HOUSE OF LORDS.

Friday, November 3.

(Before Lords Dunedin, Atkinson, Sumner, Wrenbury, and Carson.)

KERR *v.* BRYDE.

(In the Court of Session, June 24, 1922, *supra* p. 460.)

Landlord and Tenant — Increase of Rent and Mortgage Interest (Restrictions) Act 1920 (10 *and* 11 *Geo. V, cap.* 17), *sec.* 3 (1) *—Notice of Intention to Increase Rent—Failure to Give Notice of Removal — "Period during which but for this Act the Landlord would be Entitled to Obtain Possession"—Tacit Relocation.*

A house was let on 28th August 1916 for a period of one month at the standard rent within the meaning of the Rent Restriction Acts, and the tenancy was thereafter from time to time renewed by tacit relocation. On 27th July 1920 and subsequent dates the landlord served on the tenant the statutory notice under the Increase of Rent and Mortgage Interest (Restrictions) Act 1920 of his intention to increase the rent, but did not serve a notice of removal. The tenant paid the increased rent for a time and then got into arrears. In an action by the landlord for recovery of the arrears, *held* (*aff.* the judgment of the First Division, Lords Dunedin and Wrenbury *diss.*) that in the absence of notice terminating the tenancy the period in respect of which the increased rent was demanded was not a "period during which but for this Act the landlord would be entitled to obtain possession," and that accordingly the increase of rent had not been authorised by the Act.

The case is reported *ante ut supra.*

The pursuer appealed to the House of Lords.

At delivering judgment—

LORD DUNEDIN—As I am aware that the majority of your Lordships hold an opinion contrary to mine, and as that opinion is in conformity with the judgment below, it would ill beseem me to express confidence in the result I have arrived at. But as I am fortified by the reflection that my noble and learned friend Lord Wrenbury agrees with me, and as I think it clear that Younger, L.J., had he been sitting in this House and not as he was in the Court of Appeal trammelled by authority, would have come to the same conclusion, I shall shortly state my opinion.

The appellant is the landlord and the respondent the tenant of a small dwelling-house situate in Clydebank, near Glasgow. The house was let on 28th August 1916 for a month at the rent of £1, 2s. 6d. per month, the said rent to include occupier's rates. Occupier's rates amounted at that time to 4s. 3d. per month, so that the net rent was 18s. 3d. The house was one to which the provisions of the Rent Restriction Act of 1915 applied at that time, and to which the provisions of the Rent Restriction Act of 1920 now apply. The rates were raised, and in consequence thereof the landlord on 27th July 1920 served a notice in statutory form intimating an increase of 7s. 7d. per month to be exacted after 28th August 1920, and again on 26th April 1921 another notice intimating a further increase of 10 per cent., bringing up the gross rent to £2, 0s. 1d., the further increase to be exactable after 14th July 1921. The rent with the first increase was duly paid up to 14th July 1921. After 14th July 1921 the respondent began to fall into arrear, and the present action was raised in the Small-Debt Court for the arrears. The defence was that as the appellant had admittedly served no removal notice on the tenant unless the statutory form demanding an increase of rent could be taken as such, tacit relocation had taken place and there was no right to the sum sued for. Section 3 (1) of the Act of 1920 provides as follows:—"Nothing in this Act shall be taken to authorise any increase of rent except in respect of a period during which but for this Act the landlord would be entitled to obtain possession."

The case was transferred to the ordinary Court and judgment pronounced by the Sheriff. Appeal was taken to the First Division. The Courts below, following the case of *Newell*, decided by the Court of Appeal in England (1922, 1 K.B. 656), have held that the period during which an increase was sought was not a period during which but for the Act the landlord would be entitled to obtain possession, and they accordingly dismissed the action.

The Act in question is, I think, peculiarly framed as regards the order of its sections. It begins with imposing restriction on the raising of rent after the 25th March 1920. Now it is obvious that it is quite otiose as regards a current tenancy at an agreed rent, for the raising of rent dealt with in the statute is the raising of rent as against a tenant. It is not, so to speak, the affixing of a label on certain premises that they are not to be let at more than a certain figure, and the existing tenant if he is under a contract can stick to his contract and object to any raising of rent under it. Had the Act stopped there it would have quite failed in its object. The object was to protect tenants who had possessed under leases expiring from having their rents raised if they still wished to stay on. The real protection comes in section 5, which prevents a landlord resuming possession except under specified conditions which need not be enumerated, but which all represent a state of affairs which the landlord *ex proprio motu* cannot bring into being. That being so, what is the natural meaning of a period during which but for the Act the landlord would be entitled to obtain possession I lay stress on two things—first, the words are not "entitled to possess" but "entitled to obtain possession." That points to a continuing action. Second, it is not "is entitled" but "would be entitled." "But for the Act" means if the Act was not there. Now what is it that stops the land-

lord taking the continuing action which will entitle him to obtain possession? Surely the provision of the Act which prevents resumption of possession. It seems to me therefore that the moment you come to a time when if it had not been for the Act the landlord could have taken proper steps to get the tenant removed, but owing to the Act he was not in a position to take those steps, you have a "period during which but for the Act" the landlord would have been entitled to obtain possession. Upon the opposite argument which is to prevail the landlord ought to have given a notice which he knew when he gave it was absolutely inept for the purpose it proposed to fulfil.

It is not unworthy of remark that the view of the Act which is now to prevail creates a serious difference between the application of the Act to Scotland and England. For short lets it would be the same, but it was clearly explained by Bankes, L.J., in *Newell's* case that the result is quite different where there is a tenancy for a term of years which expires by effluxion of time. He calls this the first class of tenancies, and says—"In the first class the rent cannot be increased until the term has run out, but upon its expiry a notice of intention to increase rent will be valid without more." No such result would follow in Scotland. Tacit relocation where there has been no appropriate warning follows in a lease for years just as much as in a tenancy of months or weeks.

There are two other points I ought to mention to show that they have not been overlooked. The learned counsel for the appellant sought to argue that assuming he was wrong on the main point, he still should prevail upon the ground that the notice to increase rent was sufficient to operate as a notice to prevent tacit relocation, and he cited some cases of which *Macfarlane* v. *Mitchell*, 2 F. 901, may be taken as typical. I agree with Lord Mackenzie, who said that no such case could be here raised. Those were all cases where on the facts an implied acceptance of new terms was proved, which acceptance excluded the idea of tacit relocation. Notice to prevent tacit relocation must in the case of a small dwelling-house be in the form provided by the House Letting Act of 1911, and the statutory notice here given to increase the rent cannot be tortured into that form.

On the specialties therefore I do not think the appellant can succeed, but on the main question I think he is right, and I consider that the appeal should be allowed.

LORD ATKINSON—The principal, if indeed not the only, question for decision on this appeal is the construction of section 3, subsection 1, of the Increase of Rent and Mortgage Interest (Restrictions) Act 1920 (10 and 11 Geo. V, cap. 17). A previous Act *in pari materia*, entitled The Increase of Rent and Mortgage Interest (War Restrictions) Act 1915, was repealed by this Act of 1920. The transaction to which these statutes apply, the first while it was in force, and the second since it was enacted, are as follows:—A dwelling-house, No. 6 Union Street, Clydebank, was on the 28th August 1916 let by the appellant Richard Kerr, through his factor the appellant, James Stewart & Sons, to the respondent at a rent of £1, 2s. 6d. for a period of one month, including the occupier's rates, the rent being 18s. 3d. and these rates 4s. 3d. per month. The standard rent of this house within the meaning of the Act of 1920 is £1, 2s. 6d., and the net rent within its meaning 18s. 3d. The tenant entered into possession of this house at the date of the letting, and still continues in possession of it. On the 27th July 1920 the appellant by his factor served upon the respondent a notice in the form prescribed in the First Schedule to the latter statute, informing the defendant of his, the landlord's, intention to increase the rents then payable by 9·9 per cent., to become due and payable on the 28th of August 1920. On the 26th of April 1921 the landlord by his factor James Stewart & Sons served on the respondent another notice similar to the first, and equally conforming to the requirement of the said First Schedule, expressing his intention to further increase the rent payable by the respondent by 10 per cent. of the rent, and from and after the 14th of July 1921, which would raise the monthly rent to £2, 0s. 1d., of which £1, 9s. 8d. represented the rent; 10s. 3d. represented the occupier's rates. The respondent had fallen into arrear. At the time the debtor summons was served upon him he owed £4, 11s. 9d. to the appellant. It is admitted that no notice to quit or to remove was ever served by the appellants on the respondent. The appellants contend it was not necessary to serve either of them. The respondent contends that the contract made in July 1920 was continuing by tacit relocation, except that the amount of rent has been increased by the amount of rates payable by the landlord.

The respondent stated three pleas-at-law in the proceedings, Nos. 2 and 3 of which are important, and run as follows:—2. The periods in respect of which increases under the Act of 1920 are asked by the appellant not being periods during which but for the said Act the appellants were entitled to possession, the said increases are not due by the defendant. 3. The defendant not being in arrears with his payment of rent, the appellants are not entitled to possession.

The second of the defendant's pleas is based upon the provisions of section 3, subsection 1, of the Statute of 1920, which runs thus—"Nothing in this Act shall be taken to authorise any increase of rent except in respect of a period during which but for this Act the landlord would be entitled to obtain possession." The respondent contends that no notice to quit or to remove having been served upon him by the appellant, there never was a period created during which but for this Act of 1920 the landlord would be entitled to demand possession, and therefore that the increases of rent were illegal. The Sheriff-Substitute on the 22nd of March 1922 decided in the respondent's favour on his pleas 2 and 3. The present appellants appealed against

this interlocutor of the Sheriff-Substitute to the Sheriff, who on the 25th April 1922 refused the appeal and adhered to the interlocutor of the Sheriff-Substitute. Against this interlocutor of the Sheriff the appellants appealed to the First Division of the Court of Session, which, following numerous English and some Scots authorities, on the 24th July 1922 affirmed the interlocutors of the Sheriff and Sheriff-Substitute, dismissed the appeal, and remitted the cause to the Sheriff-Substitute. The words in section 3, sub-section 1, "but for this Act," can, in my view, only mean if this Act had not passed. The provisions and the powers conferred by this Act of 1920 touching this matter of the landlord's title to obtain possession are therefore to be put aside in considering when and under what conditions does a landlord under the ordinary law become entitled to obtain possession. It is in respect of the period during which he would under the ordinary law and independently of the statute be entitled to obtain possession that an increase of rent is authorised. The time at which a landlord may demand the increased rent is immaterial. It is the *period* in respect of which the increase is permitted that is the decisive matter. In my view the landlord can never in any true sense of the words be entitled to obtain possession of a tenanted holding till the tenancy of the tenant has been determined. Up to the moment of determination the possession of the holding belongs to the tenant, and no person, not even his landlord, has the right to deprive him of it. He could sue the landlord for trespass if the latter entered upon the holding without his, the tenant's, consent. As soon as the tenant's interest has been determined the landlord can under the ordinary law let his property to any tenant he pleases at any rent he can induce the incoming tenant to pay, and, in my view, it is just because of the absolute dominion which the landlord has over his own property while he is in possession of it that by analogy the power is left to him under the Act of 1920 to get an increase of rent during the notional existence of such a period. In one sense, but in my view a most artificial sense, a landlord has a title to obtain possession of a tenant's holding long before the latter's tenancy terminates. In England if he should let a holding by lease for a term of 20 years he is from the moment of its execution seized and possessed of and entitled to a reversion which will entitle him to obtain possession of the holding when the term has expired. If he lets to a tenant from year to year and serves a notice to quit, he has, while the notice is current and before it takes effect, a title to obtain possession when it shall have taken effect. If the landlord of a dwelling-house leases it, and there is a covenant in it by the tenant that he will not carry on any noxious trade in it, or that he will not use it for betting purposes or such like, with a clause of re-entry on condition broken, the landlord from the moment he gives notice that the breach has occurred and that he will re-enter is *entitled* because of the clause to obtain possession. If he brings an action of ejectment it may be a couple of years before the Sheriff on a writ of *habere* expels the tenant and hands over to the landlord the possession. This might occur under the ordinary law if the Act of 1920 had not been passed. Is it possible to conceive that this legislation was ever intended to take effect during the period of two years while the landlord was fighting to get actual possession, as a measure of the period in respect of which he might under the Act increase the rent of his tenant? The landlord was all along entitled to obtain possession, but he did not succeed in proving that by law the tenant's tenancy had determined.

The use of the word "obtain" is, I think, unfortunate and misleading, for the simple reason that the obtaining in fact by the landlord of possession may be a very tedious process, however well entitled to it he may be. Its success is doubtful occasionally. If the draftsman had used the simpler and better understood words "enter into *and keep* possession" much if not all the difficulty would have been avoided, because it would have been made clear that the period in respect of which the rent might be raised under the Act of 1920 was the period during which under the ordinary law litigation had successfully ended and the landlord had gone in and taken possession. It is the remnant of the powers, I think, which the ordinary law under such conditions as these conferred upon landlords of houses to which the Act applies that was intended to be preserved to them by section 3 (1), and not the right to enforce payment of an increased rent in respect of a period during which though the landlord's title was ultimately proved it was in dispute and he was unable to go into, take, or keep possession. No doubt, one should endeavour to construe statutes so as to reconcile their various provisions the one with the other, to knit them in each case as it were into a consistent whole, but the use of ill-chosen drafting terms may often defeat the boldest efforts in that direction, and force the authorised interpreter of the statute rather into the position of a legislator so as to give to the terms of the statutes a meaning its authors never intended to convey. I am unable to give to the words "entitled to obtain possession" in section 3 (1) a fanciful meaning which according to the ordinary law I believe they never bore, merely to get rid of some unnecessary or useless proceeding. Section 5 of the Act of 1920 preserves to the landlord the right to eject for non-payment of rent and for the other matters enumerated.

Section 15 (1) provides that the tenant who retains the possession of a dwelling-house to which the Act applies shall so long as he retains possession observe and be entitled to all the benefits of the terms and conditions of the original tenancy. I agree, however, that if the tenant retains possession, not by virtue of the terms of the statute, but under and by virtue of a new agreement or tacit relocation to either of which it is fairly attributable, the Act does not apply. If once, however, a notice to

quit be served and the tenant's interest be terminated, the landlord can only obtain increases of rent under the condition and to the extent permitted. I am clearly of opinion that the decision appealed from was right and should be affirmed, and that this appeal should be dismissed with costs.

LORD SUMNER—Since the arguments in this case terminated I have had the advantage of reading and considering the opinion of my noble and learned friend Lord Wrenbury. Needless to say I never come to a conclusion opposite to his without feelings of mingled misgiving and regret.

To deal first with the section here particularly in question, section 3 (1), I think, subject to a point to be mentioned presently on the words "but for this Act," that clearly the appellants can only succeed if it can be predicated of them that for the period in question, as to which they purported to increase the rent, they would but for this Act during that period, that is, during every moment of that period, be entitled to obtain possession. I will not say that this means obtain possession exclusively under a judgment, order, or decree of some Court, but it certainly includes such a mode of obtaining possession and in practice generally refers to it. The words cannot have a different construction according as the landlord does or does not, on the hypothesis involved in the words "but for this Act," need to apply to a Court.

I think that a landlord would be "entitled to obtain possession" from a Court and by virtue of its decision when, but only when, he has performed all conditions-precedent, and when, but only when, in the language of English pleaders, all times have elapsed and all things have been done and have happened necessary to complete his title to submit to that Court the proposition that at the commencement of his proceedings in the Court his right to obtain from the Court the relief which he claims had become complete. In the case of the tenancy now in dispute I understand that before the passing of any legislation, such as we now are construing, this would have involved the giving of a notice of removal—*anglice* a notice to quit.

It is said that before the beginning of the period for which the appellants purported to increase the rent they were entitled to give a notice of removal, and thereby to put themselves in a position to pray the appropriate Court to decree them possession and on that prayer to obtain possession. *Esto.*

I cannot, however, think that upon a sound construction of the section a landlord would be entitled to obtain possession in circumstances in which he is not presently so entitled, but is only presently entitled to do acts which when done will constitute a performance of conditions-precedent to his title so to obtain possession, which acts, moreover, so long as they are unperformed, constitute an effectual bar to his being so entitled. Suppose a tenancy for a term certain to continue after the expiry thereof till the expiry of a six months' notice to quit. A landlord would be entitled to give that notice at any time during the term certain, though of course it would not begin to operate till the expiry of the fixed term and would not effect the determination of the tenancy till six months had elapsed from that expiry. On this argument, as it seems to me, the landlord could raise the rent under section 3 from the beginning of the term certain if his right to give the notice is the critical matter; if it is not, but if only his right to the assistance of the Court is the critical matter, then not only must the notice be given but it must take effect by effluxion of time before he is entitled to obtain possession. Further, I do not think that the inclusion of provisions as to mortgages in the same section as provisions as to tenancies affects the matter. The Legislature has been economical of words, but the words used are to be read *secundum subjectam materiem.*

I have proceeded on the assumption that it is important to observe that the words are "entitled to obtain possession" and not "entitled to possession." I am not, however, sure that very much turns on this, for by section 12 (1) (*g*) the very word "landlord" includes a person who would but for this Act be entitled to possession, and I doubt if the Legislature contemplated that section 3 could be deemed in certain cases to run thus, "except in respect of a period during which but for this Act a person, who but for this Act would be entitled to possession, would be entitled to obtain possession." If the word obtain is otiose I hardly think the present contention can arise.

It is said that in view of the Act the service of a notice to quit is futile and a nullity. It is said further (1) that in fact the appellants gave such notice as was necessary, namely, a notice which, in substance if not in form, was a notice to quit, and (2) that in any case the question is as to the rights of a landlord "but for this Act," viz., but for 10 and 11 Geo. V, cap. 17, or in other words as they stood immediately before the passing of this Act, that is, after the common law of landlord and tenant had been limited by the provisions of 5 and 6 Geo. V, cap. 97. I will deal with these points separately.

It seems to me quite clear that the scheme of the Increase of Rent (War Restrictions) Act is, as the name suggests, to benefit a tenant by tying a landlord's hands, in cases to which the Acts apply, by forbidding him to increase the rent when under the common law and the pre-war legislation he would have had the opportunity of validly doing so.

I can find nothing either in the language or the policy of this legislation to show that it was intended to permit a landlord to raise a rent during a period in which under an existing contract, however arising, he was not entitled to do so, or was only entitled to do so after a notice had been given and had expired. Wherever the tenant has for a time, which is or can be made certain, the right to hold possession at a given rent, these Acts do not seek to take away that right. Cases may well have happened, and indeed have happened, where a supine

landlord has left a tenant to hold over for years before the war at a rent which, economically speaking, should have been but was not raised. By 1915 and still more by 1920 that tenant was in the enjoyment of a contractual right of great value. If the landlord awoke to his interests he could terminate it by giving notice, but he could obtain a higher rent whether from the same or another tenant only within the restrictions of the Acts. They contain nothing to help him and, as far as I can see, nothing to disentitle the tenant to as much longer an enjoyment of the hold easy terms as the conditions of his contract give him.

The notice that was actually given in this case was in exact accordance with the form prescribed by the Act then in force. It is not in my opinion a notice of removal or a notice to quit at all. It is meant to be such a notice as will operate if under the terms of section 3 the opportunity for giving an operative notice has arisen, and not such a notice as will satisfy those conditions and terms and so enable the landlord to give effectively the notice prescribed by the Act.

In the present appeal I think no reliance can be placed on the saving words "but for this Act." The words are not "during which as the law stood immediately before the passing of this Act." They are "but for this Act" simply, that is, "except in so far as the provisions of this Act interfere with the landlord's being so entitled." This leaves the landlord bound to perform all the conditions which under his existing contract with the tenant, whatever it may be, have to be satisfied before he can come into Court and say "now give me possession." Even, however, on the appellant's construction I do not see what there is in the Act of 1915 which relieves the landlord from terminating a consensual tenancy by an agreed act of his own such as giving notice.

I am accordingly of opinion that the case of *Newell* (1922, 1 K.B. 656) was rightly decided in England, and that the judgment of the First Division of the Court of Session in the present case in Scotland ought to be affirmed.

LORD WRENBURY—If this case turned upon any question of the law of Scotland or upon an accurate appreciation of tacit relocation, I should hesitate to differ from the opinions expressed by the learned Sheriffs and the learned Judges of the First Division in Scotland. But in fact it does not turn at all upon the law of Scotland, but upon the true construction of a few words in the Rent Restrictions Act 1920—an Act which applies to England and Scotland alike.

As regards the relation which in July and August 1920 subsisted between the appellants as owners and the respondents as tenant of the small dwelling-house in question, I gratefully accept the statement of the learned Judges that the monthly let to the tenant was from time to time continued by tacit relocation, and that during August 1920 he continued to be a contractual tenant and had not become a statutory tenant. And I also accept that to bring that contractual tenancy to an end that which would in England be called a notice to quit, and in Scotland I understand to be called a notice of removal, would have to be given.

With this premiss I turn to the words which I have to construe. They are as follows:—"Section 3 (1) Nothing in this Act shall be taken to authorise any increase of rent except in respect of a period during which but for this Act the landlord would be entitled to obtain possession."

The first thing which I note upon these words is this—one effect of the Act is to tie the landlord's hands, to fetter his right of action in respect of the demised premises. For the purpose of the words above quoted I am to ignore that; I am to treat the landlord as being as unfettered as if the Act had not passed.

The next thing which I note is that I have to look for a "period"—a time consisting of so many weeks or months or years—and that this must be a period during which the landlord, if unfettered, would be entitled to obtain possession. In respect of such a period he can demand such an increased rent as the statute allows. The words are not "would have been entitled" but "would be entitled" to obtain possession—they are not "would be entitled to possession," neither are they "would be entitled to take possession" but are "would be entitled to obtain possession." They are not "would be entitled to obtain possession from a Court" but simply "would be entitled to obtain possession."

The third thing I note is (and this is a matter of construction) that the word "during" does not mean "in the course of which," but means "for the duration of which." It is to be a period such that the unfettered landlord would be entitled to obtain possession for the duration of it. If he would be so entitled he can require the increased rent for that period.

For simplicity of expression I will now take the particular circumstances of the present case. Was September 1920 a period for the duration of which the landlord if unfettered by the Act would be entitled to obtain possession. What would be necessary to obtain possession? In order to obtain possession the landlord would have to do certain acts. He would have to give a notice of removal. He would if necessary have to apply to the Court for an order. Would he be entitled to do those acts? Yes, he would. The verb "to obtain" involves that there is to be action on the part of the landlord (being action which he would be entitled to take) which is to result in his obtaining the possession which theretofore he had not got. The test is not whether he has done those acts or any of them, but whether he "would be entitled" to do them and whether he would be entitled to do them so as to obtain possession for the month of September. The answer to these questions is in my opinion in the affirmative.

He would if unfettered be entitled to give a notice of removal and to get an order of the Court. He would if unfettered be entitled

to obtain possession by doing those acts.

This view is supported by the corresponding words dealing with the case of mortgage interest "except in respect of a period during which but for this Act the security could be enforced." The test is not whether the mortgagee has done any act to enforce it, but whether if the Act had not passed he could have enforced it.

I notice that in *Hill* v. *Hasler*, 1921, 3 K.B. 643, Lord Sterndale, M.R., at p. 652, says—"The words 'entitled to obtain possession' seem to me to mean having a legal right to possession." With great respect I cannot agree. Having a thing is essentially different from obtaining a thing. "Having" is not the same thing as "obtaining" but is a consequence of "obtaining." What I have to seek is the answer to the question whether the landlord if unfettered would be entitled to obtain a thing. Atkin, L.J., at p. 655, says that the words in question mean "a period during which the landlord would have a legal right to obtain possession of the premises, that is to say, a period commencing at the time when the tenant would no longer have a legal right to remain in possession under the original tenancy." The earlier half of this sentence seems to me right, but the latter half is not the same, but a different proposition.

I go straight to *Newell* v. *Crayford Cottage Society*, 1922, 1 K.B. 656, without staying to comment upon the other authorities cited to us, because *Newell's* case deals with the whole question of the construction of the Act, and it is sufficient to give the reasons why in my judgment that case was wrongly decided.

In *Newell's* case it is instructive to notice that both Bankes, L.J., at p. 659, and Scrutton, L.J., at p. 661, in stating the question to be answered, allowed themselves to slip into the error of substituting "would have been entitled" for "would be entitled." And I may pause to point out that Bankes, L.J., previously in *Shuter* v. *Hersh* (1922, 1 K.B. at 445), and Lord Sterndale in *Hill* v. *Hasler*, 3 K.B. at 651, fell into the same error of language. In *Newell's* case Younger, L.J., at the end of his judgment uses the correct words "would be entitled." I entirely sympathise with L.J. Younger's judgment and regret that he did not allow the reasoning of the earlier part of his judgment, which seems to me to be quite correct, to lead him to the conclusion to which it points.

Let me look at the result of *Newell's* case if it is right. One result of the Act is that the landlord cannot obtain possession from the tenant against the will of the tenant. If he gives him a notice of removal no removal will or can ensue against the will of the tenant. The notice of removal will result in nothing at all except that that which was a contractual tenancy will for the future be a statutory tenancy. The object and effect of a notice of removal if it can be legally given is not to stop short at affecting the nature of the tenancy but to get rid of the tenant. This the landlord cannot do. The Act forbids it except in certain circumstances. But for the purpose of the words which have to be construed I have to assume that the Act does not forbid it and to see what the landlord "would be entitled" to do. I have not to see whether he has done it but whether in the hypothetical circumstances he "would be entitled" to do it. The decision in *Newell's* case involves that in order to obtain the increased rent to which under the Act the landlord may by taking proper steps become entitled, he must first give a notice, which under the Act he cannot give so as to effect the removal which it purports to demand—a notice which the landlord knows when he gives it is idle, a notice which the tenant when he receives it is entitled to disregard. This is reducing the Act to an absurdity. If I am right as to the proper construction of the words, it is an absurdity which does not arise. I think that the words "would be entitled to obtain possession" mean exactly what they say—and that I have only to inquire whether the period for which the increased rent is charged is a period for the duration of which but for the Act the landlord would be entitled to obtain possession by taking the proper steps for that purpose.

In my judgment *Newell's* case was wrongly decided, and this appeal should be allowed.

LORD CARSON—I agree with the conclusions arrived at by my noble and learned friends Lords Atkinson and Sumner that this appeal fails.

If the Act of 1920 had not passed, the tenancy in dispute could only have been terminated by giving a notice of removal or notice to quit, and without such notice the landlord would not be entitled to obtain possession, nor could he, except by the consent of the tenant, increase the rent. If the contention of the appellants is to be accepted, the Act, which is clearly intended to protect tenants to whom it applies, would confer a right upon the landlord to increase the rent without the necessity of serving any such notice of removal or notice to quit. I do not think such a result can have been contemplated.

A landlord would, in my opinion, only be entitled to obtain possession within the meaning of section 3 (1) when he had taken all such steps as the law made obligatory for terminating the tenancy, and was thus in a position, if it became necessary, to ask for relief in a Court of Justice.

Their Lordships ordered that the interlocutor appealed against be affirmed and the appeal dismissed with costs.

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