

a special case stated under the Arbitration Act, R. S. O. ch. 62. sec. 9, as to the construction of a renewal clause in a lease for 21 years from January 1st, 1880, at a rent of \$106 for first year, \$130 for the next four years, \$145 for next five years, and \$178 for next 11 years. The renewal was to be at an increased rent to be settled by arbitration, "payable in like manner and under and subject to the like covenants, provisions, and agreements as are contained in these presents."

H. D. Gamble, for the landlord.

John MacGregor, for tenant.

The Court held that the arbitrators are bound to award.

The Court (FALCONBRIDGE, C.J., STREET and BRITTON, JJ.) held, approving *In re Geddes and Garde*, 32 O. R. 262, that the arbitrators are bound to award an increased rent, which may be a nominal increase, if they think proper, but it must be based not on the amount of rent for the last eleven years, but on the rent reserved for the whole term. That the arbitrators might make the increase either upon each year's rent or upon the average of the whole 21 years, but so that in the result the average annual rent is greater for the future term than for the past. No order as to the costs was made because upon the case submitted the Court had nothing to do with costs.

C. & H. D. Gamble, Toronto, solicitors for landlord.

John MacGregor, Toronto, solicitor for tenant.

FALCONBRIDGE, C.J.

JANUARY 6TH. 1902.

TRIAL.

BOWERMAN v. TOWN OF AMHERSTBURG.

Municipal Corporation—Power to Permit Laying of Gas Pipes under Streets—Private as well as Public Purpose of their Use does not Affect—By-law—Valid if Signed by Presiding Officer Appointed by the Council in Absence of Mayor, under R. S. O. ch. 223, sec. 272—R. S. O. ch. 223, sec. 566 (3) as amended by 62 Vict. (O.) ch. 23, article (a 8)—1 Edw. VII. ch. 26, sec. 24.

Action tried at Sandwich, brought by plaintiff on behalf of himself and other ratepayers, and the Attorney-General for Ontario, to have declared invalid a resolution of the council of the corporation, subsequently confirmed by by-law, allowing defendant Fraser to lay metal pipes under the surface of certain streets for the purpose of conveying acetylene gas to his neighbours, to restrain defendants from laying the pipes, and for a mandamus to defendant Fraser to restore the streets to their former state of repair.

A. H. Clarke, Windsor, for plaintiff.