tenant 5 per cent. on cost of building. The sinking funds we create ourselves from the revenue. The tenant gets no valuation for improvements. We had experience of the Glasgow lease before our city lands were sold. The tenants used to put up wooden buildings on those holdings, and we soon discovered they were quite unsuitable for Glasgow leases. They would erect a building to last only the term of the lease practically. We do not think much of the Glasgow lease. Our leaseholds then threatened to end in slums, but the Trustees sold a large block of 70 acres of land at St. Albans, on which most of these Glasgow leases existed, and we do not know the ultimate fate of them. They were sold subject to the lease. The first period was twenty years, and the renewal periods ten years. The rental for the second period was to be fixed by arbitration. The lessee was assured of a thirty-years tenure from the beginning of the lease or valuation for improvements. I have had no experience of valuation, as in the only instance where the second period would have been taken on we arranged with the lessee to abandon the Glasgow lease and take an ordinary lease. We were quite satisfied, and so was the lessee, that there would have been nothing in it. I can quite understand that in an important city business block it might be in the interests of both the landlord and tenant to arrange a Glasgow lease. In suburban property, if they build in wood, the improvements are of no value. We work under the Church Property Trust Act, 1879. We had to get special legislation to deal with local endowments. The capital raised is, under the jurisdiction of the Synod, used in the purchase of more suitable sites or invested for the benefit of the particular district in which the endowment was. We parted with some of our lands because we found that the city rates were so high that the Corporation got more out of the land than we did.

DUNEDIN, MONDAY, 29TH JANUARY, 1917.

GEORGE ARTHUR LEWIN examined. (No. 34.)

1. *To the Chairman.*] I am Town Clerk of Dunedin, and have been so for the last six years. Before that I was Town Clerk of Lyttelton. I had experience in Lyttelton of the leasing of borough reserves. We have not a tabulated statement of the actual area of our reserves in Dunedin, but I am able to place before the Commission a map which will probably give a better idea of the reserves than a statement, as it shows the location. In some cases the reserves are in blocks, and in others they are scattered over the city. Our system of leasing is taken from the Municipal Corporations Act, section 136, subsection (1) (*b*), paragraph 2. That is really a lease for twenty-one years with a revaluation submitted to public auction. The valuers are appointed as the Act prescribes, one by each party concerned, and an umpire selected by the two of them. The question of whether the term of lease should be more than twenty-one years has never been considered. Our renewals are also for periods of twenty-one years. I think twenty-one years is the limit, from the lessor's point of view, that the term should run without revaluation of ground-rent, and I think it is a sufficiently long term from the lessee's point of view. We are quite satisfied with the length of term so far as I have been able to gather, and there has been no complaint from the lessee. When the valuation is to be made we simply instruct the valuers to proceed in terms of the lease under the Act. Apparently it is supposed to be done by arbitration, but in practice it is done by valuation. We appoint expert valuers. For the past two or three years Messrs. Park, Reynolds, and Co. have acted as our valuers, and invariably the lessees select a man of that calibre to meet our valuer. The two valuers then simply appoint the third valuer without any reference to us whatever. There has been no difficulty so far as I know. We have not had to go to a Judge yet in our experience. The valuers value the improvements as well as the land. Sometimes the third valuer is a man versed in building; but we do not worry ourselves very much about the building aspect because we do not have to pay. The only way in which the value of the building could operate against us would be by its being so excessively high that it would rob us of any chance at auction of competition for the ground-rent. Of course, if there was any dispute about the value of the buildings witnesses could be called, but in practice that is not done so far as my experience goes. Within three months of the expiry of the term of lease we proceed to appoint a valuer, and if the other party fails to appoint a valuer within the time prescribed by the lease our valuer proceeds to make a valuation, which is binding on both parties. We then auction the right. We are rather keen on the auction: we regard it as a safeguard. It may be argued that there is not very much in it from our point of view, and I find that, in going over some forty-nine cases during the past two years dealt with by the City Council, in every instance the leases submitted to auction were purchased by the outgoing tenant at the upset. It appears to me that the very knowledge that the valuers have, when they are assessing the ground-rent and the valuations generally, that they are to be subjected to the test of public auction is likely to influence them in making an honest, fair, and just valuation. In the forty-nine cases I have mentioned there has been no single instance where there has been competition. I do not know that there is any conventional rule that one man shall not bid another man out of his property. The fact that there is no competition may be a compliment to the valuer—that the value he has placed upon it is quite

its full value. I know of one instance in the previous year where we had competition, but there there was that subtle influence due to a licensed house upon the premises. That was a special case, and to show that it is not general in these records there is the case of another licensed house sold at auction without competition at the upset. Taking the forty-nine cases of renewals extending over the years 1915 and 1916, we find the total cost of renewals, including valuations, advertising, auctioneers' commissions, and legal expenses, amounts to £1,260, or an average of £25 14s. in respect of each lease. The lowest figure is £8 10s. and the highest £62 4s. These figures include solicitors' fees for preparation of new leases. The aggregate, £1,260, is the total cost to both sides. £706 of that falls on the Corporation and £554 on the lessee. We pay all expenses incidental to the auction—that is, auctioneers' fees, advertising, &c.—as we only get the benefit of the auction. £14 8s. is the average cost to the lessor and £11 6s. to the lessee. Eliminating the shillings and pence the £1,260 is made up as follows: Advertising, £63; auctioneers' commissions and other kindred expenses, £259; valuations, £765; and law-costs incidental to preparation of new leases, £171. Stamp duty is included. Out of that £1,260 the sum of £936 for valuations and law-costs would have to be paid under any system. Then on a percentage basis the cases dealt with represent a yearly rental of £4,378, or an aggregate rental for the term of twenty-one years of £92,000. The total cost of renewal to both parties was therefore 1·36 per cent. of the aggregate rental, divided between them in the proportion of 0·76 per cent. to the lessor and 0·60 per cent. to the lessee; or, in other words, the cost to the lessor was practically 15s. per annum and to the lessee 12s. per annum in respect of each £100 of yearly rental. Present rental, £363; cost to the Corporation, £29 19s.; cost to the lessee, £20 2s. 6d., which, spread over a term of twenty-one years, is a little less than £1 per annum. In another case: Present rental, £123; cost to Corporation, £14 13s.; cost to lessee, £10 16s. Another case: Present rental, £207 19s. 2d.; cost to Corporation, £33 14s.; cost to lessee, £28 10s. Another case: Present rental, £240; cost to Corporation, £24 3s. 6d.; cost to lessee, £17 9s. 6d. Then there was a small one where the rental was £14 10s.; cost to Corporation, £5 6s. 11d.; and to the lessee, £7 3s. I have not heard any adverse criticism of the auction system on the ground that a man may lose the goodwill in a business he had built up, but there has been a certain amount of contention on the part of the lessees of residential sites that they run the risk of losing the sentiment attaching to their homes, but there has been no actual representation made to the Council at all. The buildings on our leases in the business area are substantial brick buildings, up to date, and quite in keeping with buildings erected on freehold property in the vicinity. I would quote the Colonial Mutual property as an example. Then on the residential sites there are some of the very best residences. From indirect knowledge I have I should judge that money is freely lent on these leases. All mortgages have to receive the consent of the Council, and we have been putting through a good many. We have put through some lately at 5½ per cent. interest. Taking it all round the Corporation is satisfied with the existing method. I can hardly speak definitely for the tenants, but I can say there has been no serious agitation against the system. One hears little simmers occasionally, when the lease is to be renewed, about having to submit to auction, but nothing serious. It seems to me the Corporation has power to grant a lease without submitting it to auction. It would depend upon the policy adopted by the Council.

2. *To Mr. Milne.*] I do not think we have power to pay compensation on the surrender of a lease, but the Council has fairly wide powers. There is power to reduce rent on a special order. With regard to auction, the whole idea seems to be to give publicity, so that no one may get a bargain at the expense of the public.

3. *To the Chairman.*] The Corporation does not lay down any basis of valuation which its valuers must adopt in any particular instances. It simply instructs the valuer to proceed under the Act, and there is nothing more until there is a notification that the award is made. I have never looked into the question of what percentage of rent we get on the capital value. I am sure we do not get 5 per cent.

4. *To Mr. Milne.*] I do not think we get 4 per cent. I could not say definitely whether we get more than 2½ per cent. We work our own valuations on the annual value. Of course, there are the Government valuations, which are often very old.

5. *To the Chairman.*] I can hardly say why a number of the detailed covenants appear in our lease. The covenant to prohibit assignment without consent is no doubt to our advantage: it enables us to know to whom accounts should be rendered. If the tenant were bound to give notice to the landlord of assignment it might be sufficient. I know of no instance of enforcing the covenant to repair. I did not think there was a repairs clause in the lease. We do not worry about insurance. There is no provision for rebuilding in case of fire. Of course, if there is a building on the land there is greater security for the rent.

6. *To Mr. Thomas.*] The system of rating in Dunedin is on the annual value, including improvements. There is no way that I know of in which to test the ratio of rent to capital value. As a pure matter of opinion it seems to me that 5 per cent. of land which is fixed for leasing purposes is a fair return. That seems to be the standard people set out to get.

7. *To the Chairman.*] On the subject of the tribunal my opinion is that we are far better off with three expert valuers than with any tribunal that relies on mere evidence. It seems to me to be a very difficult thing to assess valuations upon evidence, as valuation is not an exact science. I do not favour reference to a Judge in default of an agreement.

8. *To Mr. Milne.*] In the aggregate the rents have always been increased at the periods of rest. The increase represents 52 per cent. in twenty-one years. Of course, the increase in some cases is very slight. There was a period in the history of the city when rents were reduced. In the case of an hotel-site which originally returned £50 a year, on revaluation it comes to £240. In the case of residential sites the increase is not nearly so large. There are increases from £4

to £5; £15 to £15 10s. There is one standing at £14 right through. For our valuer we appoint a thoroughly competent man, and we look to him to get a fair rent for the Corporation. In the case of new lands leased we still appoint a valuer. We have not found that in some cases Councillors themselves are in the habit of fixing the values and advertising them for sale. That kind of thing does not hold here.

9. *To Mr. O'Shea.*] We have no Leaseholders' Association here. Even if the conditions were the same here as in Wellington I personally would oppose any alteration of the three-valuers system. Of course, if the tribunal had to decide on evidence I would prefer to have a Judge of the Supreme Court as the final arbiter, but I am opposed to the arbitration system. I have had no experience of private arbitrations here.

JEFFERSON COUNSEN STEPHENS examined. (No. 35.)

1. *To the Chairman.*] I am solicitor for the Otago Harbour Board, and I have had supervision over their leases for nearly thirty years. I have to acknowledge my indebtedness to the memorandum you sent to me, sir, and I have prepared some notes which, if you will allow me, I will speak from, and will then leave to you to ask me questions. In the first place I put in a plan which has been brought up to date, and which shows the Harbour Board area. These are all self-contained blocks. I also put in the statement showing the total rents. I have also prepared a statement, giving instances over a period of years, which shows the area of the land, the term of the lease, rent, improvements, and fees. Now, the first leasing provision of the Otago Harbour Board was, as in the case of all other Boards, to be found in sections of the 1875 Harbours Act, which became sections 120 and 121 of the Harbours Act, 1908. [Sections read.] So that under that the Board originally granted leases for twenty-one years, with a right of renewal for another twenty-one years, at the expiration of which the lease came to an end without valuation to the tenant. The rent for the second twenty-one years was arbitrarily fixed at an advance of 50 per cent.—that is, under the 1875 Act. In 1883 (No. 22, local) and in 1885 (No. 15, local) wider powers were given to the Board, but to the best of my recollection they were never exercised. The next real stage is the Public Bodies' Leaseholds Act of 1886. That Act contains in section 10 power to a leasing authority to accept a surrender of any lease existing at the date of the passing of that Act. When that Act was passed the Board circularized all its tenants who held leases under the provisions of the Harbours Act, and offered to exchange their existing leases for new leases under the term of the Public Bodies' Leaseholds Act, and the Public Bodies' Leaseholds Act contains the form of lease which is the Glasgow lease. All the leases granted by the Board have since been granted in terms of that Act. When in 1910 an amendment of the Harbours Act was passed, by section 38 it was provided that, "In addition to any leasing-powers conferred on a Board by any special Act, the Board is hereby declared to be a leasing authority within the meaning of the Public Bodies' Leases Act, 1908, and shall have and may exercise the powers conferred on leasing authorities by that Act." Now, the Public Bodies' Leases Act of 1908 was a very different Act from the Public Bodies' Leaseholds Act of 1886. It contained, for instance, power to accept surrender of a lease at any time; it contained power to reduce rent. The Board was not in favour of being vested with power either to accept or surrender in that way or reduce rent. It gives occasion for pressure to be brought upon members of the Board, and the Board preferred to remain under the Public Bodies' Leaseholds Act of 1886. Representations were made to the Government, as the result of which a special subsection was included in this section 38 by which it is provided that this section shall not apply to the Otago Harbour Board. We therefore remain under the Public Bodies' Leaseholds Act of 1886. Now, we have other powers, which are contained in the Otago Harbour Board Empowering Act of 1893. These are largely machinery powers. One is to enable leases to be granted direct to assignee. Suppose we have two sections in one lease, and the tenant wishes to sell one of them, we have power to split them up and lease one direct. There is a somewhat similar power in the Act of 1886. Then we had another section dealing with the case of a section on which there was a building, a building belonging to the Board in this particular case. This was intended to apply to cases of the Board's own offices, which they desired to sell. We then, instead of selling it, obtained power to lease it subject to valuation, and then we placed the tenant in exactly the same position as all the other tenants. Then we have power to lease for short tenancies. We have special powers also contained in the Otago Harbour Board Amendment Act, 1911. That is another power dealing with the case of the Board's own buildings. Then the Otago Harbour Board Amendment Act of 1913 gives power to lease land without right of renewal for any term up to twenty-one years. We have found difficulties in being governed by a cast-iron form of lease. Circumstances arise which cannot be dealt with under the cast-iron form of lease provided by the Legislature, and these amendments are to give the Board a certain amount of freedom.

2. *The Chairman.*] You say you sent a circular to all tenants holding under the long term of lease—forty-two years—offering the exchange: what was the result?—The result, strange to say, was that some of them took no notice of it. As a matter of fact, I had to bring it under their notice in the end and point out to them how they stood under the other lease, and as a final result everybody exchanged his lease, although at first the advantages were not apparent to them, nor would they have become apparent until the end of the forty-two years. All our leases are now, therefore, under the so-called Glasgow lease system. Of course, the Board own a large amount of land now on which there are no buildings erected. As these lands are subdivided they are put up to auction for lease. The upset rental is in every case fixed by the Board's

valuer. The valuer is a man who has had experience in valuing. The Board has followed the principle of appointing the same man year after year, a similar principle now adopted by the City Corporation. He is not in the employ of the Board. The term that was adopted after the arrangement to come under the Public Bodies' Leaseholds Act was twenty-one years. Not long after that the Board adopted the principle that new leases should be granted for a term of fourteen years. It is so long ago now that I cannot tell you exactly the arguments which swayed the Board, but it definitely adopted fourteen years as the term of lease, and that term has been in operation ever since—certainly since the nineties. We have now twenty-nine leases for a term of twenty-one years, and 221 for a term of fourteen years. Of course, these leases granted originally for a term of twenty-one years provided for a renewal for twenty-one years, and therefore they got it automatically. In addition to that form of lease we have what we call a form of annual lease. [Form handed in.] The only object of that lease is to enable the Board to grant a sort of preliminary lease, which I may explain in this way: Some of the lands of the Board have not yet been subdivided for leasing purposes. They may be subdivided on paper, but not on the ground. People may come along who desire a piece of ground in that direction, and they have been given an annual lease, and when the subdivision is completed they may be given an opportunity of coming in under the fourteen-years lease. Now, in my experience, extending over nearly thirty years, no difficulty whatever has been raised on the question of the term of the lease. The only instance of a person objecting to a term of fourteen years in my experience has, strange to say, happened since this Commission started to sit, and the only objection there was that the company, operating over a considerable part of New Zealand, suggested that on their piece of land applied for they might not put up as valuable buildings on a fourteen-years lease as they would on a twenty-one-years lease. As a fact, however, the buildings in Dunedin under the fourteen-years-leasing system are quite as valuable and substantial as are buildings put up on the twenty-one-years system. My own personal opinion is that the fourteen-years term is a reasonable term for both sides. It is true that the expenses of renewal, being spread over a shorter term, add an infinitesimal amount to the rental so far as Dunedin is concerned. I look on the matter in this way from the point of view of the Board—that it is the duty of the Board to obtain the best rent possible. That has been laid down by the Court of Appeal, and goes without saying. In the case of the Board subdividing—and this probably would not apply to other centres—in the case of a Board having a large amount of waste land and subdividing that land, it may have to offer it at low rents in order to get the land settled. I remember one case where we had a block of land, and it was put up for residential purposes at £5 a year. It lay there for years without attracting any one, and then we reduced the rent by £1 and it went off like hot cakes. The mere difference between £4 and £5 for a year is not very material; but, suppose the Board leases its land at a comparatively low rental, when building operations begin it will, of course, increase its value. Now, to whom does that value belong? It does not belong to the tenant, as he may have done nothing to create it. If the Board is to obtain the best rent, then it ought not in a case like that to grant too long a lease.

3. Does it not operate in another way: if you grant short leases the land will not be taken up at the same high rent. A man will not pay as much for a short lease as a long lease. Have you not to try and arrive at where the two things adjust themselves?—If the value of the land rises considerably the Board does not obtain the best rent then. If the value falls the tenant pays more rent than he should, and so the problem we have is to fix a term that should be reasonable as between the two when the rent shall be revalued. Of course, there cannot be constant changes, and there must be a certain amount of security of tenure to the tenant. The question is what would give a reasonable length of time to enable the Board to make its leases attractive enough to the tenant and at the same time give it the rental it ought to get. Now, in some cases in Dunedin rents are revalued every seven years. Possibly there might not be an objection offered to twenty-one-years leases provided there was revaluation every seven years. Personally I think that is too short. I think fourteen years is a reasonable splitting of the difference between seven and twenty-one years. I can illustrate what I say with regard to the necessity of a reasonably short term even from the tenant's point of view. A gentleman here who was practising as a solicitor in Dunedin, and who subsequently became a Magistrate, took up a lease speculatively for twenty-one years at a rental of £90 a year. He did not put any building on the place, and when he wanted to get rid of the lease he could not do so, but had to keep on paying the rent, I believe, until the end of his term. Now in that case, if the gentleman concerned had had a lease for fourteen years, he would have had two chances—the right of revaluation and the right to give up his lease. If a lease is granted for a long term the tenant has to stick to his bargain, whereas if it is for fourteen years he has a chance of renewing his bargain. The tenants in Dunedin—and I think I may speak for the City Corporation tenants as well as for the Harbour Board's tenants—expect to get a renewal of their leases, and in 99½ per cent. of cases their expectation is realized, as they are not outbid at auction. It is impossible to lay down any definite reason for that, but my suggestion is that the valuers value the buildings and improvements benevolently, and any person, therefore, who wishes to outbid the outgoing tenant will have to pay more for the improvements than he would have to pay in the case of a private purchase. Mr. Lewin stated that within limits the City Corporation are not concerned to beat down the value of the improvements. The Harbour Board is in the same position. Of course, there is a limit. Buildings cannot be valued too low, otherwise there would be no virtue in the auction at all. The benefit of the auction to the Harbour Board is the possibility of getting higher rent. It is true that in practice there is no bid above the upset as a rule. The only cases I know of where the outgoing tenant has been outbid were, first, the

case of an area of land which was largely unutilized and certainly not built on, and the other was that of an adjoining lessee who desired more room for his business. In neither case was the question of goodwill involved. I cannot say that any benefit follows to the tenant, but it certainly does obviate any possibility of collusion in valuing or arbitrating. I do not suggest for a moment that there is any chance of that in Dunedin, but it certainly removes any possibility of any person suggesting that there has been any collusive value. The Harbour Board pays the cost of auction and all expenses in connection with it. My Board would have no possible objection to local bodies being given the power to lease for a term of twenty-one years, but we contend that the power of a local body should not be hampered by any provision that it should not grant any lease except for a term of twenty-one years. Personally I do not think a longer term than fourteen years should be granted by local bodies in connection with their leases. Then I would deal with the question of private renewal as against auction. I would point out that under the Public Bodies' Leaseholds Act the Board is prevented from selling privately at all. If it puts a section up for auction at the upset price it can only sell privately within twelve months after the auction, and then only at the same upset. The whole scheme is to prevent pressure being brought to bear upon members of public bodies by influential lessees, for example.

4. *To Mr. Thomas.*] I do not know that the same result would be achieved if auction were made permissive rather than compulsory, so that if either party were dissatisfied he could demand auction. It would, of course, reduce expense to some extent and prevent disturbance of tenants' minds at having at any case to run the gauntlet of auction, but it would not get over the possibility of pressure being brought to bear upon members to secure a collusive valuation. However, those are not probabilities but possibilities, and all these restricted provisions tend to keep our public life clean. Then, as to payment of valuation by the lessor, in my opinion such a proposal is very objectionable and quite unworkable, as the lessor has absolutely no control over the class of building to be erected or the amount expended. If it is provided in the lease that buildings must be of a certain character, then it means that the lessor is interfering with the tenant as regards the class of building which the tenant himself considers is most suitable for his business. We have at the present moment the case of a building held under lease which even the mortgagee has refused to take over. It would mean, therefore, we should have to pay valuation for this building, because the valuers would put some value upon it. It may be that the valuers in valuing buildings would take the original cost, allow some amount of depreciation, and so arrive at the valuation; whereas the buildings to the Board would be absolutely valueless and unsaleable.

5. *To the Chairman.*] As to the proposal of the Wellington Corporation that 60 per cent. be allowed for improvements at the termination of a term of lease, that would leave that body with 40 per cent. as a gift on the face of it. If, when a lessee has put up buildings for his own purposes, at the end of twenty-one years he thinks he has made a bad speculation, he says, "I have got a chance to get out of this, and I will throw it on to the lessor." And here, where you have a large number of leases such as you have in Dunedin, it might be disastrous to the Corporation or to the Harbour Board to allow anything of that kind. I think those who have been arguing on this question have lost sight of one point in connection with the form of lease. Originally the form of lease was a perpetual lease in principle—that is to say, both parties were bound to continue. The covenant ran that if at the end of a term nobody bid at the auction the lessee was to execute a fresh lease, so that as a matter of fact the alteration in the provisions of the lease whereby the lessee could refuse to bid and throw up his lease if he liked is a concession to the tenant. Of course, if they are valuable buildings the tenant will never throw up. But suppose, for instance, a building is burnt down towards the end of a lease, and you have a piece of vacant land—under our system the tenant can throw it up; and whereas he has the option, the lessor must continue, so that it is a one-sided bargain from that point of view. Then I quote this extract from the memorandum: "To enable the Corporation to pay, the suggestion is that one year should be allowed so as to enable it to dispose of the lease elsewhere subject to the payment of the valuation, the tenant pending payment to receive 5 per cent. interest on the amount he is entitled to." Now, although the tenant goes out of possession the lessor has to pay 5 per cent. interest, although he makes no use of the building. The next point is the question of valuation of rent. The highest rent payable—and it is one of those on the list—on any one lease is £500. That is quite exceptional. The valuation fees range from £6 6s. to £37 16s. I think it will be found that the fees charged in Harbour Board awards are less than the Chamber of Commerce rates. The cost of valuation is payable in equal shares by the lessor and the lessee. I put in the scale of rates. [Scale of rates put in.] The expenses of auction, advertising, and so on are paid wholly by the Board. The Board has for many years past appointed the same person as valuer. I think the effect of that is to secure uniformity in rents. The Board's valuer has to consider the question of rents not only in relation to the particular case before him, but also in relation to one another, for it is not in the interests of the Board or the tenant that you should have a number of leases in one block with varying rents. We think if we have the same man in office he necessarily gains a large fund of experience and information specially relating to the Board's leases which is exceedingly valuable, not only for himself, but he is able to bring all this information before his brother valuer and the third valuer, and this tends to secure continuity and uniformity. Of course, there is nothing to prevent tenants from combining and appointing a permanent valuer also; but I echo what Mr. Lewin said, that there is no influence brought to bear by the Board on its valuer as to amounts or as to principles. The valuer appointed is an experienced valuer. The Board have full confidence in him, and he is left entirely unguided and uninfluenced. As to the valuations I cannot give a list, nor can I give the effect of the valuations. All I can say is that, generally speaking, they have increased, although not in every case. A valuation has never

been reduced so far as I can recollect, but there was one case where there was objection to the rent paid, and there was some special arrangement made whereby by agreement it was put up to auction. It was many years ago. I think it may be said that the general result of the valuation is to bring to the Board a return in the vicinity of 5 per cent., but I cannot give figures to prove that—that is on the market value of the land as it stands—on an estimated capital value. As to arbitration *versus* valuation, I may say the question was not brought particularly to our notice until we had the decision of His Honour Mr. Justice Sim in *Re* Bryant, as reported in 16 G. 676. Up to that time the valuation was strictly a valuation. Since then we have had a system of nominal arbitration but actual valuation—that is to say, the valuers give notice to both parties that they will sit at a particular time and give them an opportunity of producing evidence if they wish it. As a fact they never do. We are strongly of opinion that the valuation system is the best system, with two expert valuers, one appointed by each party, and a third expert valuer as an umpire between them. I lay stress upon the third expert valuer because in my judgment it is more likely to lead to substantial justice to have an expert in the position of third valuer than to have a business man. Dealing with the question of arbitration I put it this way: that if you have three expert valuers you have men who have probably a lifetime experience in valuing property. Now, if you put those men in the position of arbitrators you have to bring before them as witnesses other valuers who either know less than the three arbitrators, in which case their evidence is not worth anything, or they know as much or more, in which case they ought to be appointed arbitrators. And evidence as to fact can always be brought before the arbitration by those particular arbitrators representing the particular parties concerned. Mr. O'Shea asked Mr. Lewin if he had any experience of private arbitration. Well, the last experience I had as counsel in a private arbitration was this—and I may say this was not a valuation-of-land case: We had to meet at odd times and mostly in the evening, and the arbitration lasted for four years. I have no faith whatever in arbitration, certainly as against ordinary action in the Supreme Court. Answering another question put to Mr. Lewin, we have had no difficulty as to the appointment of a third valuer. We have had in one case to threaten to apply to the Judge, but the threat was sufficient. It has been suggested that there should be a permanent tribunal for the whole Dominion. My objection to that is that no tribunal could, at any rate for many years, understand local conditions. Then, as to another question, as to the calibre of the valuers who are appointed, speaking generally they are experts. It is true that in odd cases tenants will appoint an incompetent person. The only remedy for that is the one suggested by Mr. Bardsley that valuers should be licensed in the same way as land agents, but how it is to be done I do not know. The only qualifications I would suggest would be that they might be licensed by a Magistrate, who would examine into their past career to see what experience they have had. Of course, we know that every man who paints up his name as a land agent considers he is competent to value property. The next point is valuation by Court proceeding. The following is the extract from the memorandum submitted to me: "The city objects to the lay tribunal, and suggests a Judge of the Supreme Court in all cases where the capital value is over £2,000, and Magistrates in cases below that figure. The tenants strongly desire a tribunal of business men, and object to lawyers." Now, this suggestion was a very attractive one at first sight, and it seemed to open up a golden vista to me. Considering that we sometimes have twelve or more leases falling in at one time, if we had to have a Supreme Court procedure every time a lease fell in naturally the fees of the board of advisers would be considerably augmented; but the experience I have gained in the Board's service and in valuation methods leads me to object very strongly to the proposal. In the first instance I may be permitted to say I have had considerable experience in compensation cases both on the Board and as assessor, and I am not impressed with the tribunal as a tribunal for ascertaining values. I think that the person who can make a valuation, whether it be one person or an ultimate umpire, should himself be a skilled valuer, because I agree with Mr. Lewin that valuation is not an exact science, and it is impossible to lay it down as a mathematical proposition. I think it has been stated by one witness that a valuer comes to his conclusions purely by intuition. What he means, I think, is that in valuing a man largely goes upon what he knows about sales and rent, and so on, that he has gathered together; and I believe the arbitration system, whether it be arbitration in the way suggested or a reference to a Judge, is less likely to secure substantial justice than a decision of three skilled men. I think the two skilled valuers, if left to themselves, will appoint a skilled man as the third man. One great objection to the Court tribunal is the great expense it would involve. We know what the expense to the tenants and the lessor is under the present system, but if we were to go to a Judge the expense might be anything up to £100. Then the new lease has to be put up before the expiration of the old one here, and consequently the valuation of rent and building must be ascertained before the lease is put up.

6. *To Mr. Thomas.*] Under our system we have the revaluation made six months before the end of the term. In the case of the Corporation leases, I understand from Mr. Lewin, the time allowed is three months. Now, as I have said, one great objection to a Court tribunal is the great expense, and I suggest that if the object is to secure standard principles that object can be secured by originating summons, which is always open if one valuer refuses to apply what another considers the correct principles.

7. *To the Chairman.*] Though the arbitrators are not bound to disclose the grounds on which they proceed the Corporation valuer knows, and I take it that in the course of arbitration proceedings it will become clear whether the principle of valuation that has been adduced by one party or the other is accepted or not. I would point out that according to Mr. Justice Edwards the arbitrators are not at liberty to adopt any rigid rules. While on the subject of tribunals I would point out that in the Gisborne Harbour Board case what the Court had before

it was a particular lease, badly drawn, which did not specifically lay down what it was that had to be valued. In the Dunedin Harbour Board leases, and also in the City Corporation leases, the main lines of valuation are clearly laid down; it is to be the value of the land without any buildings or improvements thereon. Personally I would have no objection, with regard to the rent, to adopting the suggestion of the Court of Appeal that the test should be what a prudent tenant would give. I think, as a fact, that is the only true basis of valuation. With regard to improvements, I think there is confusion in the evidence between "cost" and "value." The cost of a building is simply what it costs less depreciation, but that is not necessarily the value of the building. The neighbourhood may have changed. One can conceive of a number of circumstances where, although the building itself may be of some value to the particular tenant, it is not necessarily of value to the incoming tenant. I think the tenant should get the market value of his building. To give a concrete case: I had a property with a building upon it the total cost of which to me was £1,400. I sold the whole thing for £750. I could have proved in any Compensation Court that the property had cost me £1,400, and that it was kept in good repair, and so on, but simply owing to the nature of the architecture and other things it was not marketable at that price. I think the principle that should be applied in the valuing of buildings should be the same principle that would be applied in the property as a whole. If an expert valuer is valuing property as a whole, in order to find its saleable value he would value it in its then condition and according to its surroundings. If the building were out-of-date very little would be added to the value of the property; but, as I have said previously, the valuation of these improvements in these renewable leases is largely a benevolent value, and I think rightly so. If there is competition, and if a man is ousted from his lease, they should pay the full price for his improvements.

8. *To Mr. Thomas.*] I think if buildings have become obsolete the person to carry the burden of obsolescence should be the lessee and not the lessor.

9. *To the Chairman.*] At any rate, owing to the liberal view taken in Dunedin with regard to improvements, there has been no difficulty that I have been made aware of in assessing the value of the buildings. Then, on the proposal that there should be an appeal to a Supreme Court Judge on the question of valuation, I feel inclined to support it if some machinery could be adopted. It would give a remedy in a glaring case. The difficulty lies in the fact that valuation is largely a matter of opinion, and that it is very often difficult, if not impossible, to prove it as a mathematical proposition. It would only be useful in a glaring case, because the burden of proof would be on the appellant, and the Judge would require very clear proof before he overruled the opinions and the award made by two valuers out of three. It might be more useful in the case where the umpire made an independent valuation. There has only been one case in my experience where I should have been disposed to advise the Board to appeal. That was a glaring case, but the circumstances were unusual, and I do not think it is likely to happen again. I should like to see an amendment made by which costs should be awarded against the appellant if unsuccessful. That would deter frivolous appeals. Again, it would involve making the valuations a long time ahead, so as to enable the necessary auction proceedings to be put through.

10. *To Mr. Milne.*] No doubt the lessee would have a greater dread of the expense of referring a matter to the Supreme Court than would the lessor, and that is why I should think the costs should be borne by the appellant. The main difficulty I feel about referring the matter to a Supreme Court Judge is that it is very difficult for valuers to support their values as a mathematical proposition. It is largely a matter of opinion. In compensation cases you have six valuers on one side and six on the other. None of them can really prove they are right—they can only give their opinion as expert valuers.

11. *To the Chairman.*] Even if each side is limited to two experts their evidence is only a matter of opinion. Every one knows the differences there are between the tenders put in for the erection of a building by contractors who may be regarded as experts in their own particular line of business. The suggestion has been made in Wellington that it is difficult, if not impossible, to borrow money on Corporation leasehold. That certainly is not the case in Dunedin. No difficulty whatever is found in borrowing either upon Harbour Board or Corporation leases. Certainly the additional rate of interest is not more than ½ per cent.

12. *To Mr. Milne.*] Of course, if a lease is rented too high its value as security is reduced. With regard to a suggestion that there were implied covenants in the leases with regard to repairs, and so on, we do not act upon them. We have no provision for insurance. We place no restriction upon the tenant in any shape or form. If the building is burnt down the tenant takes the insurance-money himself, and he pleases himself whether he rebuilds or not.

13. *To the Chairman.*] If a building is burnt down between the date of the valuation and the time the lease is put up for auction nobody would pay a valuation for the building which does not exist, and the result would be that either the existing tenant would throw up his lease or he would go on.

14. *To Mr. Thomas.*] If a lease is put up for auction only a short time before the expiry of the existing lease the tenant is not sure he is going to get a new lease, and his business is upset in consequence. I quite think a tenant ought to be given plenty of time to enable him to know what he is to do. The reason why many hypothetical difficulties have not been dealt with is that they have not turned out to be practicable difficulties. In 99½ per cent. of cases in Dunedin the lessee does get a renewal. I would not raise any objection to a provision that revaluation of a lease should be made a reasonable time before the expiry of the old lease, so as to give the tenant an opportunity of finding new premises before his old lease expires.

15. *To the Chairman.*] On the subject of covenant against assignment the only controversy that has been raised here is whether there should be an addendum with regard to assignment that

assent should not be withheld to a solvent tenant. Such a qualification is useful in the case of private leases, but it is not necessary in the case of public bodies' leases, as they do not there take up an arbitrary position. The object of the covenant is to protect the rent. Of course, the original lessee is liable, but he may go away and leave the Dominion; then it is in the hands of the assignee. That assignee can escape liability for rent by assigning to another. There is no great necessity for a covenant where there are valuable buildings upon the land, but we have cases where there are no buildings at all, and it is in the case of vacant land that it is of value. With regard to assent to assignment, the expense is half a guinea, and there is absolutely no disclosure of the business whatever. They go through on the letter from the solicitor. If we happen to know that the proposed assignee is worthless financially we advise the Board not to agree. In conclusion I would say my own judgment is that, speaking generally, there is no reason why a public body should be placed in a different position from private owners. They are trustees, and it is their duty to obtain the best rents. It is true that the best way to obtain the best rent is to grant liberal leases, but I say our lease is a liberal one. I cannot say how the so-called form of Glasgow lease originated in Dunedin. My recollection of the oldest form of lease is that it was simply a covenant on the part of a landlord that he would not allow any new tenant in unless he paid the outgoing tenant the value of his building. I had a good deal of experience in that form of lease as solicitor for the Otago School Commissioners. The Commissioners were, at the time I had to do with them, under the Public Bodies' Powers Act, 1887. I found a great deal of difficulty in the working of this provision, and in consequence I drafted an amendment of the Act in 1891, which was adopted by the Government and put through. I think the covenant to which I have referred was in the old Presbyterian Church lease also. The originator of that form of School Commissioners' lease was Mr. W. H. Reynolds. Speaking for the Harbour Board, we are quite satisfied with the system we are operating now, and we see no reason why we should be compelled to alter that system because it does not suit another part of the Dominion. Of course, if the proposal is to pass a Bill dealing with another part of the Dominion alone we have not the slightest objection, but I think both Mr. Lewin and I are agreed that we would rather bear the ills we have than fly to others that we know not of.

16. *To Mr. O'Shea.*] I have had practically no experience in Dunedin of arbitration as conducted under the amending Act of 1906—not real arbitration. We have no leaseholders' association here. As I am not a prophet I cannot say whether, in the event of a leaseholders' association being formed here with the pertinacity of the Wellington association, we should ever have a chance of regaining the virtue of the old valuation system. My opinion is that it would be disastrous to both landlord and tenant if such an arbitration system were adopted here. I think the system of valuation is more calculated to reach substantial justice than is a system of arbitration. I think it is far better, in the case of arbitration, that the third man should be himself an expert so that he can analyse the opinions of the other two, and he can do that far more successfully than a Judge of the Supreme Court could ever hope to do, unless, of course, you had a Judge set apart to do this work alone, in which case in the course of experience he would himself become an expert. I cannot say whether, if we had the lessees here banded together as a leaseholders' association, we would be likely to get anybody who was not likely to be partisan. As it is we are quite satisfied with our own valuers, who are left entirely to themselves. If I am asked whether, in the event of our having to submit to arbitration properly so called, I would prefer to have a valuer, or a man who was accustomed to sift evidence, or a business man, my judgment is that I would sooner have an expert valuer as third man under any circumstances. If I had to choose between an ordinary business man not specially skilled in valuation and a Judge or barrister, I would certainly prove in favour of the Judge or barrister—that is to say, a man who is accustomed to weigh evidence. By an "expert valuer" I mean a man who earns his living by valuing.

EARDLEY C. REYNOLDS examined. (No. 36.)

1. *To the Chairman.*] I am a member of the firm of Park, Reynolds, and Co., auctioneers. I have acted for many years as a valuer both of capital values and of rentals of land. I have valued on behalf of the City Corporation for a number of years, but not on behalf of the Harbour Board, as I am auctioneer for the Harbour Board. I have valued for the Presbyterian Church Trust and also for private people. As to the period of the City Corporation leases, I think twenty-one years is a very suitable term. We are tenants of the City Corporation, and twenty-one years seems to come round pretty quickly. I have not found that the Glasgow lease system, with revaluation periods, interferes in any way with the class of building that is put up. The very best buildings have gone up on some of those leases. In valuing for the Corporation or any other body, where the lease is to be on the Glasgow footing with the right of renewal, I am aware we are not supposed to take a percentage on the capital value, but it is absolutely impossible to do it otherwise. I know what Sir Robert Stout, as Chief Justice, has said on the subject, though I have not seen his decision. In valuing we do not always, in the first place, proceed to arrive at the capital value. In many cases we have valued on a rental basis, but we invariably check our figures by the capital value. We do not adopt the Government valuation as the capital value. We never know the Government valuation. We sometimes ascertain the market value as tested by other rentals in the neighbourhood. If there are leases adjoining and they are of a similar nature they certainly do guide us in arriving at our values. When I arrive at the capital value I work out the rental at 1 per cent. lower than the market rate. If the market rate for borrowing money is 5 per cent. I work it out at 4 per cent. Ground-rent with a building on the land is much better than a mortgage, and then the landlord has all the unearned increment coming to him. Since the decision of the Court of Appeal that the rent should be

based on what a prudent man would give we have altered our method somewhat. We look at a site and ask ourselves what is reasonable—the best use to which it can be put. We test the values we obtain by reference to adjacent rentals, after taking a percentage on what we work out as the capital value. If the rate of interest current is 5 per cent. we take it on a basis of 4 per cent. to the landlord, and we consider that a fair rental. But you do not always get the three valuers to agree to the valuation when worked out in that way. As a rule the three agree and sign. It is only in isolated cases that the third man does not agree. Occasionally we have complaints from the tenants that the rent fixed is too much. In my experience I have not had many objections, but I suppose all valuers have some. Human nature is human nature. With regard to the Corporation form of lease there is one improvement I would suggest, and that is as regards the appointment of the third man. I do not think that should be left to landlord or tenant as it is now. I find there is often a good deal of trouble and delay in appointing a third man. When a third man is proposed the other valuer has to go away and see the people he represents before he can agree. I think all that could be overcome by the Court in each town in New Zealand having on its list two or three sworn valuers who shall not take part in any arbitrations or valuations of land except as third man. They should not be paid anything by the Court, but when a valuation arises the two valuers appointed by the parties should take one of those men appointed by the Court as their third man. These men should be entirely under the Stipendiary Magistrate or Judge of the town, and if any flagrant case of partisanship was brought to his notice he could remove the name of the offender from his list at a moment's notice. In that way you could always get an absolutely impartial man as third man. I am not in favour of a proposal that these assessments should be made by a Judge sitting alone and deciding upon evidence brought before him. If you could hear some of the evidence that is given in arbitration cases you would wonder how any one could make anything out of it. I could give dozens of instances to show that valuers for the tenants so value that when everything is worked out the landlord gets nothing. I have the figures before me now of one case in which the assessment by an expert valuer for the tenant in an arbitration case, when worked out, actually showed a deficiency against the landlord of £4 9s.

2. *To Mr. Milne.*] In assessing the rental for a new period we do not take into consideration any loss the tenant may have made during the previous period. I have never known of a case where, when the tenant has kept his buildings in first-class repair and has managed his business reasonably, he has got little or nothing on his outlay, and the landlord has received the whole benefit of the work done. In my experience it is generally the tenant that gets the most out of it.

3. *To Mr. Thomas.*] We never test our valuations with the Government valuations subsequently. We do not assume that they should bear some relation to the Government valuations. Down here the Government let us value first, and they seem to take their valuations from ours. Even the mistakes are carried on. In arriving at the capital value for the purposes of these valuations, which we sometimes do, we take the freehold value at its lowest, and we place the highest value on the buildings, as the tenant runs the risk of being ousted from his lease. In assessing the value of land for leasing we do not make any deduction of 15 to 20 per cent. as compensation to the lessee for loss of unearned increment or expectancy of unearned increment. The tenant has a lease of twenty-one years, and if two years afterwards, when the lease has still nineteen years to run, you try to buy his goodwill, the price he asks would make your hair stand on end in comparison with what he is paying for rent, although they may say the rental has been grossly overvalued. I can give one or two instances the details of which I would ask should not be published. [Figures quoted.] When we assess the rent for the new period we assess it strictly on the present letting-value without any regard to fluctuations at all.

4. *To Mr. Milne.*] The present rate of interest in Dunedin is about 5½ per cent. At the present moment we would value to the lessor on a 4½-per-cent. basis.

5. *To Mr. O'Shea.*] I do not think the rise of ½ per cent. for interest on mortgage has had any effect on property one way or the other. In valuing land for leasing we do not base our values on isolated instances of rentals received for similar properties. In a street where there was no difference in the sites I would take into consideration rentals that have been previously given for such sites. It is a fair thing, I should say, to take into consideration prices given for such sites, especially when the lessees are doing well out of them. We invariably find the capital value is the very best check you can have for ascertaining the rental that should be paid. A man next door who is a freeholder should not be penalized by letting another man come into the business alongside on a rental equal to a third or half the value of the property.

6. *To Mr. Stephens.*] I have stated in my evidence that after the valuations have been made tenants have acquired a considerable sum for goodwill. I have also stated that one reason for my fixing 4 per cent. as a rough guide as to what the rent should be is that the landlord has the unearned increment. I do not think those two statements are inconsistent. What the tenant gets is goodwill in the lease; what the landlord gets is the unearned increment in the freehold. During the whole of the term of the lease the land is going up in value, and the landlord eventually gets the benefit of that. In many cases the tenant makes his goodwill himself with his business, or somebody else for some particular reason may want to get into that locality. It is true that the unearned increment may be gradually mounting up, and that the landlord does not get it until the end of his term. It might be argued that fourteen years is a fairer term of lease to obviate those difficulties, but it is generally recognized that it is more difficult to finance on a leasehold than on a freehold, and no doubt it is more difficult to finance on a short term of lease than on a long one. I think a 1-per-cent. deduction is fairer to the tenant without doing any injustice to the landlord. Although we are careful not to overvalue these leases, very often the tenant himself overvalues when he has got the lease.

7. *To Mr. Thomas.*] I can quote cases where the tenants have given more at auction for their holdings than the amounts at which I had valued them. As a rule here in Dunedin the tenant gets his own place back at auction. Then people negotiate with him afterwards.

WILLIAM STEVENSON examined. (No. 37.)

1. *To the Chairman.*] I am a tenant of the Wellington City Corporation. What I wish to say is that it seems to me the Wellington City Corporation places its values too high. Eleven or twelve years ago there was a great boom there in property and buildings were scarce. In consequence rents were high. Times have since changed. First of all there was the American bank crisis, which seemed to affect Wellington very much. My firm had erected a building on the value in boom time. Now times have changed, and the result on the last valuation is that our rentals have shrunk so much that on the basis of calculation placed before the Commission they showed a loss on our investment. Had we invested our money in Dunedin it seems to me we should have done very well out of it. Since the last valuation the whole of our building has been let, and we are no better off to-day than we were the day the valuation was made. Although the ground-rent and rates have gone up we are not getting any higher rents. I am aware the valuations are made by valuers and not by the Corporation itself, but I believe the Corporation asked for even more rental, and had we been compelled to pay what the Corporation asked we should have been in a very serious position. The moneys invested were trust-moneys, and instead of being able to pay interest on them we should have been losers. This was originally a forty-two-years lease which we purchased from the lessee, and we converted it into a Glasgow lease. The Corporation would not agree to the rental we offered. They said it would be selling the people's birthright. We left it alone for a time, but afterwards came back and accepted it at 100 per cent. on the old ground-rent. Our interest for twelve months was 1·5 per cent.—that is the interest we received on the capital expended. We found difficulty in subletting at a fair rental. If a person comes along and offers half what you have been getting you cannot accept that. As far as I know the building is modern and suitable for the location. My idea is that the ideas of the Wellington Corporation as to present-day values are altogether too big. I think people are giving extravagant rents in Wellington. I hope things are now going to be put on a fair basis, as I do not see why the tenant should be robbed in the interests of the landlord. Mr. Stephens has said that the tenants of the Harbour Board were always satisfied. Mr. Donald Reid certainly was not satisfied. He was paying too much. I hope now, when you get something done in the way of legislation, these anomalies will be got rid of.

2. *To Mr. O'Shea.*] I have not adopted Mr. Harcourt's system of calculation in making out the interest I have received. If I had adopted Mr. Harcourt's system I should have shown a loss. As I have said, people in Wellington are giving extravagant rents nowadays. It seems to me that in the heyday of youth people will plunge into engagements which no prudent man will look at.

3. *To Mr. Stephens.*] Possibly it might be a good corrective if we had the term of the lease fourteen years instead of twenty-one, but I do not know.

DUNEDIN, TUESDAY, 30TH JANUARY, 1917.

GEORGE SIMPSON examined. (No. 38.)

1. *To the Chairman.*] I am a builder and contractor. I have for many years devoted myself to valuing rentals and properties generally. I have a fair amount of business in Dunedin in that way. Since 1908 I have been the sole valuer for the Otago Harbour Board of their leases, including buildings. Previous to that the Board used to employ various valuers, and I had my share amongst the others. My valuations for the Harbour Board have been on the basis of the Glasgow lease system. In valuing I try to ascertain as nearly as possible the freehold value of the piece of ground I am dealing with. I do this to a great extent by reference to the saleable value of adjacent lands or similar lands in the market. Then we generally adopt about 5 per cent. on the capital value as a fair percentage for rental. We heard Mr. Reynolds say he generally deducts 1 per cent. from the market value, but I do not think he always sticks to that. I think he generally makes it about 5 per cent. on the full acknowledged freehold value of the property. I value the leasing in the first instance, and also for renewals when the terms have fallen in. When there are new leases going on the market the secretary sends me a list of the sections with a plan, and asks me to place on them what I consider a fair upset price such as they might expect to get on the market. While reclamation is going on new land is coming in all the time. When I have fixed an upset price the sections are put up for lease at auction with others that may have fallen in. There is a certain amount of selection open to a tenant whose lease has fallen in, as he can go for a new section if he wishes. The sections are well advertised, and plans are open for inspection. I do not think there are any sections vacant at all now except between the sea and the railway. Of course, the values vary with the streets, and so on. I could not give you the values from memory, but I will prepare a statement for the Commission giving an idea of the position of the sections and the present-day values of the sections on the town side of the railway. Most of our sections are outside the strictly retail area, though Lower Crawford Street is a good business street. I think some of our sites in Crawford street might be compared to sites in Victoria Street and some of those cross-streets running down to the sea in Wellington.

2. *To Mr. Milne.*] We have in that locality Murray, Roberts, and Co., Dalgety's, Donald Reid's, Otago Farmers, and others. They are all our tenants.

3. *To the Chairman.*] The term of our lease is generally fourteen years. No doubt from the lessee's point of view a twenty-one-years term would be more favourable, but from the lessor's point of view I think fourteen years is the best term. As a fair thing between the parties perhaps fourteen years is preferable. For example, if a piece of land is worth £100 to-day

in a growing district, and it is rented at, say, 5 per cent., every year afterwards its value is enhanced, and in a few years the landlord would not be getting anything like a fair percentage on the value. The Town Clerk yesterday told you that the value of Corporation land had gone up about 50 per cent. in the past twenty-one years, so that if you let land on a 4½- or 5-per-cent. basis the landlord towards the end of twenty-one years would not be getting anything like what he ought to get for his land. Of course, if a city were not going ahead it would not make any difference whether it was fourteen or twenty-one years.

4. *To Mr. Thomas.*] I cannot say that a twenty-one-years term would induce the erection of better buildings on the sections. We could not have better buildings on our reservations than we have now. We have the Union Company's building and others I have mentioned on the fourteen-years leases. There are no better buildings in the city. Perhaps one might be justified in charging a little more rent if the leases were for twenty-one years, but I do not think you could ask more than 5 per cent. Of course, valuation expenses at the end of fourteen years would be saved. Probably as a business man I should prefer a twenty-one-years lease. I cannot say what induced the Board to reduce the term from twenty-one to fourteen years. No doubt if they had thought they would be losing money out of it they would not have done it.

5. *To the Chairman.*] In acting as valuer for the Harbour Board I am left free to exercise my own judgment. I simply get a list of the leases to be dealt with, the dates they are returnable, and a list of the valuers appointed by the lessees. With very few exceptions the lessees have appointed good men as their valuers. There have been exceptions. We have had bookmakers sometimes put up and even suggested as third man, but on the whole I have been fortunate in getting men who knew their business fairly well, at least as representing the lessees. Generally there has been little difficulty in getting the third man, but on one or two occasions I have had to threaten to let the Judge make the appointment. The valuations are nearly always made by the three men, but as a rule it is left to the third man to do it finally. The other two valuers, in making their calculation, proceed on the freehold basis. So far as the Harbour Board leases are concerned I do not see what other basis you can adopt. We always argue with each other on the freehold value, and that is pretty well the ground we work on. So far as Dunedin is concerned I consider the system of appointing two valuers and an umpire to deal with these valuations from their own knowledge is satisfactory. I do not consider you could get better results by the arbitration system, as arbitration is cumbersome and would increase the cost very materially. I have seen arbitration in connection with Harbour Board valuations and private valuations, with only about two witnesses on each side, and no better results obtained. I do not think provision for appeal to a Judge in case things go wrong would do any harm. A right to appeal is always a safety-valve at any rate. But a good deal depends on the machinery you have in connection with an appeal. If you make it a simple process you will have quite a number of appeals; if you have a process involving some trouble you will have very few appeals. If it can be done for 4s. 6d. you will have them all appealing. Since I have been valuer I have only heard one complaint either as regards the term of lease or mode of valuing, and that complaint was of little consequence.

6. *To Mr. Milne.*] I am retained by the Harbour Board as valuer. I have done the whole of the valuations since 1908. Apart from the Harbour Board I am frequently employed by tenants to value for them against the Corporation and other landlords. In valuing for tenants I proceed in exactly the same way. I make no difference as far as my judgment goes. I try to do the fair thing between the parties. I consider a tenant is entitled to get some return from the building he is about to erect. We cannot value on the kind of building a man is likely to erect; we can only value on what stands before us. A man might not even build. If a tenant employed me as valuer I would advise him to the best of my judgment as to the best class of building to put up. As to whether he would follow my advice or not is a pure matter of speculation. It would not weigh with me very much in assessing the rent. I do not say I would disregard the opinion of the Court of Appeal. We are all prudent men. I might make £1,000 a year off this piece of land, while another man might only make £400. Apparently those who have been paying 5 per cent. as rental on the assumed value of the freehold have been getting fair returns for their moneys expended. They all seem to come back.

7. *To Mr. Thomas.*] Probably if we let our newly reclaimed land on long-term leases we should be making a heavy sacrifice. We can let for twelve months if we wish. We have no power to lease for a long term.

8. *To Mr. Milne.*] I heard Mr. Reynolds in his evidence say yesterday that he fixed the valuation of rental on a basis of 1 per cent. under the current value of money, but he does not always carry that out. I am often with Mr. Reynolds, and I happen to know. It is true that if the rate for money was 8 per cent. the tenant would find it more difficult to pay 7 per cent. than to pay, say, 3½ per cent. if money were at 4 per cent.

9. *To Mr. Thomas.*] I do not say the three valuers always agree, but there is usually not much difference between us. If three men possessing ordinary common-sense wish to see fair play it is easy enough.

10. *To the Chairman.*] Five per cent. on the capital value is equivalent to twenty years' purchase. I think the tenants get a better rental here than at Home. We seem to have less trouble with regard to fees and expenses than they have in Wellington and other places. The tenants greatly prefer the Corporation lease to the long lease of sixty years with revaluation every ten years. No matter what you pay, at the end of the sixty years it is not yours. I think the revaluation every ten years is considered objectionable. The Cutten Trust lease, I think, is very much the same as the Glasgow lease. I heard Mr. Reynolds's suggestion that there should be an official list of valuers from which the third man should be drawn. I have never heard him refer to it before, though we have been connected for a good many years in valuing. It

would certainly save trouble when selecting a third man. But at present there is power to refer to the Judge if there is trouble about the third man. The Judge may not know the names of all the men submitted, but he can appoint one he does know. To my mind that meets largely Mr. Reynolds's suggestion. We have never been in trouble here. Only on one occasion had I to threaten to refer the selection of third man to the Judge, and the moment I did so the other valuer took one of those I gave him the option of. If the Judge is not exactly acquainted with the men whose names are submitted to him he is in touch with people who can advise him on the matter.

11. *To Mr. Stephens.*] So far we have found little or no difficulty in appointing a third man, and things would have to alter very much before I would suggest any change in the present system. I remember some twenty-five or thirty years ago there was a considerable amount of speculation in Harbour Board leases. Some few years after that there was a request to the Board to reduce the term. I cannot say of my own knowledge what induced the Board to reduce the term. I have never heard of any demand to extend the term to twenty-one years. I value on present-day values. The capital value of land goes up or down according to the price of money. I am aware there has been some suggestion as to arriving at the rental value by ascertaining the return on the building erected. It is a very fair test, of course, if the building is suitable for the locality. Of course, one man might put up a valuable building in town and not do much with it. There are a good many things in building to be taken into consideration. I have been in a good many compensation cases. I know in those cases the compensation values largely depend on the assumed rents that can be obtained if a man builds speculatively. When the Corporation widened King Edward Street we had to listen to some fabulous prices for buildings. It is true that if the result arrived at in such a calculation is not sufficient all one has to do is to add a shilling or two to the speculative rents, or take them off, as the case may be. In these valuation cases for the Harbour Board I do not always get my own way. In my experience of thirty-five years I only know of one case—a Port Chalmers case—where I would have advised an appeal if the right to appeal existed. I am speaking now both from the tenant's and the landlord's point of view. There has been only one case in which the land has come back into the Board's hands—that was land leased to the Macdonalds, the lime and cement people. The value of the building on that would be about £500. I consider the test of rent by what a prudent man would give is no test at all. In my judgment it is a myth.

12. *To Mr. Milne.*] I suppose a tenant who builds and enters into business is entitled to make 7, 8, or 9 per cent. on his enterprise or investment. It depends a good deal on the amount of energy a man puts into it. I should be content with 10 per cent. myself, but sometimes I have to be content with 1 per cent. and sometimes with nothing.

13. *To Mr. Stephens.*] It is not the practice in Dunedin to erect buildings for letting or for speculative purposes. Buildings are generally erected for use in connection with businesses or for residences. The building is generally erected for the use to which it is to be put straight away. Some are built for letting purposes, but building houses to let has been disastrous in Dunedin.

14. *To the Chairman.*] The Presbyterian Church lease seems to be well thought of here. Under it there is compulsion on the tenant to take a new lease—the leases are for twenty-one years with revaluation of rental, very much on the same lines as the Glasgow lease. The Board usually ask if the rent fixed is agreeable to the tenant, and there is no sale, so that the tenants do not have to run the gauntlet, in a sense. With regard to valuation of improvements, the practice in connection with the Harbour Board's leases is to value the buildings at full value—that is to say, if the present lessee has to go he receives full value for his building—he gets the cost of the building less a percentage for depreciation. I have always found it better to give the lessee the benefit of any doubt there may be with regard to value of buildings. That is what is called a benevolent value.

15. *To Mr. Thomas.*] There is no power to a tenant to surrender his lease.

16. *To the Chairman.*] We do not take into consideration whether or not a building has become obsolete for the neighbourhood. That is no business of the valuer. What is put before us is the building.

17. *To Mr. Stephens.*] In some localities we might discount the values somewhat because of unsuitability to locality, but as a rule we do not take much notice of the question of unsuitability.

18. *To Mr. Milne.*] If the cost of building has risen to a great extent since the erection of a particular building that would be taken into account in assessing the value.

19. *To Mr. Thomas.*] If there were a clause in the lease providing that the lessee should have the right to demand from the landlord the value or a certain proportion of the value of his buildings I should be less inclined to put a benevolent value on the buildings. You have to be fair all round, and not allow one man an advantage to the disadvantage of the other man.

20. *To Mr. Lewin.*] No doubt one effect of a benevolent valuation is to reduce competition at the auction.

JAMES QUAIL examined. (No. 39.)

1. *To the Chairman.*] Mr. Fred Smith, who is factor of the Presbyterian Church Board, is away on holiday just now, and though I have no status as far as the Board is concerned, I have been associated with Mr. Smith for considerably over twenty years, and I am therefore able to speak with some experience as to the operations of the Board's leases. The majority of our leases are for fourteen years. They are a decidedly mixed lot. Some blocks are for fourteen years and some are for twenty-one years. Most of the city sites are for twenty-one years, and the suburban residential sites are for fourteen years. There is the right of renewal, and the revaluation is sometimes arranged by amicable settlement three months prior to the expiry of

the lease. There is provision for auction, but very often by consent of both parties auction is waived. If the valuation is accepted by both parties auction is waived. There are very old-established buildings erected on our town sections. I might mention Sargood, Son, and Ewen's block; then we have another block in the same locality occupied by Nimmo and Blair, the International Harvester Company, and the *Otago Daily Times* building. On the other side we have the Leviathan Hotel. Generally speaking, first-class buildings are put up on our leaseholds. So far as the residential leases are concerned the Board has been most successful in arriving at valuation by friendly settlement, and it is a rare thing to refer them to arbitration. So far as the larger leases are concerned, where you are dealing with firms, neither side cares to take the responsibility of fixing a valuation; they prefer to have the amount settled by the three arbitrators, but we still waive going to auction. In our case it is not two arbitrators and an umpire, but three arbitrators and the majority rule. The Board has been impressed for some years with the desirability of meeting the tenant by waiving auction. In fact, I can safely say that when dealing with big firms the Board does not see the necessity of going to auction provided both parties are satisfied. We have found, as a rule, the system of arriving at the rental is satisfactory to both sides. Prior to the expiry of the lease the Board, through its factor or a small committee, endeavours to ascertain what would be a fair rental for the further term. Without disclosing any figures whatever they enter into friendly negotiations with the tenant and suggest that the tenant should make an offer to them. The Board further suggests to the tenant that he should make some inquiries from some suitable person or persons and frame his offer on the advice so tendered. If the amount offered comes reasonably near to what the Board has in its own mind then a settlement is arrived at. In many cases, of course, there is a little give-and-take on both sides. As to the provision for compulsory renewal in our lease, so far as I am aware it has always been in existence. Generally speaking it is not regarded adversely by the tenant to the best of my knowledge, though I have heard tenants express the opinion that the leases are very hard to get out of once you get in. On the other hand, it is wonderful to see the ease with which some of these properties are sold. Our leases are regarded as good security on which money can be borrowed on the open market at a fair rate of interest, judging from the number of mortgages that go through. From my experience there is a tendency to ask a little more interest for loans on leaseholds—about ½ per cent. As to the principle followed by our Board in arriving at the rental, usually an attempt is made to estimate what is a fair capital value and upon that charge 5 per cent. We do not take the land-tax value—it is too risky. Contemporary sales in the neighbourhood are considered a factor to a certain extent, but what a place is likely to earn is not always taken into consideration. Of course, in taking into consideration contemporary sales, that factor has to be qualified sometimes by the motive which has induced the buyer to give. We have had no difficulty with regard to the tribunal that assesses the value. In most cases valuation has been resorted to, though there have been cases where there has been arbitration. I cannot say that there has been any very marked difference in the results of arbitration as compared with valuation. Generally speaking the tenants are satisfied with the leases they hold. Now and again you hear murmurings, but, of course, you always find one or two dissatisfied persons anywhere. The Church Board is also satisfied that it is getting a fair return upon its reserves. There has been a considerable rise in value of some of these leases in recent years. In the North-east Valley, for instance, residential sites which were let for a very small rental originally had increased considerably in value when the leases were reviewed about 1914. Then, as regards some of the city properties, there was a sharp rise in 1916. One I have in my mind, the rental of which twenty-one years ago was £90 per annum, is now returning us £210 per annum without having been submitted to auction. Then in the case of another property the ground-rental has risen from £116 to £163. Those two properties are widely separated. The first one is in Stuart Street, and that place has gone ahead very much in the last ten years—it is now the direct route to the railway-station.

2. *To Mr. Milne.*] I could not say right out what is the average return the Board is receiving on the whole of the buildings on the ascertained value. In arriving at our rentals we generally try to ascertain the true capital value and fix the rental on a 5-per-cent. basis. In assuming the 5-per-cent. return we ignore all fluctuation of interest.

3. *To Mr. O'Shea.*] Our leases are readily saleable. The vendors usually get full value for their improvements. As to the term of the lease, I must admit that some tenants do say that the term might be extended, but there has been no representation made direct to the Trustees in that direction.

4. *To Mr. Stephens.*] When the Church Board is putting up vacant land the main factor in fixing the term of lease is, I think, the class of building that is likely to be erected upon the land. We have no vacant land in the city.

5. *To Mr. Thomas.*] Our idea is that where perishable wooden dwellings are to be erected the lease should be for the shorter term of fourteen years.

6. *To the Chairman.*] Our land is scattered—north, east, and west.

7. *To Mr. Thomas.*] In most cases where there have been sales of leases the vendors have simply received a fair value for their improvements. As far as I know there has been nothing paid for goodwill.

8. *To Mr. O'Shea.*] There has been very little traffic in leases of city property, as the bulk of the city properties are held by old-established firms such as Sargood's, Bing, Harris, and Co. in Princes Street, and so on. Mr. Reynolds has drawn my attention to a slight inaccuracy in my evidence. It appears I stated that there had been the one form of lease in operation, so far as I knew, for all time. Mr. Reynolds reminds me that that is not so—that some years ago there was a different form of lease in vogue, which was afterwards withdrawn and the present form substituted. I will produce the old form if I can if it is of any value.

ALEXANDER BATHGATE examined. (No. 40.)

1. *To the Chairman.*] I was for many years a solicitor practising in Dunedin, and have now retired. I am chairman of Kempthorne, Prosser, and Co. I understand the Commission would like to hear something about our Wellington leaseholds. We hold a lease of a small piece of ground at the corner of Victoria and Willeston Streets, measuring 60·74 links by 121·21 links. For that piece of land we paid £90 and some odd shillings per annum, but when the lease expired the rent was fixed at £300 a year. That seemed such an enormous advance that the board were rather staggered at it, and they had to consider what was best to be done. We looked about and we found a freehold property that would have suited our purposes if we put up a building costing several thousand pounds. But we were in this position, that we had another similar section, the lease of which was still current—the section adjoining. Of course, we were afraid of a similar increase in rent regarding that. We instructed our Wellington manager to let us know if he thought there was any chance of disposing of our leasehold, and the reply received ultimately was that apparently there were no buyers even at a sacrifice. We felt that if we could have got rid of our then premises, even at a considerable sacrifice, it would have paid us to do so and erect a building on the freehold. Of course, one difficulty was that we did not come into direct negotiations with any possible purchaser because we could not hear of one at all. Another difficulty was that we should have required time to erect our building on the new premises, and we could not give immediate possession. We inquired into the reason of this enormous increase, and we were told that shortly before these valuations were made the Government had required a small piece of land to complete the Post Office block, I think, or, at any rate, one of those blocks where there are buildings. The land was not of any large area, but the owner would not sell except at a fancy price, and he got it.

Mr. O'Shea: That is not so.

Witness: That was the information supplied to us from Wellington, and that that sale, which was not an ordinary sale by any means, was a big factor in establishing market values. So far as we are concerned our building has a frontage to the street, but that is, of course, of little or no value to a wholesale house—the business we do is mostly done by travellers or by telephone. The number of people actually calling at the warehouse is comparatively small, and the main factor in deciding the site would have been distance from the wharves, because of cartage, and so on. The site we had in view would not have involved very much greater cartage than the present site. Our rental was assessed before the judgment in the D.I.C. case. Our rental is £7 10s. a foot. I could not say whether our own valuer agreed to that or whether he dissented. I should not like to commit myself by stating what I consider the rent ought to have been. It is some time since the matter cropped up. We discussed it then, but I could not, just for the moment, say what we considered would be a fair rental. We anticipated an advance in rent, no doubt, but certainly nothing like more than three times what we were paying. I am one of the tenants that ask for some relief if it can be granted. My grievance is that the present ground-rent is at least a third more than it ought to be. I do not think we should have been greatly injured if it had been nearly doubled. I do not know whether we had any valuation from any one outside at the time the renewal was made. The whole thing was conducted by our Wellington manager. I do not even know the name of the arbitrator. The whole thing came like a "bolt from the blue" upon us when the Wellington manager reported the result. I am not against the form of lease, but the valuation, in my opinion, has been excessive. Personally, however, I consider fourteen years rather a short term of lease under such conditions. I have had a good deal of experience in practice of the so-called Glasgow lease, and on the whole I think it is fairly satisfactory from the point of view of the landlord as well as of the tenant. I think that a twenty-one-years term is better than fourteen so far as Wellington is concerned. I omitted to mention that there is one point in connection with the Wellington lease that is objectionable. I think the revaluation should be made at least twelve months before the expiry of the lease. Three months is too short a time. The position is this: Any firm or company having a lease such as ours would want time to attend to things, and if the ground-values in the locality were going up they probably, as prudent men, would think it advisable to write off something from the value of their buildings. If they knew when the time for renewal came the rent was to be practically prohibitive they would reduce the value of their buildings on their books. Of course, it would not lessen the actual loss, but would spread it over a period. They might think it better to forfeit the buildings rather than pay the new rental. But three months would not be sufficient time in which to do those things. They would be in a hole and obliged practically to take a new lease. I think at least twelve months should be allowed the tenant to enable him to make up his mind as to the course he should adopt. The same thing would, of course, apply to what we call the Corporation lease in Dunedin, where the lease is put up to auction. In only one case that I can remember at the moment has the tenant of any such lease been run up unduly. It was done with the collusion of rival traders who wished to push him out. They pooled the loss, so the story goes. Then there is one little peculiarity in the wording of the lease. It says, "The valuers shall value the full and improved ground-rental." What that means I do not know. We know what unimproved value is, but "improved ground-rental" seems unusual. It looks as though the Corporation are instructing their valuers to give them a better rental every time.

The Chairman: I believe it relates to what the lessee gets from his subtenants.

2. *To Mr. Milne.*] I do not know that I am of the opinion that the length of a lease should correspond in any way with the life of the building. In a growing town that would involve too long a lease. I favour the perpetual lease with revaluation every twenty-one years. Messrs. Sharland and Co., who are in the same line of business as ourselves, have relinquished their lease in Wellington and have built on a freehold. That is what we contemplated doing. Pre-

sumably they were discontented with their valuation. We considered it would have been an advantage to us to make some sacrifice and build on a freehold rather than pay the £300 a year rent.

3. *To Mr. O'Shea.*] I do not know what price the land in our street brings. I do not know whether we could buy land there at £200 a foot. Of course, land in Wellington is limited, and has a certain fictitious value. For example, in the case of the recent purchase by the Bank of New Zealand from an adjoining owner the bank had practically to give whatever was asked. Well, sales like that give a false basis of value. We did not obtain a freehold in Wellington, as we did not see our way to get rid of our leasehold, and we had to drop the scheme. The place offered to us was not so very far from our present site. It would have involved a little more cartage, but that would not have amounted to much. I do not know that I would prefer a renewable period of twenty-five years. There is not much to choose between twenty-one and twenty-five years. I think fourteen years is too short, whether the lease terminates or whether it is a perpetual lease.

4. *To the Chairman.*] The renewal of our lease cost us about £20, I believe.

CHARLES RUSSELL SMITH examined. (No. 41.)

1. *To the Chairman.*] I am a member of the firm of John Reid and Sons (Limited). They are land-valuers in conjunction with their other business. I have been acting in connection with the valuation of land for something like twenty years. First of all I would like to say in connection with the leases there has been no serious trouble in Dunedin such as apparently has arisen in Wellington. Values in some localities in Dunedin have risen considerably, but that has perhaps been due to special causes. The pronounced locality in that respect has been Stuart Street and its vicinity, due, no doubt, to the shifting of the railway-station to its present position. In some cases the values there have risen 100 per cent. since the sections were valued twenty-one years ago. On the other hand, certain parts of Dunedin have gone the other way. Properties in Princes Street South and Maclaggan Street have gone back rather than forward. Most of the evidence I have heard and read in this connection seems to assume an unearned increment. No one seems to have referred to the fact that there is the remotest possibility of land decreasing in value in any city in the Dominion, but we have illustrations of that in Dunedin. Population here has not been increasing, and as, for example, the railway-station seems to have attracted a certain amount of business, the parts of the city which are thereby to some extent depleted must go back. So far as local bodies' leases are concerned, my opinion is that they should be so framed as to eliminate as far as possible the element of speculation. We know that many people have made money out of leases, while on the other hand people have been broken by a lease. My view is that leases of this class should be for twenty-one years, giving either side the right to call for revaluation at the end of seven and fourteen years. The party calling for such valuation should have to pay all costs connected with the valuation. The object of that would be to prevent frivolous applications for revaluations. There should be the usual further valuation at the end of twenty-one years at joint expense. The tenant should have the right to renew at the end of twenty-one years, but he should not be compelled to take a renewal; he should simply have the option to renew on the same terms. I think a lease based on such conditions would tend to give more confidence both from the side of the landlord and of the tenant, because both sides would feel that they were not undertaking anything in the nature of undue speculation. If at the end of seven or fourteen years the tenant felt that the place had gone back he would have the right to call for a revaluation. If, on the other hand, the Corporation thought the property had gone ahead it could call for a revaluation, and so the scales would be held evenly between the two parties. In my opinion, on no account should the public body be required to take over any tenant's improvements. Such a thing would end in disaster. The effect of it would be that every broken-down locality would be coming to the Corporation to take over its buildings, and in the course of a certain number of years people going round the town would be able to pick out as the Corporation's property all the ancient and decayed buildings on the different sections. But if such a thing were considered for a moment then the Corporation should also have the right to resume any tenant's buildings at the end of twenty-one years that they might wish to resume. I would not allow the buildings to be taken over even at half-value. I would not have any truck at all in connection with the matter. It would lead to all sorts of abuses, and eventually would land the Corporation with all sorts of rotten properties they should not touch at all. Then, with regard to the auction clause, from my experience I am of the opinion that it should be struck out of the lease. In ninety-nine cases out of a hundred that clause is quite ineffective. We have seen sale after sale of these leases, and they have gone to show that the whole thing is a mere matter of form. But in one case out of a hundred this auction clause can act very, very unjustly to the tenant, because, after he has built up his business, at the end of twenty-one years it is open to any harebrained idiot to come along and outbid him for his lease. I could give you a case or two as examples. I was present at one sale where land valued at £4 a foot was run up to something like £9 a foot. In another case, where the original lessee had died, the widow, who had some sentimental idea of the property, was run up at auction until she had to pay something like double the amount fixed by valuation. I believe the widow went into hysterics at the auction. I consider that was an unfair thing to that woman. The only case I know of in which an auction would have operated justly was in connection with a property near the Town Hall. It had been valued at about half its actual value, but the auction did not give any addition. Then I would suggest, if it were feasible, that for the sake of saving expense in connection with leases of this nature there might

be a statutory form of printed lease that might be used by all public bodies; the same with regard to the appointment of valuers and the making-up of the award or valuation. It should be a simple form that would be deemed to be a compliance with all the laws on the subject. I do not see why it should be considered necessary to obtain the consent of the Corporation for a tenant to mortgage or to sublet. Then, on the question of arbitration and valuation, my idea is that arbitration, as we understand it, should be struck out altogether. By "arbitration" I mean the appointment of two arbitrators and an umpire, and the calling of witnesses, and probably representation by counsel, and all the other cumbersome machinery in connection with it. From my experience as a valuer arbitration has not obtained the desired result. My suggestion is that valuations should be made by three valuers, without evidence, drawn by ballot from a body of experts licensed for the purpose, subject to the right of either side to appeal to the Court. Under the present system there is no great trouble in Dunedin, yet one can see how serious trouble might arise. Suppose I am appointed by the tenant and somebody else is appointed by the Corporation, the tenant expects me to get his rent reduced as much as I can, while the man who is acting for the other side feels that he is there to get the best rent he can, and the effect of it all is this: that instead of the valuers being there for the express purpose of trying to arrive at a true value they are more in the position of advocates arguing to try and influence the third man, with whom the decision really rests in nine cases out of ten. Just to give an illustration: There was an estate in which there was about £75,000 worth of freehold property. It was a trust estate. The Court decided that the property should be apportioned into two equal parts, and directed that the perpetual trustees should prepare the partition and submit that partition to two outside expert valuers, who would confirm it or reject it as the case might be. Mr. Park and I, as representing the trustees, went into the matter and prepared a scheme of partition which we submitted to the two outside valuers. The two valuers went round and inspected the properties. We all met later on and discussed the whole thing, and we settled the value of that £75,000 worth of property in about two hours. If that matter had been sent to arbitration it would not have been fixed up in a month. Both sides have expressed their satisfaction, and have complimented us on the manner in which the work had been done. With regard to licensing of the experts, I think there would have to be some kind of examination. It is true that under the present system experts are nearly always appointed, but generally the more expert they are the more trouble there is in arriving at a valuation. That is not an argument against experts, but against the system of each side having a representative. Then, as to the basis on which we proceed in valuing rental, I think in Dunedin we are influenced by a combination of three things: first there is the freehold values prevailing in the neighbourhood, eliminating any special cases with special circumstances; secondly there are the other ground-rents prevailing in the neighbourhood; and thirdly there is what may be termed the productive value of the piece of ground, particularly if it has a building upon it which is let for a specific purpose to a number of tenants—what can be made out of it. In valuing I try to bring as many points of view to bear on the position as I can so that one may check the other. I do not like the idea of considering the speculative value. Things may go back sometimes. In valuation cases, when I am discussing matters with the other valuers, I find they generally adopt one or other of the bases I have mentioned. A valuer usually adopts the one which suits his side best. In determining rental value I do not think there is any definite rule that should guide valuers. In arriving at the capital value we hardly ever take the Government valuation. I agree with Mr. Reynolds that the Government valuation follows the rental we fix. It comes after instead of going before. I cannot say that tenants are generally satisfied with our valuations. A tenant may profess that he is not satisfied when to a certain extent he is satisfied, and many tenants are really ignorant of the value of their land. As an illustration, just recently a large firm in this town had a lease which fell in. It had to be revalued in the ordinary way, and I was appointed on behalf of the landlord. The tenants came to me and said, "You make the valuation yourself, and we will be quite satisfied with whatever you say is a fair value." I said I would not do that. I could not serve two parties like that. I asked them to appoint their own man and let us go ahead in the ordinary way. We did so, and the result was that the rent was increased from £90 a year to something like £200. Had I fixed that on my own account I should have been for ever condemned by those people. As it was they were dissatisfied, and they said they were going to appeal. Well, a sale of property took place shortly afterwards in the vicinity of their property, and when they saw the result of that they came to me and said they were sorry they had objected, that they did not know the value of their property, and that they were now quite satisfied that the rental placed upon their holding was a fair rent. I have seen the scheme of valuation suggested in Wellington, endeavouring to arrive at the rental by seeing what can be made out of the land. That involved that in every case you have got to treat the land as being vacant. You erect on that land imaginary buildings, and you get imaginary rents, and you have imaginary expenses; then you take one from the other and you get an imaginary ground-rent. Well, there is too much imagination about that. If you have a suitable building on land which is let it is very useful for checking the value you fix upon the land, but to start off with imaginary things I do not think is a reasonable scheme at all. It is not a method that appeals to me. Under such a system you could really make your ground-rent anything you liked. You could take off so-much for repairs; you could make any allowance you liked for vacancies, and all the rest of it. If that system were to be followed in every case I do not think you would ever reach agreement if you had three men acting. In valuing a building I do not take into account its suitability to the neighbourhood at all. I endeavour to arrive at its value by what such a building would cost, and allow depreciation for the time it has been up. Although a building might be considered an encumbrance on the land it would have a certain value from the building point of view. Probably it does not make the land more valuable. I think the tenant is entitled to full value for his buildings even though they may be out of date.

2. *To Mr. Milne.*] In a case where the rent is fixed upon the productive value we always make provision for depreciation of the building. We do not assume that the building is going to last in its present condition for ever. We also take into account the fact that the tenant is getting a certain amount of any increase there may be in the land-value as well as the landlord. I agree that most tenants prefer a twenty-one-years lease because they look for unearned increment. I think the relative positions as between landlord and tenant should be taken into account at the end of every period, and that should be one of the factors in assessing rents for the succeeding period.

3. *To Mr. O'Shea.*] I do not think the appointment of permanent assessors to travel over New Zealand and fix these valuations would do at all, on account of the expense, and because they would have no local knowledge.

4. *To Mr. Thomas.*] I have not gone into details as to the arrangement for drawing by ballot valuers from a body of experts, but if you get capable men on that body it will remove a great deal of the difficulty. The trouble in connection with leases appears to exist only in Wellington, and this trouble may be termed the "boomerang of prosperity." Now the boomerang is coming back and hitting them. Things will adjust themselves in due course, and I think it would be unwise to lay down any general principles to cover a passing phase of trouble which has arisen in one particular place.

5. *To Mr. Milne.*] I could not say whether land in Wellington is assessed at a higher value than in London.

6. *To Mr. O'Shea.*] Of the three bases of valuation I have suggested I could not say which is the most valuable. Everything depends on the circumstances surrounding the property to be dealt with. If, say, four persons tendered a certain price in open market for places adjoining, that would weigh with me in assessing values on the other side of the street unless there were reasons which would prevent me from doing so. I certainly think what a man will give for a lease in the open market, after calculating what rents he can get from his building and what his expenses are, would give a fair idea of the value of his lease. There is very little speculative buying in Dunedin—people nearly always buy for their own use. I do not consider it is profitable at the present time to build for subletting in the city for business purposes. I do not know whether it would be in normal times. There are too many vacancies here at the present time.

JAMES ALEXANDER PARK examined. (No. 42.)

1. *To the Chairman.*] I have been engaged in the business of land-valuing for a period of forty years or more. I am acquainted with what is known as the Corporation lease. I agree in the main with the evidence given by Mr. Russell Smith. Any valuer of any reputation at all must take an interest in such a tribunal as this. We have followed as far as we could the reports of the sittings in Wellington without being aware until quite recently that the Commission would sit in Dunedin. I have made a few notes upon the memorandum I received from the Commission on the subject. First, with regard to the objection that fourteen years is too short a term of lease, I may say I consider twenty-one years is an equitable term. If there is to be any alteration in the Corporation leases it should be on the lines suggested by Mr. Smith—that is, the ground-rent should be revalued every seven years either by mutual arrangement or at the option of either party. Then, if any portion of the town is going down in value, the lessee has an opportunity of applying for a revaluation and a reduction of rent. If, on the other hand, property is going up the lessor can have a valuation made. The Harbour Board leases were originally for twenty-one years, but they cut them down to fourteen years, as they found they were losing a certain amount of goodwill. I believe myself they would get better tenants and better buildings if they made the term twenty-one years. It is difficult to compare the rentals received by the Presbyterian Church Board and the Harbour Board or the Corporation, because the two latter bodies are not required to pay land and income tax. The Church Board would naturally look for a somewhat higher rental. I am in touch with all classes of leases. Although a long lease, say of sixty years, may be considered an advantage by some people, the lessor is often landed in the end with a loss of old buildings which have to be pulled down. The Corporation lease is a favourable lease. The tenants of the Harbour Board are compelled to take a fourteen-years lease because they cannot get anything else. With regard to objection No. 2, that the tenant will lose his building if he does not take up a new lease, I have not heard of such a thing happening in Dunedin during the forty years I have been valuing. I account for this from the fact that on the whole the ground-rents in Dunedin are fixed on a fair basis. Although sometimes we may have a little trouble in the appointment of umpire or third man in valuing, the object of the valuer generally is to fix a fair rent, and fortunately for Dunedin there is very little speculation indulged in by investors; it is genuine, legitimate trading. We cannot compare Dunedin with Wellington, where everything seems to be on a fictitious basis. You have a bank or an insurance company, who want a particular site there, giving £30,000 or £40,000 for it. It is the same with hotel premises. In such cases more than the legitimate market value is given, and it is not fair to base all rentals in the vicinity on such transactions. Property must not be valued on the prosperity of a certain business. In connection with our leases our instructions are to value the land as if vacant. We endeavour to find the freehold value, then take 4½ or 5 per cent. and we have the annual ground-rent. If we want to check that we put a building upon it and estimate the rents. The surrounding sales of freehold or leasehold properties are another guide. Then I come to objection No. 3 in the memorandum. The Wellington City Corporation objects to a lay tribunal and suggests a Judge, and the tenants suggest a tribunal of business men. Both suggestions are unsatisfactory, in my opinion. My experience

leads me to suggest that a property-valuers' association should be formed, and only qualified valuers should be members. When two parties require a valuation they should be in a position to send to the secretary the names of two valuers to act, and the third party should be a man appointed to the permanent position of chairman for each city, whose experience of valuation in time would lead him to be of great value as a third party. The principle of selecting a qualified valuer is one that would place not only the valuer's reputation but the association's reputation at stake, and they would require to have a properly defined principle of arriving at their valuations. Then I would go further and grant the right to appeal to a Judge alone, who takes the evidence of the three valuers only and decides. I do not think the Arbitration Court would be a suitable tribunal by any means. As to objection No. 4, it is said that a tenant has the option to buy or surrender under the terms of the Dunedin leases. In my opinion he has no option—he is compelled to buy to protect the value of his building, and I know of no case where a building has been forfeited. It is possible that an opposition trader may outbid the tenant for the property and so secure the connection, but it is highly improbable. It has only happened in one case in Dunedin to my knowledge. As to the auction, I almost feel inclined to advise that it should be done away with, and yet I cannot quite make up my mind. It is not so much what has happened in the past as what may happen in the future if there is no auction. Although it is a protection to a public body I feel very much inclined to do away with it. Then, with regard to the cost of renewals, in my opinion the cost could be reduced under the suggestion of a registered association which would have a scale of charges. All renewals under £100 could be engrossed on the old lease in a short form, and signed by both parties. Referring to the last clause in the memorandum, as to the principle of fixing values, in my opinion the fairest way of fixing a ground-rent is by a certain rate of interest on the capital value. This system can only be unfair if the property itself has been valued too high; this then is the fault of inexperienced valuers.

2. *To Mr. Thomas.*] You cannot in valuing take a prospective rise into consideration unless you also take into consideration a prospective fall. Business properties are paying fairly well in Dunedin just now, but I should not like to say what the position will be in three or four years' time. We do not know, for instance, what effect the war will have.

3. *To Mr. O'Shea.*] I do not know that you could buy any land now in Wellington at the Government valuation, but when there is a fever on for buying you must let people cool down before you can get at legitimate values. The same thing happened in Auckland some ten or twelve years ago. It is cooling down now.

DUNEDIN, WEDNESDAY, 31ST JANUARY, 1917.

SAUL SOLOMON, K.C., examined. (No. 43.)

1. *To the Chairman.*] I am a barrister and solicitor practising in Dunedin. I notice that witnesses have been asked whether it has been found that the auction of a lease at the end of its term has resulted in loss to the tenant by reason of his losing his goodwill. As that matter came before us most acutely about eighteen months ago it has been thought proper by a client of mine that the facts should be placed before you so that the Commission may see there is a serious danger in that connection. A client of mine, Mrs. Laurenson, jointly with her husband I think, held a Corporation lease of long standing, which lease matured in March, 1915, I think. On that lease was the hotel at the corner of George Street and London Street which was originally called the "Black Bull." That hotel had stood there from time immemorial. The ground-rent of the lease was £60 a year. It fell in at the date I have mentioned, and in accordance with the terms of the lease it was revalued. The ground-rent on revaluation came to, I think, £120 a year, and the valuation of the building was somewhere in the neighbourhood of £2,050. When the lease was put up to auction the tenant, who was then a widow, was called upon to pay £390 per annum—that is to say, she was so run up at the auction that she had either to let her property go or take up the lease at the increased ground-rental of £390. It was not a tied house in any way. A large proportion of Mrs. Laurenson's income was derived from this property. It was against our advice that she bought this property back. The war was in progress, and things were steadily getting worse. She had sublet to a tenant who was paying £10 a week. She had to keep the rental up in order to get anything out of the property in consequence of the additional rental she had to pay. Well, she was threatened by the sublessee that he would be compelled to surrender the lease, as he could not pay the rental. Messrs. Speight and Co., who were financing the tenant, assured us that this woman could not possibly carry on. Thereupon we asked the Council to allow some representative of Messrs. Speight and Co. and a representative of our firm to place the matter before the Council. Mrs. Laurenson is a client of a lifetime of my office, and she is an upright, reputable woman. The Council were good enough to agree that we should appear before them, and they gave us a good hearing. I hope it will not be considered for a moment that I am suggesting the Council were actuated by any improper motives in the attitude they took up. It is just on the general principle I am speaking. At the interview we had with the Council we urged that we thought it was only fair that Mrs. Laurenson should be entitled to the lease at the outside value that could be placed upon it. We stated that we were quite willing to allow their valuers to make a valuation, and that we were quite prepared to pay what they considered the extreme value for the lease. I received a letter in reply on the 20th October declining our request, but offering to have the property again put up to auction at the upset. [Letter read.] Well, that could not, of course, be done without the consent of the subtenant, and so far as the tenant herself was concerned she was placed in the predicament that she might find herself in a worse position than before. As it was obvious the price was

being run up to enable some one else to get the hotel license both she and her subtenant might lose the property. Both Mrs. Laurenson and her subtenant decided to hold on and see what they could do with it, and the offer of the Council was refused. Things went on until the question of the new licensing legislation came up, and quite recently this year we wrote again on behalf of Mrs. Laurenson agreeing to accept the offer of the Council which had previously been refused. [Letter read.] The Council in reply regretted that they could not agree. The Council no doubt was justified in that. That is their business, and they have public moneys to control. But, as the Commission had asked if there was any danger of a miscarriage of justice in connection with the auction system, it seemed to me that I should place this case before you. It seems to me, with respect, that a tenant has a right to hope for a renewal of his lease at a fair price. We contend that rental should not be based on the fact that there is a hotel on the land. The lease provides that the rental shall be on the land. It is to be based on the land, apart from the buildings upon it. I do suggest that it is not the intention in such a lease as this that the tenant should be called upon to pay a price which does not represent the price of the land at all. These city properties are mostly held by people to use for their own business purposes. Now, suppose a man under these circumstances holds a property on which a draper's, butcher's, or boot shop is established, and he makes a great success of that particular corner. In consequence of his industry and prudence he makes that particular corner a specially valuable place for that particular class of business. A rival comes along and, as things are, can force that man out of that place. He can either outbid him altogether or he can force him to pay a rental for the premises at which it is impossible for him to continue his business in that place. May I be allowed to suggest that there might be some legislative provision insisting that in such a case as this, which is quite an isolated case, there should be the right of appeal to the Court. The Corporation already has power to reduce the rent by special order, and it does seem to me that as the place becomes more settled this sort of thing may happen more frequently.

Mr. Lewin (Town Clerk): May I say that the view of the Council was that what was asked would give a lessee a chance to get out of a bad bargain immediately after the bargain was made. We knew there was somebody else who was prepared to give more than the tenant, and as trustees for the public the Council could not have done anything else.

ALEXANDER SLIGO examined. (No. 44.)

1. *To the Chairman.*] I am a bookseller and stationer. I am not a Corporation tenant, but am a tenant of a trust-estate lease under Corporation conditions practically. We have had the lease for thirty-five years. There have been two valuations. My father bought the lease from some one else who had failed to make good on his lease. The term was twenty-one years, and there was a covenant for two-thirds valuation at the end of the term. It was different to the Corporation lease in that respect. At the end of the term, and before the new lease was granted, the extraordinary proposition was put and forced on my father that "if only two-thirds belong to you the other third belongs to us, and therefore you must pay us a third of the value of your property before we give you a new lease." It is only fair to say the new lease was at a fair valuation, but £288 10s. was in my opinion filched from my father in connection with that lease. The old lease had no renewal clause, but simply two-thirds of value of buildings to be paid at end of lease. At the end of the term it was to go to auction at a new upset rental. I am not quite sure whether we paid an increased rental in this case. There were some five or six properties in the area that came in under the Thomson trust estate, and two of the properties which were valued went without competition at the upset rentals. An arbitration case was forced upon us, and the rentals were increased by something like 50 per cent. or a little over. That was about nine months ago. We do not complain of the 50 per cent., but the condition as to auction is manifestly unfair to a tenant who has established himself in business. It cost us £40 for the arbitration case in connection with the lease. A certain amount of feeling was created at the auction. One of the witnesses for the lessors at the arbitration—one who, like a good many others of the valuers, is directly connected with the carrying-on of estates for the big landlords of Dunedin—himself bid at the auction until it had gone past the figure which he had placed upon the lease at the arbitration case. It seemed to us there was a lot of laying of heads together. In fact I think there was a caucus in the office of the auctioneer, who was also a valuer for the lessors. No doubt there was some one to take the responsibility off this man's shoulders had he secured the lease. An argument put forward by one of the arbitrators was that we tenants had been established in business so long that we could pay a considerably increased rental. It is like the case of a man who had an invalid wife—the landlord knew she could not be shifted, and so he raised the rent. It seems to me that any one's goodwill is at the mercy of any one who comes along. It is not always that goodwill attaches merely to the name of a firm. I feel certain that if the bulk of the bigger business houses in Dunedin decided to shift into King Street they could force the trade into King Street. A man wants to get in just exactly where the public walk. Another thing is that, if some tenant pays a fabulous price under pressure at auction, there is a tendency to assess the rentals in the vicinity on that fabulous price. The valuers may disclaim that process of valuation, but the bulk of them are collecting rents for the bigger landlords. Our arbitrator in the case I have mentioned was a valuer long established in Dunedin, and one who knew the business from A to Z. I think the valuers, with the exception of the valuer for the lessor, came to somewhere near an agreement. The valuation fixed on the building would have afforded me no relief. My valuer valued the building, and the other valuer suggested the Government valuation, which had been standing for some twenty years. Then rather than confuse the issue they came to a compromise somewhere between the two.

WILLIAM EDWARD LANE examined. (No. 45.)

1. *To the Chairman.*] I am a cordial-manufacturer. I hold several Corporation leases from the Dunedin City. I have been asked to say a few words on behalf of some other dissatisfied tenants alongside of me. I also appear on my own behalf. What I have to complain about is that the Corporation has increased my rent although I am unable to get any increased rent from my tenants. The land is on the Quarry Reserve. The houses are not altogether out-of-date. The upset rental was increased by 20 per cent. My valuer dissented from that, and the value was fixed practically by the umpire. When the lease was submitted to auction there was no bid. I suggest that in cases like that the lease should lapse and the Corporation should pay valuation. What I maintain is that if the Corporation value a place at a certain increased price which they are to get the benefit of, and if the tenant is dissatisfied, he should have the right to demand that the Corporation should take it over at 10 or 20 per cent. below the valuation. That would make the valuer more careful not to put exorbitant ground-rents on places. It would not have paid me to pull down the houses and put up new ones. Although there was no value put upon the houses they were not bad enough to pull down. At any rate, the Corporation are getting rates and taxes on the property. There is another tenant, Mr. Saunders, who took up his lease fourteen or twenty-one years ago, and now they have put his ground-rent up 125 per cent.

GEORGE BRADNEY NEALE examined. (No. 46.)

1. *To the Chairman.*] I have been coaching foreman on the railways, Dunedin. I am a tenant of the Presbyterian Church Board. I took over a lease of land in Roslyn from another tenant. The rent was £7 10s. a year. When the revaluation was coming round I expected I should have to pay some increased rental, but to my surprise the rental was raised to £20 a year. I thought at the most it would have been £10. I do not consider the street—Michie Street—in which the sections are has become more fashionable, as there is no building going on there. We went to arbitration, but I got no redress. The Board's own valuer was on the arbitration, and, of course, he worked hard to maintain his valuation as correct. I do not know whether the terms of the lease provided for an independent valuer, but we were most dissatisfied with the constitution of the tribunal. That is practically the only point I feel aggrieved about.

JAMES RENNIE examined. (No. 47.)

1. *To the Chairman.*] I am headmaster of the Albany Street School, and I am a Corporation tenant. The conditions of the lease appear to me in one respect to be very inequitable. I live on the banks of the Leith. The Corporation have guarded themselves very well in their conditions. They have no liability at all with regard to the eccentricity of that river. If the ground higher up is in danger of being carried away they can take whatever steps they please in the way of putting up walls to divert the current, and so forth. Now, it is well known that if you interfere with the river in one place it is likely to affect the attack by the river in another. So far I have not been personally affected by it, though I may be, since the last great flood, but my neighbour has been affected by it. For the want of attention in parts the river tends to run in and undermine the retaining-walls. I maintain that the Corporation is more concerned in seeing that these walls are retained than I am, because it only wants a little more force in the flood and the Corporation will be in danger of having no section where my place is. I cannot say that those sites are let very cheaply. I am paying £18 a year for a quarter-acre. I consider it inequitable that they should guard themselves against any liability in a matter of that kind. Equitably they are concerned and financially they are concerned, because it is their property. It may be that they want to guard themselves against liability for any houses that may be washed away, but they are always interfering with the course of the river—that is the point. There are four sections liable to that trouble. The other point I wish to refer to is this: I have not had a revaluation yet, but I notice that Mr. Lewin has stated in evidence that the cost of valuation comes to something like £25. If it will come to only, say, £8 or £9, as I now understand, or say 10s. a year over the whole period, I am quite satisfied.

JOHN THOMAS HARRIS examined. (No. 48.)

1. *To the Chairman.*] I have retired from business. I am the holder of a Corporation lease. My point is that the rents are too high, being based on the level of freehold property, and a Corporation lease is not marketable in the same way as freehold is. As to the rent of the section I occupy, I was expecting a reduction instead of an advance. I spent £500 in putting the place in up-to-date order, but it has not made any improvement in my return. I am not getting more than 4 per cent. on my money. My place is on the Quarry Reserve. It is a large section, but very steep and rough, and it cannot be used to proper advantage. I should be better off on a smaller section. My old rental was £12, and my new rental is £14 10s. We did not call in an extra man to decide this, as we wished to save the three guineas, especially as the result would probably have been the same.

2. *To Mr. Lewin.*] I have had some experience of rent of freehold property. If an ordinary freehold with a residence upon it does not give 10 per cent. it is not a profitable investment—

that is, if the building is an ordinary wooden building. Ten per cent. is the gross rental, from which has to be deducted upkeep, rates, repairs, and so on. Such properties should produce rentals of from 10s. to 15s. per week. That would be in the more closely populated part of the city, where there is a good deal of risk of there being vacancies. The 4 per cent. I was getting from my leasehold property was after deducting rates, insurance, and repairs.

3. *To Mr. Milne.*] The cost of repairs has gone up very considerably lately—that has tended to lessen my return. I agree that the higher the cost of building is the lower is the value of freehold, and I was certainly expecting a reduction in rental.

4. *To Mr. Lewin.*] It is true that increased cost of repairs tends to increase rental, but I have not been able to pass the increase on to the tenant.

5. *To Mr. Milne.*] I think the owner of the ground is entitled to a lesser rate of interest than the tenant, because the value of his land is always increasing, whereas the value of the tenant's building is gradually lessening. I do not say that 4 or 5 per cent. return to the landlord is more than he is entitled to, but if I only receive 4 per cent. I do not think the landlord should receive as much. I consider, if I am receiving a low rental from my property, the rental I pay to the Corporation should be reduced instead of increased.

GEORGE CLARK examined. (No. 49.)

1. *To the Chairman.*] I am a builder and valuer in Dunedin. I am not a Corporation tenant. I have had a good deal to do with the valuing of various leases, chiefly on behalf of the tenant. I may say that at one time here a builder, so far as the Corporation was concerned at all events, was always chosen as third valuer. Now the Corporation will not have a builder of any kind, and the position of Corporation valuer is now held by a land agent. The land agents have become very strong as valuers here quite recently, and they on their part will not accept as third man any builder. In connection with the Church Property Board, on a recent occasion, when the leases came in for revaluation, the Arbitration Court was constituted wholly of men who valued for the public bodies here, and it seems to me that it is to their interest that they should keep up the price of property. Most of the valuers here are men who are employed by huge trusts which control enormous properties. In that case there is no hope for a builder, who would probably be an independent man, to be appointed third man. It is questionable whether it is right morally for these men to take part in such arbitrations, as they are not disinterested parties. I do not think they are altogether independent valuers. They would go to the extreme of going to the Court rather than accept as third man one who would be an independent builder. I do not say that the Court should always appoint the third man. The trouble about appealing in most cases is that the expense would be too great. When the rentals were small it would not pay. Of course, as a builder I want to see plenty of houses going up, but I must say that my experience is that it would not pay any builder to build houses to let. I say the cost of both freehold and leasehold ground is far too high. One can quite understand an exorbitant price being paid for a piece of freehold ground because a man may fancy a particular neighbourhood. In such a case he may be quite prepared to throw away a couple of hundred pounds on a site, but the trouble is that this is immediately seized upon as being the value of land in that district. We have evidence of land being taken by the Government and of the value of land in the vicinity being boosted up in consequence. My method in valuing is to endeavour to find out what can be made out of the property. In leasehold property it is the producing-value. There is no other way for it. In arriving at that you have to consider, of course, the site, the class of tenant you will get, and then find out the average rental obtaining in the neighbourhood. Once you decide the house you will put upon it you allow 6 per cent. on improvements, then work out the rates, deduct 20 per cent. from the gross rental, deduct from that lesser amount your insurance, upkeep, depreciation, and collection of rent, and the remainder is the price of the ground-rent. It might sometimes mean that as worked out the ground-rent might come to nothing. I do not know how that is to be got over. I cannot say how it is that some of the best buildings in Dunedin are on leasehold sites, but I have not the slightest doubt that if those people had to leave they would have to sacrifice a great deal in the way of improvements. That is what happened when Mr. Bullock went to Wellington. His valuation was £1,200, and he had to sacrifice 25 per cent. in order to get rid of his land to Mr. Burt. What I am stating is not due to the fact that the property market is rather stagnant in Dunedin. I am speaking of normal conditions. I maintain that what land will produce should be the basis on which rentals should be assessed.

2. *To Mr. Milne.*] I do not claim to have any extraordinary experience, but I have been valuing for about twenty years. I do not see how people who have invested their money in leasehold property in Dunedin can be receiving any return at all. I know of one case where a man became bankrupt. The average interest he was getting from a number of properties was 4½ per cent. He was heavily mortgaged, and the average rate of interest he was paying was 6 per cent. Quite recently they foreclosed on three large properties, and as to the other one he does not care whether they take it or not. This man was himself a builder. I should imagine that the lessee should be satisfied with 6 per cent. I think the lessee is entitled to more than the lessor. I am aware that a builder has recently been appointed as umpire in connection with Harbour Board leases, but I know of numbers of builders who have been turned down.

WELLINGTON, THURSDAY, 1ST MARCH, 1917.

HAROLD BEAUCHAMP examined. (No. 50.)

The Chairman: You have kindly come in response to the desire that you should. I should be glad now if you would just make your statement. Of course, you know what the issue is: First as to whether there are any defects in the present form of city lease and in the methods of valuation that follow upon it, and what remedies ought to be adopted to meet these defects.

Witness: I have taken the liberty to embody my views in writing, and if I may I will read my statement:—

Wellington City Corporation Leases.

Where the terms of a tenure cause the tenant unnecessary loss without any corresponding gain to the landlord that loss is economic waste—a truth of which an extreme example would be the leasing of rural land totally unsuited for agriculture on condition that it should not be used for pastoral purposes. This illustrates the crude fallacy that a fair rent may be ascertained by determining the freehold value of the land, and fixing rentals on the renewal of a lease, with oppressive terms, on a percentage of that value. Where land belonging to a Municipal Corporation can be leased only on terms which are unnecessarily disadvantageous to the tenant the ordinary freehold value of such land is reduced by the extent to which these terms prevent the best rental being obtained, and that reduction is a pure economic loss. Hence it is of paramount importance, in determining the terms of the Municipal Corporation leases, that they should impose upon the tenant no burden which does not bring to the Corporation a corresponding gain. If this test is applied to the Wellington City Corporation leases it will be found that their terms are gratuitously burdensome and economically unsound. In the case of the D.I.C. *v.* the Mayor of Wellington (31 N.Z. L.R. 598) it was decided by the Court of Appeal that the basis on which the valuers must proceed in fixing the fair annual ground-rent on the renewal of a Wellington Corporation lease was that there were no buildings or improvements on the land, and then ascertain what a prudent lessee would give as ground-rent for the term, and on the condition as to renewal and other terms, &c., mentioned in the lease. This means that the land must be considered as being vacant, and no compensation is payable to the tenant for his building should he decline to take a renewal of the lease at the new ground-rent and no new tenant be found prepared to take a lease of the land at such ground-rental.

The term of these leases is for fourteen years only. It is true that there is a right of renewal, but a renewal upon a revaluation of the ground-rent assessed as expressed in the judgment of the Court of Appeal above referred to. These terms, and others which will be found in these leases, are devoid of the requisites of a lease which is to the fullest extent mutually beneficial to the landlord and tenant. These requisites are—Firstly, the reasonableness of the term; secondly, the reasonableness of the rent; and, thirdly, the fairness and reasonableness of the other conditions to be observed by the tenant.

As regards the first requisite, the term of fourteen years, even with the right of renewal referred to, is absurdly short. The business man, who in many cases must look for a return from his operations not year by year but often only over a period of time, is liable to experience considerable embarrassment where he is faced with the prospect of disturbance after such a brief period. Very many businesses, especially in a young country, are dependent upon the financial support of the banks and other lending institutions, and the security offered by the trader to the lending institution is, generally speaking, the business assets, which are generally comprised in the undertaking as a going concern, and the business premises. Anything which tends to raise doubts as to the value restricts credit and hampers trade and progress of the district generally. I regret to have to say that the present Corporation leases are worthless for security purposes. I do not know of any of the larger lending institutions in the city which will make advances to the lessees.

Second, as to the reasonableness of the rent, it does not appear to me that the rents asked by the City Corporation, especially the rents asked on a revaluation, are at all reasonable. It had been the practice, until the D.I.C. decision was given, for the arbitrators appointed to settle the question of rent, to ascertain the freehold value of the site, and allow a percentage of that value as the fair rent to be paid. In my judgment, and, I think, in the judgment of every man who has had to deal in a practical fashion with the matter, this worked out most inequitably. The only sound principle, in my view, is to take the return that is to be made from the site, having regard to all the usual conditions generally adopted by a prudent business man. I can speak with some special and practical knowledge of the way some rents have been fixed at least, as some years ago my firm was directly interested in a leasehold property of the Hunter Street endowment. The rent of that section was increased in 1911 from £242 11s. per annum to £706 per annum, an advance of not less than 291 per centum per annum; and in addition to this my company was mulcted in legal and other charges, in order to secure a renewal of the lease for a further period of fourteen years, to the extent of about £70. Unfortunately for my firm and others whose properties then came up for revaluation the arbitrators—or, rather, the umpire—proceeded to ascertain the rent by endeavouring to find the freehold value of the land as if it were available for any purpose at all, and was not influenced in any way by the return that could be made from the premises in ordinary business calculation. Very many other lessees at that time suffered similar extraordinary increases in their rent, and these increases were such as led to an investigation by the lessees of the terms and conditions of their leases, which I am perfectly certain none of them had ever understood. It is true that after an application had been made to the Court of Appeal in the D.I.C. case rents were fixed upon a more reasonable basis, but this afforded no relief to those whose rents had already been fixed other than the melancholy satisfaction of knowing that the method of valuation adopted in the previous cases was wrong.

Third: This brings me to the third element I spoke of—namely, the conditions the lessee must observe during the lease and understandable conditions of renewal. In my opinion the evil arising from uncertainty or divergence of opinion as to the conditions to be observed by the lessee during the term and as a preliminary to renewal cannot be overstated, and in this respect the Corporation leases are unutterably bad. I do not think there is any ignorance of the fact that neither the lessees nor their legal advisers have been able to fathom the real meaning and effect of these leases. It certainly does not seem a reasonable or sensible thing that lessees should be asked to carry on under a lease from such a body as a City Corporation without a clear understanding of the rights and obligations under that lease, yet this is what, I venture to say, every Corporation lessee has done for years past.

There is a further objectionable feature in the Corporation leases in that they contain no provision for compensation for improvements effected by the lessee. The effect of the absence of such a provision is a tendency towards what might be described as a compulsory purchase by the lessee of his own goodwill in cases where the lease has to be put up for auction. Speaking generally, the short term of the lease, plus the chance of an excessively heavy increase in rent upon renewal without any compensation for improvements, renders these Corporation leases most undesirable as a base from which a business man can carry on his operations, and upon which to invest money in the erection of substantial buildings. At present they are absolutely worthless for security purposes, as lenders recognize that it is quite within the bounds of possibility that the lease may become a liability instead of an asset. In the case of three large corporations of which I am a director none will accept a Corporation lease as a security for an advance. To make them attractive and equitable from every point of view I would respectfully urge—

(1.) That leases for a term of sixty-six years should be granted, such leases in the first case being offered for sale by tender or public auction at the upset rental fixed by the lessor.

(2.) That at the expiration of each term the rent for a further period of sixty-six years should be fixed by arbitration in the customary manner, and the value of existing improvements determined in like manner.

(3.) Should the then tenant elect not to continue his lease he should have the right to surrender same, and be paid half-value of his improvements as assessed in the manner aforesaid.

(4.) On the surrender of the lease the lease should then be offered for sale by tender or public auction for a new term of sixty-six years at the upset rental, weighted with the total value of the improvements.

By providing for payment of value of improvements to the extent of one-half there would be every inducement for a tenant to maintain his premises in a good state of repair, whilst under existing conditions there is no such inducement. There should be a provision in the lease that the lessee should be compelled to keep his premises in good order and condition, fair wear-and-tear excepted. Before building plans of buildings it is contemplated to erect should be submitted to the lessors for their approval or otherwise.

I see no reason why there should be any difficulty in securing the services of competent and experienced men to act as arbitrators and umpires in conformity with the practice that has hitherto obtained, provided that the method of ascertaining the rent is more clearly defined to ensure something reasonable. I would, however, point out that, if the terms of the leases are altered in the direction I have recommended, it is more than reasonable to assume that in the matter of rent there would not be such a wide difference of opinion between the arbitrators, as the one acting for the lessor would know that in the event of his stipulating for too high a rental the lessee would decline to continue his lease, and would then be entitled to receive from the lessor half the value of his improvements; and it is manifestly in the interests of the lessor that there should be no break in the tenure of his leases.

1. *The Chairman.*] We are exceedingly indebted to you, Mr. Beauchamp, for your views upon the subject. There is one question: You spoke of the fact that these leases are not treated as available security in the first place, and in the second place you mentioned that there is no inducement for keeping the places in repair. What I really have not been able to fathom is this: that in Dunedin, as we have it from the evidence taken there, for nearly fifty years this system of leasing has been in vogue, and there is no objection brought forward to-day except that the leases ought not to be put up to auction. They are accepted there by the various lending establishments and treated as good security up to a certain amount. The difficulties that have arisen here have never arisen there. Now, either there must be some difference in the people, or else the method of arriving at valuations has been something different from what it is here. The plan of arriving at valuations there, according to what we have heard, has been generally to take a rate of interest on the capital value—not the current rate of interest, because it is recognized that these rentals make the best security possible. Why that is not applicable in Wellington I really have not been able to understand. Wellington is the only place where we hear of these difficulties arising. In Auckland they did try this system, but under the last Chairman of the Harbour Board they reverted to the long-term lease without renewal. Can you explain how it is this difference exists?—I do not think that with the conditions that obtain Dunedin can be really compared with Wellington, for this reason: Dunedin has been really retrogressive to a certain extent, while Wellington has been progressive. Wellington has been progressing so that within the last few years there has been a dearth of land, and people have snapped up the leases at the price fixed by the Corporation without a full knowledge of the oppressive conditions that would be imposed on the renewal of the leases. As to security, I would point out that prior to the revaluation of the Hunter Street endowment a large institution,

the Australian Mutual Provident Society, was willing to advance 50 per cent. of the value; but since that revaluation the A.M.P. Society, and also the Equitable Building Investment Company, of which I am a director, and the Bank of New Zealand would decline to take one of these leases as security for an advance unless it was supplemented by some other attractive cover. It might in the case of a bank be taken as a make-weight, but I would not countenance an advance made by the Bank of New Zealand on leasehold under present conditions; because, I would point out, it is conceivable that instead of an asset you might have a liability. Our own firm's land was jumped up 250 per cent.; the building might not be worth the value of the land, the value of the land being determined for other purposes than that for which the property was occupied. In Auckland the Harbour Board lease is most attractive—sixty years—and a business firm has no difficulty in selling its interest in a lease, or in raising money upon it if they want money for business purposes.

2. What has happened there is that the tenants have the lease for sixty years at the existing value of the ground, and the Harbour Board will get nothing out of the increment in the value of that land for sixty years; and it does not at all follow that the same rental would not have been obtained if the period had been twenty-one years. The tenant would have been quite ready to take the risk at twenty-one years at the present rental instead of getting a gift of it for sixty years?—I take it it is not the function of a large public body such as the Corporation to extract the uttermost farthing. I think they ought to take a more liberal view than that so far as business is concerned. In the life of an ordinary business sixty years does not seem such a long period. I have been in business in Wellington forty years already, and have been subjected to one revaluation, and found it a very unhappy experience.

The Chairman: Was not that due to the extraordinary rise in the price of freeholds in Wellington? I had an instance in my own experience of a piece of land, bought for a very small sum, nothing done for twenty years, and sold at a marvellous price. It was in the direction of the Royal Oak.

Mr. Skerrett: His Honour the late Chief Justice holds a freehold section in front of the Supreme Court. He has held it, I think, for some thirty years. It was purchased then at a very high price, and is not disposable of now at a price that would recoup him. That is one instance.

The Chairman: There are instances the other way.

Witness: I might explain that the whole of the Hunter Street block was in the first place bought by Mr. T. Kennedy Macdonald, and he was only released from his obligations in connection with the land by filing a declaration of insolvency; and then the Board released him, and it fell into the hands of another purchaser, who finally sold it by public auction for a bonus of £105.

3. *The Chairman.*] Between 1890 and 1911, is not that the period during which values in Wellington rose enormously?—They did rise very considerably.

4. It was when things were rather stagnant until after the cleaning-up of the Bank of New Zealand in 1895, and then things went up?—Yes; a good many wholesale firms became domiciled in Wellington, and consequently there was a big demand for land, and they were induced to take up Corporation leases. For the first period of twenty-one years I admit the rents were reasonable, and in 1911 we were prepared to pay a substantial increase, but not the increases as finally fixed. I think that to describe the proceedings as arbitration is farcical. I would like to make the point that you cannot really compare Dunedin with Wellington.

The Chairman: I admit there is much to be said, but it does not follow there is no comparison. I hold a Corporation lease, and under the valuation five years ago they raised me nearly 50 per cent., and all my neighbours all around me in that particular block were raised in the same way. That was on a lease of twenty-one years. Rents have not gone down in that way. There was a tremendous fall of rents in the eighties, but since then they have been steady. In some cases they may have gone down, but there has been no general fall.

Mr. Thomas: The evidence given showed that over the whole block leased after revaluation the aggregate increase in the rentals of the Beach lease was 52 per cent.

Witness: Against 291 per cent. in my own case.

The Chairman: In many cases leases fell in. It shows that whatever the outside view may be the inside view in Dunedin is that the place is not going back, and they are prepared to pay higher rentals for their properties instead of lower.

Witness: My reason for saying that the tenant would not be induced under existing conditions to maintain the premises in a good state of repair is this: If he knows that at the end of the term he is not going to get compensation for his improvements there is no inducement for him to spend money on improvements; but if he is going to get up to 50 per cent. on the value of the improvements there is every inducement for him to keep the premises in a good state of repair.

5. *The Chairman.*] What you ask is that the tenant, if not satisfied with the rent, should be allowed to throw up his lease and get a certain proportion of the valuation. Why should not the landlord, if he thinks the rent too low, be entitled to expropriate the tenant? If it works one way why not the other?—That is one of the risks the landlord has taken.

6. I think if you want it one way you must have it the other as well. There must be some protection for public bodies so that they are not exploited. Why should not they, if the rent is made too low in their opinion, be entitled to say to the tenant, "We will take over your building"?—Does it not come back to my statement as to the importance of clear conditions? People are not going to give a large price when facing these conditions, but if the terms are liberal they can afford to pay a higher rent to the Corporation, provided they get fair compensation for the value of the improvements and a decently long lease. So far as I am concerned

I would cheerfully pay a higher rent so long as I could get terms and conditions fixed, but in my present frame of mind I would no more think of taking up a Corporation lease than I would think of throwing money into the sea; and as a lender I would never consider the question of making an advance on a Corporation lease.

7. *Mr. Thomas.*] Are there any unimproved leaseholds at the present time?—A few, not many.

8. Is there any demand for them?—The Wellington Harbour Board are the only people who have land to any extent. It is in process of reclamation, and they have not been successful in getting the land off rapidly, though some people who want the land have had to take it recently.

9. Have they had extravagant rentals?—No, they have been more reasonable since 1911.

10. Do you think the experience in Wellington should be used for regulating the position as between landlord and tenant?—I think so. Fourteen years is too short a period—you are in a perfectly unsettled state the whole time.

11. Do you not think it has been done for the purpose of increasing the rental every time?—That is hardly the view the landlord has taken.

12. *The Chairman.*] If things had been going down the tenants would believe that twenty-one years is too long?—That is not the experience as a rule in a young country.

13. *Mr. Milne.*] I have no doubt you know the leaseholds are not paying the lessees particularly well at the present time: do you not think that at the end of the period, as between landlord and tenant, if the tenant had made a bad bargain, that he should expect a lower rental from the landlord instead of a higher?—Up to the present I think where there has been revaluation there has been an increase—the lessee has not had a reduction.

14. Have the rates in Wellington been increased? If the value of the property is increased that might double or treble the rates. Do you not think that being a burden on the land should be taken into consideration in fixing the rental?—Yes. Take my own case: the increase in the rates on the property I am connected with amounted to nearly £70 a year.

15. *Mr. Thomas.*] Seeing that the present tenure of a perpetually renewable lease gives an absolute security of tenure to the lessee, do you consider he should be in a different position in regard to compensation for improvements from that a freeholder would be in if he made a bad investment?—The man who acquires a freehold takes the circumstances into consideration and bases his price upon them.

16. That is what you object to in this, which bases the rents on the freeholder's estimate of value?—I say that practically none of the lessees of the Wellington Corporation understand the methods to be applied when the matter of revaluation comes up.

17. With security of tenure and a wise system of revaluation the lessee's position is very little inferior to that of the freeholder?—Of course, where there is to be compensation for improvements you set up what I consider an ideal Court. I think myself, if there is to be a provision for improvement, that the present method of assessment can be continued—that is, that each party appoints a valuer, and between them they appoint an umpire. I think in the past that system of valuation, not in regard to Corporation leases but in regard to other matters, has worked admirably.

18. *The Chairman.*] In large departments of business valuations it is the method by which we arrive at value, whether in insurance losses or mercantile losses; in fact, business is permeated by this idea of arriving at the value by three valuers. There must be some mistakes made at times, but what can you have to value except valuers unless we take an automatic rate of interest upon what may be called the Government land valuation from time to time?—Up to recently there seems to have been considerable difficulty in two valuers arriving at something like a fair rental, and, of course, in that the rental is fixed by the umpire, and I think that in most cases he has adopted the ready method of taking the difference between the two parties and dividing it by two.

19. *Mr. Thomas.*] The fault really has been in the tribunal. It is a system by which the nominated valuers have been advocates, not valuers. The practice which has worked so smoothly in Dunedin to get over that difficulty is that the public body orders a valuer of standing to ascertain the present value of the section—no instruction to get the maximum rent, merely to go in and assess the value. The other parties nominate their valuer, and they appoint an umpire. The work in Dunedin in an overwhelming majority of cases is a three-man judgment. If such a condition of things can be arrived at I should imagine you would get as near to absolute fairness as possible. Do you think that a board of expert valuers, as against arbitration as it has been understood here, would get over the difficulty?—The difficulty is to get those acting as valuers to take anything like what I consider an equitable view. Take my own case: I would sell my property at the assessment that has been made by the local valuers; in fact, I would take a slight reduction. That shows that the valuer is actuated by a desire to get the uttermost farthing out of the land.

20. Would you get over the difficulty by a clause whereby an appeal could be made against the valuation, and a Judge might authorize the submission of the whole thing to auction at the upset price fixed by the revaluation on condition that the improvements are also valued and the buyer of the lease has to pay the price of the improvements, but failing a bid at the upset it should be resubmitted at the old rental: would not that test it?—I think that should be only the last resource, and after provision that the person who does not wish to continue the lease should be paid compensation for improvements. I do not think it is fair to revalue the land and weight it with improvements on the understanding that the person who buys it pays the outgoing tenant. That was the difficulty with regard to the Harbour Board leases. At the end of the term there was revaluation, then the property was submitted to public competition weighted with the value of the improvements, and if the first tenant did not buy then the person who purchased the property had to pay the outgoing tenant the amount as determined by arbitration. It is

conceivable that a man might be carrying on a business and a stranger might come and say, "I can afford to pay £300 a year more to secure the premises because there is attached to them some goodwill of the business."

21. That is only as a last resort—I suggest that to avoid injustice?—I have thought a good deal about the matter, Mr. Thomas, and my opinion is expressed in the memorandum. I think the rent should be reasonable—a long term of lease, and half valuation for improvements at the end of the term.

22. *Mr. Milne.*] I suppose the real trouble, after all, is that in practice you find the terms are burdensome—that is to say, the rentals are absurdly high, based on a high valuation, and added to that there is the high rate as well, so that not only are your rates increasing but your rent is increasing?—Undoubtedly. If I could get for it what I consider the market value I should be prepared to sell and to get a freehold, though I might have to pay much the same in interest on the freehold, because I should know there would be no disturbance of business.

23. We find the Wellington rentals are fixed on something like 5 per cent. on the valuations: do you consider that reasonable or too high on the present valuation?—I have said the present valuations are too high, but assuming the valuations were fair and reasonable I think 5 per cent. would be a fair rate to impose. Any one who gets 5 per cent. rent is doing well, and the tenant has no cause to complain, but on the present valuations the lessees are paying too much.

24. The lessor is doing exceedingly well, and on the other hand the lessee has a very bad bargain, as a rule making very little out of the lease?—In my own case and in the case of others I know of a large amount is being written off with the object of extinguishing the capital, because towards the end of the term a man might not be in a position to do it.

25. Do you think that a tenant who expends the whole of his capital for producing capital is entitled to a higher reward than the lessee who spends nothing on capital?—I think something ought to be taken into account for the energy and skill which a man exerts in carrying on business, which enables him to produce—that he is entitled to a better return than the lessor.

26. It may prove that the lessor's property is appreciating in value while the buildings of the lessee are depreciating. Therefore do you not think the lessee is entitled to a better return, in reason, than the landlord?—I think that rule is generally adopted.

27. *Mr. Thomas.*] It seems obvious that whatever way you approach it it comes back to the capital value—the difficulty is to arrive at the capital value. Do you think you could get a working basis for these leases?—I do not think the basis of value is the rock on which lessee and lessor are going to split, provided the leases themselves were subject to fair and equitable conditions. The methods of assessment, to my mind, are not so important. If you provide fair value for improvements and a fairly long term you will find there will be no difficulty in arriving at the value of the land for rental purposes; I do not think there will be any trouble about that. It is not a difficult matter for business men to determine the capital value of land at the commencement of the lease. If you have that settled then you decide between yourselves what shall be the rate of interest chargeable on the capital value—say, 5 per cent., or 6 per cent., or 4 per cent.—and then you fix that and incorporate in your lease reasonable conditions as to length of tenure and improvements. To-day a man of small means cannot take up a Corporation lease. It is all right for the man of wealth; a man of large means can take up a lease on arbitrary conditions, but the smaller men are shut out altogether.

28. *Mr. Milne.*] Under present circumstances Corporations are forbidden to insert any provision for the payment of compensation—they have no funds out of which to pay for improvements?—That could be dealt with.

29. *Mr. Thomas.*] Is the small size of the Wellington allotments in many cases not answerable for the bad results yielded to the lessee? Considering the enormous capital value that has been placed upon them can they be profitably handled?—The difficulty of Wellington has always been the limited area of land in suitable localities. There are always offers for it.

30. *The Chairman.*] That is the reason of the high capital value?—Yes. Where you have limited areas they have been able to get excessively high rentals on the present method of assessment. The tenants had to take the property willy-nilly.

31. *Mr. Thomas.*] Would it not improve matters if the Corporation reacquired the small blocks and reallotted them?—I do not think it would mend matters very much.

32. *Mr. O'Shea.*] Will not the Wellington Investment Company lend money on leases in Wellington?—I cannot say.

33. Has not the position regarding these securities arisen since the Leaseholders' Association was formed?—No, prior to that. The revaluations of 1911 brought about that decision

34. And you were much dissatisfied with yours?—I was much interested

35. And you were aggrieved?—I never let my judgment be warped by such considerations. Others came to the same decision, and the decision of the A.M.P. Society was arrived at before I was a member of the board.

36. Supposing you were going to give compensation for a building after a sixty-years term, would that compensation be for the actual value of the building added to the land, or the value of the bricks and mortar?—I should take it to be the actual value of the building itself, or what it would cost to put up a building of a similar character, less a fair amount for wear-and-tear. Obsolescence ought to be considered. After the end of sixty years that would be fair wear-and-tear. I should get experts to determine what would be the value of the building at the time the improvements had to be valued. In the case of a manufacturer using sheds the buildings might be simply an encumbrance. Buildings would not be allowed to fall into disrepair if proper compensation were paid for improvements. The lessees appointed a business man as their valuer. I do not think you can compare the value given for hotel-sites with the value of land occupied by merchants' premises. I think you have to consider for what purpose a property is used at the time the valuation is made. There is no repair covenant in the Corporation leases, and, though that may show that the Corporation is satisfied with the way in

which the properties are maintained, I would point out that there is no inducement to the tenant to keep the property, towards the end of the term of the lease, from going to the bad. Generally speaking it was not the practice to allow the properties to go to the bad.

37. In the twenty-one-years renewable lease there is no covenant to repair, in the fifty-years lease there is: does not that point to the fact that the twenty-one-years lease is regarded by the Corporation as one in which the tenant's self-interest will induce the tenant to keep the property in repair?—That may be the view of the Corporation.

38. Do you know of any property leased by the Corporation that is paying 5 per cent.?—I could not offhand name one.

39. Do you think any system of valuation satisfactory whereby the valuers arrived at a rental in 1914 the same as fixed in 1890 in Customhouse Quay?—As I have said, we were prepared to pay a substantial increase, but we did not expect to be mulct to the extent we were.

Dr. F. FITCHETT examined. (No. 51.)

Witness: I understand your Honour wishes to know what the Public Trustee does in renewable leases. We have three systems, each of which is statutory. The one dealing with the largest and most valuable areas is the one applicable to the West Coast settlement reserves. I suppose there is from a million and a half to two millions of acres of land, and the number of renewable leases is about eight hundred.

1. *The Chairman.*] Both town and country?—No; the West Coast reserves are all country lands. Well, the Act provides that not more than three years before the end of the term, and not less than six months, two valuations are to be made by arbitration, and the rent of the new leases is to be fixed by adding 5 per cent. to the value of the fee-simple. Five per cent. is fixed by Act, and it is offered to the outgoing lessee at that rent. The lease is put up for auction by the Public Trustee at any rental he likes, not exceeding that fixed by arbitration, and burdened with the valuation of improvements; but he makes a separate valuation of the improvements, because there might be a change since the original valuation—a period of three years. If it is sold at the upset or above it the purchaser pays the outgoing lessee the value of the improvements. If the outgoing lessee becomes the purchaser, of course, matters stand as they were. If he does not get an offer at all then the outgoing lessee has the right to continue in occupation at the original rent until the Public Trustee can dispose of it.

2. Do you find many continuing in occupation?—No. What we do is, we have these valuations for renewal made in batches. We take land contiguous or nearly contiguous, and during the three years. During the last year we valued five groups, and there have not been more than two cases in which the outgoing lessee did not take it. The result I may quote: The rental under the old leases totalled £12,000, and under the new £29,500, showing an increase of £17,500. That system, so far as I can judge, has worked satisfactorily. I find there are very few cases where the outgoing lessee refuses to take the lease.

3. Pausing there for a moment, do you find valuation in batches economizing the expenditure?—Economizing the expenditure and introducing uniformity.

4. Do you think that in Corporation leases it would be an improvement to have a provision that these leases should expire at a definite time, so that they might be valued together?—Undoubtedly it ensures uniformity and diminishes the expense. The expense in our own case is exceedingly small. We have a graded scale: for 1 acre and under, one guinea; for 2 acres and over 1, two guineas; for 4 acres and over 2, four guineas; for 5 acres, five guineas. You see we have a batch, and the Public Trustee appoints one man and the lessees invariably appoint one man, and the result is a substantial thing for each valuer.

5. You have a third man?—Yes, an umpire; but he is seldom resorted to—he is an umpire, not a third arbitrator. Then we have the West Coast and Nelson Native reserves; they are town reserves largely; the whole of the Town of Greymouth and a great portion of Westport is comprised in these reserves. There the renewed lease is offered to the lessee at an annual rental of 5 per cent. on the unimproved value as fixed by the Government valuer, but both sides have to accept that. The Public Trustee may object, but if he objects it goes to arbitration in the ordinary way. The lessee is not bound to take it, and if he does not then it goes to competition at the upset rental fixed by the valuers, subject to payment for improvements as fixed. If it is not disposed of the outgoing lessee must protect himself.

6. Is it not your experience that there is no competition at the auction?—Yes, there is a very firm ring.

7. We have it in Dunedin. There is never any competition at auction; so much is this the case that they seem to think the auction might be dispensed with?—In Dunedin my experience was that the outgoing tenant always bid the upset, and that nobody bid against him. The other form is in connection with some land at Palmerston North—suburban lands—and they are disposed of under the Public Bodies' Leases Act. The term is for twenty-one years, and the tenant has the option to arrange for a renewal under either the First or the Second Schedule of the Act. He makes his election within six months of the expiry of the lease. If he happens to proceed under the First Schedule then valuers are appointed and one valuation is made—that is the fair rental of the land, omitting the improvements; but there is no separate valuation for improvements. If he does not take it he forfeits all improvements. Under the Second Schedule valuers are appointed and two valuations are made, one of the value of the ground-rent and one of the substantial improvements. The lease is then put up to auction burdened with the valuation of the improvements, and the purchaser pays the outgoing tenant the value of the improvements. If the lease is not disposed of the improvements are forfeited. These schemes we have are each fixed by statute. I cannot say how the Palmerston North scheme has worked because the question has not cropped up.

8. Do you know the Wellington form of lease?—Yes.

9. Would you care to say what your view is upon that lease, whether it is a good lease or otherwise? I do not know whether you know the tenants' objection to it. First of all they object that the term is too short—fourteen years?—I think the term is too short myself.

10. Your experience is that fourteen years is too short a term?—Undoubtedly.

11. The question seems to be how to arrive at a valuation. Some take the capital value and calculate a rate of interest on that. Others pursue a more ambitious method and endeavour to find out what a reasonable man would believe to be a reasonable rent to put on the land—what he could put on the land and what he could make out of it—and then to arrive at what he could afford to pay, with the result that he could afford to pay nothing in many cases as far as I understand from some of the examples?—My own opinion is that the system of appointing a valuer on each side and then an umpire is a system attended with difficulties to the third person, who may be influenced by either. If you could get the matter determined by somebody absolutely impartial! Our Nelson and Westland system of taking the Government valuation is absolutely impartial. A special valuation is made, but in making it the valuer has the saving grace that he is the valuer for the district, and his valuation for the particular farm he is dealing with is bound to be influenced by his knowledge of values. The same principle would apply in the city. If the valuation were fixed by the Government on the capital value the rate of interest on the capital value might be fixed arbitrarily. It is fixed by Act in our own case at 5 per cent. I do not think that is an unreasonable sum to fix. That is a fair charge on the capital value. It is what land would bring if unencumbered and sold by auction under reasonable conditions of sale.

12. With country lands I can see that applies: in towns land, of course, varies so much, as being useful for advertisement or otherwise. A farm is always to be judged by what you can make out of its cultivation?—True; but I know a city valuer proceeds on that principle: when he is valuing a particular section in a street he is guided by the values that have already been given in the street, and the broader the basis on which the valuation proceeds the sounder the value.

13. *Mr. Milne.*] If the lessee had the same right that the freeholder has of calling on the Government to take over the property if the valuation is wrong your system would be excellent; but he has not, has he?—I do not know if there is statutory power for paying compensation, otherwise it could not be done, and it might be a disastrous thing for the lessor to be burdened with a lot of buildings.

14. Your experience, Dr. Fitchett, with regard to the Valuation Department is that the Department's valuations are becoming increasingly more important than they have been?—I think so.

15. They are relied upon by people investing moneys?—The Public Trust and the Government Insurance, the chief lending Departments, lend on nothing but Government values.

16. And they attach more importance to Government values than to private values?—In the case of the Public Trust over £10,000 we check the values, but we are guided by the Government valuation. And there is little use in making the private valuation save as a check.

Mr. Skerrett: Neither in regard to country lands nor town lands do I regard the Government as competent to make such valuations as ought to be relied upon for really important purposes. Most of the valuers have grown up in the Department, and many have not been concerned in the buying or selling or in the farming of land.

Witness: I hold no brief for the Valuation Department, but the broad fact remains at the present time that a large fund of money has been invested by the Public Trustee and no difficulties have arisen. Practically all the money is invested on those values, and we have not had in half a dozen years half a dozen in which the security has gone bad. And the Insurance Department can say the same.

17. *Mr. Milne.*] Do you not think the Government valuers are guided by what takes place round about them—sales of property and so forth—and I suppose your experience is that these men are trained in a theoretical way by the Department?—I am afraid Mr. Skerrett is right, and that in a way they have merely grown up in the Department, but they get to know values.

18. In reality the Government valuer for a particular district would, in your opinion, be more reliable for fixing values than any outside valuer?—Undoubtedly.

19. *The Chairman.*] He would have at his command the largest stock of information probably?—Yes, local knowledge from travelling up and down the district.

20. *To Mr. O'Shea.*] We have power to lend on Government leases, and the limit is three-fifths. These securities are satisfactory; they are renewable leases, leases in perpetuity, and leases with right of purchase. We have no right to lend on Corporation leases, and would not do it—it would be too great a liability. As a matter of fact, the higher the rental the more dangerous a lease becomes from a money-lending point of view, because if it fell into our hands we should have to pay the rent.

21. *To Mr. Skerrett.*] I have no personal knowledge of the personnel of the Valuer-General's staff, and no knowledge of the men who make the Government valuation for the City of Wellington. The Government valuations are only checked by outside independent valuations in the larger cases. I could not say upon what principles Government valuers determine the value of pastoral or agricultural land. I have never examined any of them on the subject. The main factor in determining the value of agricultural land must be its productivity. The sales of land in the vicinity ought not to be taken as a governing factor, for in many cases they were fictitious or paper sales. In the case of city lands the basis of valuation should be the same as for country lands—what it would produce if offered at auction under reasonable conditions. All valuations are matters of opinion. I cannot agree that the value of freehold land is to be found by ascertaining its productivity, capitalizing that, and adding perhaps something for unearned increment. I do not think the productivity of city lands can be gauged at all; you may have a good

site and a bad business man, and its productivity is gone. Where the area of land is small it is difficult to be guided by sales, as one firm may be prepared to give a high price because it wants that land. Assuming that the sales of land in Featherston Street to Dalgety and Co. at £200 a foot and to an insurance company at £220 a foot were put forward as the basis for determining the value of the bulk of the land there I would not think that a fair method. I have arrived at the conclusion that Wellington Corporation leases are not satisfactory security.

Mr. C. B. MORISON, K.C., examined. (No. 52.)

1. *The Chairman.*] I understand you usually acted as one of the arbitrators or as umpire in making the valuations for the city?—I think I was mostly appointed the arbitrator for the city.

2. You may take it that your methods, whatever they were, to arrive at the rentals are challenged?—Oh, yes.

3. And what we want to get at is what is the best method to arrive at rentals. To begin with, of course, we have to get at the question of how the rentals should be valued, and then there is the means by which the valuation should be made. These two broadly cover the questions we have before us?—Well, of course, any value is purely a matter of opinion; it is not capable of mathematical ascertainment, and various elements are always put forward in evidence before the arbitrators. One method put forward was that we had to assume the place was to be used for buildings to be sublet. One would really have to consider the thing from half a dozen different points of view, particularly the use to which the property was likely to be put during the currency of the term. I cannot say that I adopted exclusively any particular method. One checks one's view as to value by the evidence and by the assumption that the landlord was entitled to a fair return upon the capital value, and then the difficulty arose that present capital values, though so called, might necessarily involve a certain amount of prospective value. That, however, it seemed to me, did not operate unjustly to the tenant, because the lease was for a rental fixed for a period of fourteen years, so that it might be that, taking the present capital value, if it did involve a certain element of prospective value, the amount fixed at a rate of interest on that value ought to be a fair rent for the period. The difficulty which I always understood existed in the minds of the tenants was the length of term—fourteen years.

4. What is your view about that?—Well, of course, the length of term would operate either with justice or otherwise according as the land remained stationary in value, or tended to rise, or went down. If it tended to rise the tenant would naturally want the longest possible term at a rent fixed having regard to present values. Naturally enough, if the tendency was for values to recede, the tenant would like to submit his case to arbitration within as short a term as possible to have the lease revalued. So that I had not to consider in the course of any function I had to discharge whether the term was too long or too short, but really what was the fair rent for the given term of fourteen years; but it was impossible for me to go into that question without to some extent considering that point and some others that depend upon whether the land is going to rise or fall.

5. Did you, as a matter of fact, in arriving at an estimate of the rent, or did you find that the others in doing so said, "We will make this rent so-much less because the term is only fourteen years as against twenty-one"?—Well, I looked at the matter in this way: so far as I could, taking all the different points of view put forward as a proper standard, and giving them all due weight as far as one could—none could carry them out as a rule, it had to be a sort of average—my own conclusion was that Wellington values were more inclined to advance than to recede during the next fourteen years. I concede at once that the cost of arbitration every fourteen years is a matter of some objection to the tenant and to the landlord, but in my opinion that would be more than compensated for by the advantage the tenant would get from the prospective rise in site-value as fixed to-day.

6. So that if the term had been for twenty-one years you would not have increased the rental—you would not have given the Corporation a higher rental?—That I am not prepared to say.

7. We are told the longer the lease the higher the rental. If all these provisions were taken out of the Wellington lease would you have given higher rentals than you awarded? And what percentage, how much higher, would have been the rentals if they had got ideal leases?—I do not depend on the percentage myself. I checked them in other ways—by Government values.

8. Do you think any one would give a penny more because he got a twenty-one-years lease instead of fourteen years?—I do not think in this particular lease it would have made very much difference from the tenants' point of view.

9. *Mr. Thomas.*] Is not the basis on which land is to be assessed under statute the present letting-value, so that you could not take the unearned increment into consideration at all if you assess the rental on the basis of the present letting-value?—I may have been quite wrong, but my view of my obligation was to ascertain what would be the fair average rental for the period of fourteen years.

10. *The Chairman.*] In Dunedin, where they have both Harbour Board leases and City Corporation leases, one for fourteen and the other for twenty-one years, the rental is valued on the same basis?—I should think so.

11. The tenant does not give more for a Corporation lease than for a Harbour Board lease, and the value is on exactly the same footing?—I did take it to some extent into account. These arbitrations are very strenuously fought. There is no doubt they do impose on both parties a very substantial expense, and one felt that if that arbitration could be avoided or postponed for seven years it would be an advantage to both parties, assuming you could do justice. The difficulty is that if you assume that values are going to rise or tend to increase you must have regard

to that when you fix the rent; but if, on the other hand, values are likely to fall, and you can only form a conjecture, then you see at once that the tenant instead of asking for a longer lease would want a revaluation every ten years. There are complex factors. It seems to me you cannot fix any term which will operate with certain justice to the landlord or tenant. My view is that valuation every twenty-one years would be a reasonable valuation.

12. *Mr. Milne.*] Do you not think that in estimating the present value of the property you are going beyond your province in estimating the prospective value?—I do not think so; it is the present value of the lease.

13. I understand the period of the lease is to be at the present value, not the prospective value. It might be a very unfair thing to fix the prospective value; it might decrease in value. I think the probabilities are it was the intention to fix the present value, not the prospective value at all, and that in going beyond the present value you are exceeding your province as a valuer?——

14. *The Chairman.*] Is not this the case: that if there is a piece of land that you estimate is going to rise 25 per cent. in five years' time that fact forms part of the present value?—Yes, any estimate of present values always involves prospective advances in price.

Mr. Thomas: In Dunedin the present value is taken.

15. *The Chairman.*] "Present value" includes present value of a prospective sum?—As a matter of fact, of the rentals of the last batch we had few came to 5 per cent. of the present values. I dissented from the other two valuers, and because I differed I put my reasons in writing. I think the values were something less than the Government valuation. Mr. Hayes, I think, made a deduction of 10 per cent. on the Government valuation. One had to consider special circumstances. In the valuing of these sites one has to act instinctively—one cannot do it otherwise—you have to get an appreciation of the popularity of the side of the street, and so on. For instance, in Lambton Quay one side of the street is more valuable than the other at certain points, and in Brandon Street one side is more valuable than the other. There are certain parts where people naturally tend to go, and certain parts where they do not. One has to get an appreciation of that and consider it in each case. It is not a matter that can be done by foot rule.

16. *Mr. Milne.*] Are your values less or greater than the Government values?—As to the Government valuation I am rather inclined to agree with Mr. Skerrett, and should not be disposed to lend a client's money on Government valuation. I should want it supported by a valuer who had special knowledge of the property. On the whole I think the Government valuation is near the mark, but I find some excessive and some quite below.

17. *Mr. Thomas.*] Do you consider, by reason of ground-rents being superior security to mortgage, that a fixed deduction should be made in the ratio between ground-rent and mortgage rate—say, 1 per cent. or 2 per cent. below the current rate of interest?—I do not fix any ratio because the mortgage rate fluctuates. I think on the whole the interest which the landlord would get under my valuation was in each case under the mortgage rate of interest.

18. As a matter of principle I suppose you recognize that ground-rent should be a lower rate than the ordinary average rate for money lent?—I think, subject to this qualification, that if the lease is unimproved land on ground-rent you will have no security excepting the solvency of the tenant. When improvements are on then you do get security. The solvency of the tenant is the only security pending improvement, and it may be the improvement will spoil the site for the next tenant. It is a difficult thing to lay down a general rule. One has simply to consider each site on its own circumstances, with a general regard to surrounding values; not what some man gave for a site for a special purpose—that is the wrong way of considering the matter. A man may be prepared to give a big price for a special purpose.

19. *Mr. Milne.*] You stated that in assessing the value you considered the landlord entitled to a fair——?—Unquestionably.

20. Have you ever, in arriving at a conclusion, considered the position of the tenant?—Oh, certainly. We were in this difficulty: we had no information given us by the tenants as to what percentage of net or gross profits any particular business treated as fair rental—not any business but the particular class of business for which the site was suitable. Supposing a man is taking a house, he considers he can only afford a certain amount for rent. I assume there is a principle by which a competent business man—say, a bootmaker—can say, "Very well, I cannot afford to give more than a certain percentage of the profits as a rental." He invests a certain amount of capital, and has to estimate what rental his business can afford to pay. We had no information of that kind. It may be difficult to give it. I do not think any particular individual might be expected to come forward with a statement of profit and loss for our inspection—that is too drastic; but we were given hypothetical rents from subletting that were of no assistance to me.

21. But no person would think of leasing an unimproved section for the purpose of erecting a building without expecting a fair return?—Beyond question; but, when he leases a property, as a rule he must have made a calculation as to what he proposes to pay for rent. We never had any information put before us. Two cases struck me as in rather sharp contrast. One was Kirkcaldie's draper's shop, the other the Midland Hotel site. My recollection is that we were told the Midland Hotel site ought to have a very low rental. There were different arbitrators. I think the Midland Hotel site brought seven guineas or something less, and the opposite corner £5 10s.: the one was a draper's, the other a publican's. I remember there was a sharp contrast, but on paper there was nothing to choose between them. It may have been that different sets of arbitrators had different values.

22. Do you value all the sections as you would drapers' and publicans'?—No, you have to consider what class of business generally may be carried on upon it. You are given hypothetically a plain piece of ground without a building. The arbitrator starts on the assumption that the present building is wiped off. You are given the piece of ground, and you are to say, having regard to the class of business which could be carried on successfully on these sites, what is a fair

annual ground-rent. You have to disregard—though one cannot wholly disregard—the fact that there is an existing building, and no doubt the tenant would get consideration by reason of the nature of the existing building. It is impossible to value any site in any town without considering whether it is a retail site or a wholesale site, and you have to consider whether it is suitable for any particular class of business; and the fact that a business has been carried on upon the site for twenty years makes it a common-sense conclusion that it is suitable for that class of business.

23. I believe you regard shop-sites as most expensive. Are not sites for shops rather limited?—There are shop-site areas—certain shop streets. You would not call a site on the Terrace a shop-site. If you value a site on the Terrace you would consider what it was worth for residence. Supposing I were asked to value a site on the Terrace I should look upon it exclusively as residential.

24. *Mr. Thomas.*] Sargood's site is an instance of a very high rental. As now valued it should be used for shops, not for warehouses: is that so?—I do not know. I should never have valued it as a shop-site. There are some shops there. E. W. Mills's is in the neighbourhood.

The Conference adjourned at 1 p.m. until 2.15 p.m. On resuming,—

Witness: May I say with reference to my answer given this morning that I might be wrong in treating the average fair rental on a fourteen-years base. My view is that a proper point of view was to ascertain what was the fair rental for a period of fourteen years—not necessarily the fair rental to-day.

25. *Mr. Milne.*] You are discounting the future?—You may do it the other way if values are falling, so that the average would be less than it is to-day; you would not give as large a rental as if there was a rising tendency, and you do this by taking the future to some extent into account. That is made largely by fixing a sum for what is called the present capital value. When these valuations are made you always do bear in mind the future. My experience is that most valuations are made, unless it is a valuation for mortgage purposes, with some regard to the future.

26. My contention was that it was the present value, not evidence as to the future value, you had to consider. Unless you are a prophet you cannot arrive at the future value?—But valuers do think of it; they say the land will rise in value.

Mr. Skerrett: That is, the speculative value.

27. *Mr. Milne.*] It may be a decreasing value?—Then, if that is so, fourteen years is too long a period.

28. It has no regard to the length of term. What you have to ascertain is the present value of that particular section in exactly the same way as you would ascertain the present value of any other thing. You are expressly prohibited from looking to the future?—I should like to see the actual terms of the lease referred to.

Mr. Skerrett: "A new lease for the term of fourteen years, at the valuation ascertained as aforesaid."

The Chairman: My notion is that if a property has a rising value probably attached to it that is an element in forming an opinion of its present value.

29. *Mr. Milne.*] If you are valuing any article you value it not for a future period but for the present day?—Land has a tendency to go up. If you have a piece of land which is now bringing in 4 per cent. on what you paid for it, and a railway-station is projected near by, you will immediately raise the value of that land, not because it is going to give you anything more at present, but because in three or four years you will be able to sell it for something which produces 7 or 8 per cent., so that you do take into account the probable rise.

30. Does not the Public Works Act prevent any looking forward and estimating values?—That is another matter. On the other hand, if what had been a shop area was no longer a shop area, that would be taken into consideration.

31. *Mr. O'Shea.*] You have been arbitrator on several occasions, and have acted as assessor in the assessment of compensation. Have you ever had any instruction or direction from us how to act?—Never. I have been instructed to appear, and Mr. O'Shea has kept aloof.

32. It has been suggested by Mr. Skerrett that in one arbitration I asked that the rentals in Featherston Street should be fixed solely upon the price given by Dalgety's and the Royal Insurance Company: is that so?—I never understood that. Evidence was given of the price given by the Royal Insurance Company and Dalgety's as indicating somewhat the capital value of the land in that locality.

33. Did I mention any instance of land tendered for?—Yes, opposite Bethune's. I think we had every deal before us, and the price, as far as ascertainable, of every site in that locality. We had all the data that we could use.

34. In the case where a business man was the third valuer were you in any case unable to agree with him: with Mr. Ferguson and Mr. McIntosh—did you agree with them in any case?—I think Mr. Maxwell and I were in agreement, and that I was largely in agreement with Mr. Fell and Mr. Nelson. I think the whole three agreed.

35. *Mr. Skerrett.*] Was there not power to take the matter higher?—We simply threshed the matter out for the best part of a day. I could not lay it down as a rule that I agreed with business men.

36. Is it not the fact that in all the arbitrations in which you sat the counsel for the Corporation put his case for you to adjudicate upon in the main upon the present valuation of the freehold of the land?—In the main that was so.

37. I was present, as you know. Did the Corporation adduce any evidence showing the earning-capacity of any freehold or leasehold land?—I do not recall any instance. I do not think they had access to data.

38. I want the fact?—I do not recollect any case in which the earning-power of any particular piece of land was mentioned.

39. Was not the attitude of the Corporation's counsel throughout the arbitration in which you sat a distinct attempt to adopt a basis of calculation different from that of the Court of Appeal—different from that laid down by the Court of Appeal?—No, I cannot say that struck me.

40. Will you be kind enough to tell me what material to enable the Arbitration Court to determine what a tenant could fairly afford to pay for the sites was given on the part of the Corporation?—Well, Mr. Skerrett, I think I may put it quite clearly by saying that another side was given us to help us to value it. The tenants certainly did not give us the assistance we might have had in dealing with the shop-sites; they treated them as sites for subletting as offices.

41. That is criticism upon the character of the evidence. What I am asking is, was there any evidence presented by the Corporation's counsel to the arbitration by which you could ascertain and determine the earning-power of either freehold or leasehold land in Wellington?—I cannot recall any instance at the moment; I do not know if I could do so on going through my notes.

42. Mr. Ferguson has told this Court that in the main the Corporation's counsel invited the rentals to be fixed upon a percentage upon the rental as freehold value?—I have said already that in the main that was so.

43. That contrawise the only evidence presented by the Corporation was evidence of some tenders on lease by Mr. Izard and one or two others?—I do not think so. We had previous arbitrations. You have put the matter very generally. I suppose the position was that the Corporation was showing what was the capital sum it had and the income from the capital—the same that the tenants show that if they pay interest on that sum they would not make a profit.

44. I think I am right in saying that you agreed with the rental fixed for Levin and Co. in Featherston Street?—I agreed because I did not dissent. There were two against me. I think it too low.

45. Do you know what was claimed by the Corporation: do you remember that it was £7 a foot?

The Chairman: It is admitted that it was about £7 that was claimed.

46. *Mr. Skerrett.*] I want to put this to you: The T. and G. buildings were mentioned frequently in the course of the arbitration?—I think they were. Oh, yes, we had eight separate sittings. I think the T. and G. was mentioned.

47. Do you know that the rental in respect to the T. and G. section was £5 10s. per foot?—If you say so; I do not recall the actual figures.

48. You know as a fact that the owners forfeited the value of their improvement?—I believe they did.

49. Do you know what rental was asked by the Corporation? Would you be surprised that it was £11 10s. per foot? I will put this in because ordinarily, over and over again, the inquiry is made, Why has all this trouble arisen in Wellington and in no other place? [Document (tabulated) put in.]

Mr. O'Shea: I am authorized by His Worship the Mayor and Mr. Ames to state that when I suggested the lease-period of sixty-three years, with a rising rent on a fixed scale, they were merely propounding the lease that would meet the objection of the leaseholders; that they could not ascertain what rental they were going to pay on the renewals, and that that was a suggestion that would not meet the circumstances in a place where the values were rising as they were in Wellington. It was not intended to be the main proposition; they adhered to the proposition as laid down in my bond.

Mr. Skerrett, K.C., addressed the Commission on the following topics:—

(1.) Observations on the amending Act and its effect on the Corporation leases.

(2.) Inquiry as to whether the system of leasing embodied in that form of lease is an advantageous form of disposing of Corporation property by lease.

(3.) The nature of the tribunal to determine the quantum of rent, the period of renewal, and in this connection the reasons why greater conflict and irritation has existed in Wellington in relation to fixing the rents than in other cities.

(4.) Observation upon suggestions made by the Corporation's and other witnesses as to an improved system of leasing.

(5.) Whether in the circumstances of the City of Wellington, and having regard to the manner in which the capital value of freehold is arrived at in Wellington, there is any real relation between the capital value and the rental value for practical purposes.

(6.) Whether this Commission ought to recommend an *ex post facto* alteration to be made in the conditions existing in the Wellington Corporation leases, either (*a*) as to the nature of the tribunal to determine the renewed rental, or (*b*) as to other conditions of the leases.

WELLINGTON, FRIDAY, 2ND MARCH, 1917.

Mr. O'Shea addressed the Commissioners in reply, submitting that as the result of a careful study of the history of these leases he was satisfied that the whole action of the Wellington City Council had been as far as possible in conformity with the desires of the lessees.

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