Wheeler Vs. Mercer

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Court : House of Lords

Decided On : Oct-31-1956

Judge : Lord Viscount Simonds, Lord Morton of Henryton, Lord Cohen, Lord Keith of Avonholm, Lord Somervell of Harrow

Appeal No. : No.

Appellant : Wheeler

Respondent : Mercer

Judgement :

Upon Report from the Appellate Committee, to whom was referred the Cause Wheeler against Mercer, that the Committee had heard Counsel, as well on Tuesday the 17th, as on Wednesday the 18th, days of July last, upon the Petition and Appeal of Alfred Morris Wheeler, of "Franks", Horton Kirby, in the County of Kent, praying, That the matter of the Order set forth in the Schedule thereto, namely, an Order of Her Majesty's Court of Appeal of the 24th of October 1955, might be reviewed before Her Majesty the Queen, in Her Court of Parliament, and that the said Order might be reversed, varied or altered, or that the Petitioner might have such other relief in the premises as to Her Majesty the Queen, in Her Court of Parliament, might seem meet; as also upon the printed Case of Helen Molly Mercer, lodged in answer to the said Appeal; and due consideration had this day of what was offered on either side in this Cause:

It is *Ordered* and *Adjudged,* by the Lords Spiritual and Temporal in the Court of Parliament of Her Majesty the Queen assembled, That the said Order of Her Majesty's Court of Appeal, of the 24th day of October 1955, complained of in the said Appeal, be, and the same is hereby, **Reversed** except as to Costs and that the Order of His Honour Judge Glazebrook of the 28th day of July 1955, be, and the same is hereby, Discharged except as to Costs: And it is hereby **Declared**, That the Plaintiff is entitled to recover possession of the lock-up shop at the ground floor of 59 Grosvenor Road, Tunbridge Wells, in the County of Kent, and that the Plaintiff is also entitled to recover mesne profits in respect of the said premises, the amount of such mesne profits 'to be determined by the County Court Judge: And it is further *Ordered,* That the Cause be, and the same is hereby, remitted back to the Tunbridge Wells County Court to do therein as shall be just and consistent with this Judgment: And it is also further *Ordered,* That there be no Costs of the Appeal to this House.

Viscount Simonds

MY LORDS,

The Appellant is the owner in fee simple of premises at 59, Grosvenor Road, Tunbridge Wells, in the County of Kent, of the ground floor of which the Respondent has been in occupation since 1936, there carrying on the business of a tobacconist. On the 13th April, 1955, the Appellant issued a summons in the Tunbridge Wells County Court against the Respondent claiming possession of the premises and mesne profits from 29th September, 1953, to 12th May, 1955. On 28th July, 1955, the learned County Court Judge dismissed his claim for possession and adjourned the claim for mesne profits. From that decision the Appellant appealed to the Court of Appeal and that Court unanimously dismissed his appeal.

It is common ground that the Appellant is entitled to recover possession of the premises unless the Respondent can avail herself of the protection given by Part II of the Landlord and Tenant Act, 1954, and that she can only do so if she establishes *(a)* that at the relevant date she was in possession of the premises as tenant at will of the Appellant, and *(b)* that a tenancy at will is protected by the Act.

Both these propositions must now be examined.

Upon the first question I do not think it necessary to say much, for I find myself in complete agreement with the County Court Judge on this point and am content to adopt his careful judgment as my own. Having been in possession as joint or sole lessee under a lease which terminated on the 6th September, 1943, she thereafter became a quarterly tenant until the expiration on the 29th September, 1953, of a notice to quit which had been validly given. Since that date she has remained and she still remains in possession of the premises. In the meantime both before and after the notice to quit negotiations took place for the grant of a new lease. These were protracted and exhausting and at an early stage of them the Respondent gave notice under the Landlord and Tenant Act, 1927, claiming a new lease or compensation. This was a circumstance which in my opinion is of paramount weight in determining in what relation the parties thereafter stood to each other and leads decisively to the conclusion that, pending negotiation, the Respondent remained in possession not as a licensee nor as a tenant at sufferance of the Appellant but with his positive assent. The learned Judge in my opinion rightly held that she was a typical tenant at will, conforming to all the classical definitions of such a tenant.

The Respondent was then a tenant at will of the premises when on the 1st October, 1954, the Landlord and Tenant Act, 1954, came into operation and repealed the relevant provisions of the earlier Act. I do not think that the present proceedings are in any way affected by the provisions of the Ninth Schedule to the Act of 1954 and do not further refer to them.

It remains to be considered whether Part II of the 1954 Act protects a tenancy at will, and upon this question I am of opinion that the judgments under review cannot be supported.

Before I come to the crucial definition of "tenancy" in section 69

(1) of the Act I propose to examine briefly the earlier sections in Part II in which that word occurs. By section 23 it is provided that that Part applies to any tenancy where the property comprised therein is or includes premises occupied by the

tenant for the purpose of a business-a word which is defined to cover a wider range of activities than those which the earlier Act had protected. Section 24 provides for the continuation and renewal of tenancies: it enacts that a "tenancy" shall not come toan end unless terminated in accordance with the provisions of that Part of the Act and provides by subsection

(1) that, subject to the provisions of section 29, the tenant may apply to the Court for a new tenancy (a) if the landlord has given notice under section 25 to terminate the tenancy, or (b) if the tenant has made a request for a new tenancy in accordance with section 26, and by subsection

(2) that subsection

(1) shall not prevent the coming to an end of a tenancy by notice to quit given by the tenant, by surrender or forfeiture, or by the forfeiture of a superior tenancy. I pause to note that there are no words in subsection

(2) which are apt to cover the case of a tenancy at will. Section 25 is of crucial importance. It purports to deal comprehensively with the way in which a landlord may terminate a tenancy. Subsection

(1) is general in its terms: it provides that a landlord may terminate a tenancy by a notice in the prescribed form specifying the date at which the tenancy is to come to an end, referred to as the date of termination: the prescribed form does not throw any light on the present problem. Subsection

(2) provides that subject to the provisions of subsection

(3) a notice under the section shall not have effect unless it is given not more than twelve nor less than six months before the date of termination specified therein. Subsection

(3) deals with that class of tenancy which apart from the Act could have been brought to an end by notice to quit given by the landlord and enacts what the date of termination in such cases may be. A tenancy at will is not determined by a notice to quit and does not fall within the subsection. Sub-section

(4) deals with any other tenancy-these are the vital words-and provides that in the case of any other tenancy a notice under this section shall not specify a date of termination earlier than the date on which apart from the Act the tenancy would have come to an end by effluxion of time. A tenancy at will is not a tenancy which comes to an end by effluxion of time, and does not appear to be within the subsection. The other subsections of this section do not help, and I find, therefore, in the section which is a vital part in the machinery of the Act a significant omission of any provision which covers the case of a tenancy at will.

Section 26 deals with a tenant's request for a new tenancy. It covers only the case where the tenancy under which the tenant holds for the time being is a tenancy granted for a term of years certain exceeding one year. It does not apply to a tenant at will. Nor need I refer to sections 27 and 28. Section 29 must be noticed. It provides that, subject to the provisions of the Act, on an application under section 24 (1) of the Act for a new tenancy the Court shall make an order for the grant of a tenancy comprising such property, at such rent and on such other terms as are thereinafter provided. This is mandatory and I attach some importance to it. For there must be many cases, for example, where a purchaser has been let into possession before completion without any special stipulation and is therefore at law a tenant at will, where it would be manifestly unjust to grant any tenancy. I must observe that, notwithstanding the observation of Lord Justice Denning and the reference to *Errington* v. *Errington,* I cannot but regard the example that I have given as a typical case of a tenancy at will. But there must be still more cases where the Court would have nothing to guide it as to what should be the terms of a tenancy granted to a tenant at will. The grant of another tenancy at will would be of little value unless succeeded by another and yet another similar grant, while the grant of a term certain or of a periodical tenancy would substantially change the previously subsisting relation between the parties. T can now pass over a number of sections of which it may truly be said that their language is more appropriate to a periodic tenancy or a tenancy for a term certain yet if the context otherwise admitted it might be wide enough to cover a tenancy at will, and I come to section 43, which by subsection (3) provides that Part II of the Act does not apply to a tenancy granted for a term certain not exceeding three months unless *(a)* the tenancy contains provision for renewing the term or for extending it beyond three

months from its beginning, or *(b)* the tenant has been in occupation for a period which, together with any period during which any predecessor in the carrying on of the business carried on by the tenant was in occupation, exceeds six months. Counsel for the Appellant relied strongly on thissection. He justly pointed out the anomaly of excluding from the protection of the Act tenancies granted for a term certain not exceeding three months, unless certain conditions are satisfied, but bringing within its protection tenancies at will whose duration might be for a far shorter period. The answer made to this was that it was no greater anomaly than that which was provided by a weekly tenancy which had been extended from week to week by a tenant holding over, and would, it was claimed, be within the protection of the Act. I am not satisfied what the rights of such a tenant would be, and do not think it desirable to discuss it. It is sufficient to say that in section 43 (3) I find once more language which is not appropriate to the case of a tenancy at will and which I should expect to find extended or amplified if such a tenancy was intended to be protected.

I come then to the interpretation section, section 69 (1). There are only two expressions to be considered, which have meanings assigned to them without the usual qualification of an admitting context. " . . .' notice to quit' means a notice to terminate a tenancy (whether a periodical tenancy or a tenancy for a term of years certain) given in accordance with the provisions (whether express or implied) of that tenancy. I have already observed that a tenancy at will is not terminated by such a notice, or, I should say more accurately, that such a notice is not appropriate or necessary to the termination of such a tenancy. The other relevant expression is "tenancy", which means a tenancy created either immediately or derivatively out of the freehold, whether by a lease or underlease or by a tenancy agreement or in pursuance of any enactment (including this Act) . . . ". A "tenancy". then, includes a tenancy " created . . . out " of the freehold ... by a tenancy agreement". Can a tenancy at will be thus described? And, if it might in another context be so described, is the description itself at least ambiguous so that its meaning may be influenced by the context of the Act? I do not find these easy questions to answer. It may, I think, be truly said that, since a tenant at will is regarded at law as being in possession by his own will and at the will express or implied of his landlord, he is a tenant by their mutual agreement, and the

agreement may therefore be called a tenancy agreement. He is distinguished from a tenant at sufferance in that such a tenant is said to be in possession without either the agreement or disagreement of the landlord. But, my Lords, though upon a logical analysis it is possible to regard a tenancy at will as a " tenancy created by a tenancy agreement". I am not satisfied that according to the ordinary use of language, even apart from any context, it would be so described. A tenancy at will, though called a tenancy, is unlike any other tenancy except a tenancy at sufferance to which it is next of kin. It has been properly described as a personal relation between the landlord and his tenant: it is determined by the death of either of them or by any one of a variety of acts, even by an involuntary alienation, which would not affect the subsistence of any other tenancy. It is true that in some cases the relation of tenant at will may be expressly created by contract: see, for example, *Morgan* v. *William Harrison, Limited* (1907) 2 Ch. 137. but this is an exceptional case and I do not exclude the possibility of such a contract being a "tenancy agreement" even if a tenancy at will arising by implication of law is not.

If I am right in concluding, as I do, that "tenancy agreement" is itself an expression which is ambiguous in its scope. I am led by the context of the Act which I have examined in some detail to the further conclusion that it does not cover a tenancy at will arising by implication of law. It may or may not be unfortunate that the Respondent in this case cannot avail herself of the protection which the Act affords : in the case of another tenancy at will the misfortune might lie the other way. Your Lordships are concerned only to interpret the Act, and in my opinion upon its true interpretation the Respondent is not protected. The Orders of the Court of Appeal and of the learned County Court Judge should therefore be reversed so far as the Appellant's claim to possession of the premises is concerned. The Orders as to costs will not be disturbed and there will be no Order as to the costs of this appeal. I move your Lordships accordingly.

My Lords, my noble and learned friend, Lord Keith of Avonholm, who is unable to be here today, has asked me to say that he concurs in the Opinion which I have given.

Lord Morton of Henryton

MY LORDS,

Two questions arise on this appeal-(1) On 1st October, 1954, when the Landlord and Tenant Act, 1954, came into operation, was the Respondent a tenant at will of the ground floor of No. 59, Grosvenor Road, Tunbridge Wells? (2) If so. is a tenancy at will protected by the Act?

The first question is not an easy one. A tenancy at will can only arise with the consent, express or implied, of the landlord. I think there is much to be said for the view that the Appellant never consented to the Respondent's occupation after 29th September. 1953, but took no active steps to recover possession, on the principle that what cannot be cured must be endured, because he knew that any application for possession would be countered by an application for protection under section 5 (13) of the Landlord and Tenant Act. 1927. If this were the true view, the Respondent would be a tenant on sufferance. I find it unnecessary to form a concluded opinion on this point, for in my opinion the Respondent is not protected by the Act of 1954, even if she is a tenant at will ; I think that section 69, read by itself, gives rise to a very real doubt as to whether a tenancy at will is or is not a tenancy created . . . out of the freehold ... by a tenancy agreement within the meaning of the definition of " tenancy " in that section. This being so, it is right to seek enlightenment on the point from the rest of the Act, and in my view a study of sections 23 to 29 inclusive, and in particular subsections (3) and (4) of section 25. leads inevitably to the conclusion that a tenancy at will is not within the Act. I agree with everything which has been said from the Woolsack as to this group of sections.

I add that I should have thought it surprising if the Legislature had intended to bring within the scope of the Act a relationship so personal and so fleeting as a tenancy at will. It is certainly unfortunate for the Respondent that she gets no protection, but the circumstances of the present case are most unusual, and I cannot think that any real injustice is involved, having regard to the course of the protracted negotiations. On the other hand, I think that, if the Act had been extended to tenants at will, undeserved hardship to the house-owner would have resulted in many cases.

Lord Cohen

My lords,

The question for determination on this appeal is whether the Appellant is entitled to an order for possession of shop premises at Tunbridge Wells situate on the ground floor of No. 59 Grosvenor Road.

The Respondent has been in occupation of those premises since 1936. Originally she held under a lease but in the later stages under a quarterly tenancy. That tenancy was determined by a notice to quit which expired at Michaelmas, 1953. When the Respondent received that notice to quit she gave, as she was entitled to do, a notice under the Landlord and Tenant Act, 1927, claiming a new lease on the ground that goodwill had become attached to the premises, or in the alternative 3,000 compensation. There were proceedings in the County Court on her claim for a new lease, but the case never came to hearing because in October, 1953, it was adjourned so as to enable the parties to negotiate.

The Respondent did not apply, as she could have done under section 5(13) of the 1927 Act, for an interim order authorising her to continue in possession of the premises for such time and on such terms as the Tribunal might allow. No doubt there were good reasons why she did not do so, but, unfortunately for her, on the 1st October, 1954, while the negotiations were still pending, the Landlord and Tenant Act, 1954, came into force. This repealed sections 4 to 7 of the 1927 Act under which the Respondent had commenced the adjourned proceedings. Paragraph 8 of the Ninth Schedule to the 1954 Act contained transitional provisions for the protection of persons who had obtained an interim order under section 5 (13) of the 1927 Act, but these provisions do not assist the Respondent. Her right to resist the claim for possession must depend on the operative provisions which are to be found in Part II of the 1954 Act.

Before I turn to these provisions, I should mention that negotiation continued up to the 6th April, 1955, when the Appellant's patience seems to have been exhausted and his solicitors wrote to the Respondent's solicitors asking that the Respondent should vacate the premises immediately.

On the 7th April, 1955, the Appellant issued his summons for possession in the Tunbridge Wells County Court. The Respondent set up a number of defences. Only one of them is now material. That is the defence that the Respondent is and has, since Michaelmas, 1953, been a tenant at will and is therefore entitled to remain in possession.

The case came on for hearing on the 28th June, 1955, when Mr. J. Fox-Andrews, for the Respondent, argued that the Respondent was a tenant at will and that such a tenancy was covered by the protection given by the 1954 Act. This submission was upheld by the County Court Judge in a considered judgment delivered on the 28th July, 1955. On the 24th October, 1955, the Court of Appeal affirmed his judgment. It is from this decision that the present appeal is brought.

Before dealing with the arguments addressed to your Lordships I must refer to the relevant provisions in Part II of the 1954 Act.

Continuation and renewal of tenancies-

24.-(1) A tenancy to which this Part of this Act applies shall not come to an end unless terminated in accordance with the provisions of this Part of this Act; and, subject to the provisions of section twenty-nine of this Act, the tenant under such a tenancy may apply to the court for a new tenancy-

(a) if the landlord has given notice under the next following section to terminate the tenancy, or

(b) if the tenant has made a request for a new tenancy in accordance with section twenty-six of this Act.

(2) The last foregoing subsection shall not prevent the coming to an end of a tenancy by notice to quit given by the tenant, by surrender or forfeiture, or by the forfeiture of a superior tenancy.

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25.-(1) The landlord may terminate a tenancy to which this Part of this Act applies by a notice given to the tenant in the prescribed form specifying the date at which

the tenancy is to come to an end (hereinafter referred to as ' the date of termination '):

Provided that this subsection has effect subject to the provisions of Part IV of this Act as to the interim continuation of tenancies pending the disposal of applications to the court.

(2) Subject to the provisions of the next following subsection, a notice under this section shall not have effect unless it is given not more than twelve nor less than six months before the date of termination specified therein.

(3) In the case of a tenancy which apart from this Act could have been brought to an end by notice to quit given by the landlord -

(a) the date of termination specified in a notice under this section shall not be earlier than the earliest date on which apart from this Part of this Act the tenancy could have been brought to an end by notice to quit given by the landlord on the date of the giving of the notice under this section ; and

(b) where apart from this Part of this Act more than six months' notice to quit would have been required to bring the tenancy to an end, the last foregoing subsection shall have effect with the substitution for twelve months of a period six months longer than the length of notice to quit which would have been required as aforesaid.

(4) In the case of any other tenancy, a notice under this section shall not specify a date of termination earlier than the date on which apart from this Part of this Act the tenancy would have come to an end by effluxion of time."

Section 26 enables a tenant who is holding under a tenancy for a term of years certain exceeding one year, or granted for a term of years certain and thereafter from year to year, to request a new tenancy, but this provision is not available to the Respondent.

Sections 33, 34 and 35 deal respectively with the duration, the rent payable under, and the other terms of a new tenancy granted pursuant to the Act. I need not set

out the sections in full. I only mention them because the Appellant submitted that they seemed more applicable to a case where the applicant for a new tenancy was a tenant under a periodical tenancy or for a term certain than to a case where he was a tenant at will. I do not myself get much assistance from the provisions of these sections.

Section 43 (3) is in the following terms: -

“(3) This Part of this Act does not apply to a tenancy granted for a term certain not exceeding three months unless-

(a) the tenancy contains provision for renewing the term or for extending it beyond three months from its beginning; or

(b) the tenant has been in occupation for a period which, together with any period during which any predecessor in the carrying on of the business carried on by the tenant was in occupation, exceeds six months.

The Appellant relied on this subsection because, as he said, it showed that a weekly tenancy was not within Part II of the Act unless the terms could be brought within paragraph *(b).* It was unlikely, so the argument went, that Parliament intended the still more impermanent tenancy at will to be within Part II of the Act. The Respondent countered this argument by pointing out that the exclusion only applies to tenancies granted for a term certain and a weekly tenancy is not a term certain. All periodical tenancies were therefore within Part II of the Act.

The last, and the most important, section to which I need refer is the interpretation section, section 69. Subsection (1) provides that-

In this Act the following expressions have the meanings hereby assigned to them respectively, that is to say:

"'notice to quit' means a notice to terminate a tenancy (whether a periodical tenancy or a tenancy for a term of years certain) given in accordance with the provisions (whether express or implied) of that tenancy;

'tenancy ' means a tenancy created either immediately or derivatively out of the freehold, whether by a lease or underlease, by an agreement for a lease or underlease or by a tenancy agreement or in pursuance of any enactment (including this Act), but does not include a mortgage term or any interest arising in favour of a mortgagor by his attorning tenant to his mortgagee, and references to the granting of a tenancy and to demised property shall be construed " accordingly;"

Subsection (2) provides that references in the Act to an agreement between the landlord and the tenant (except in section 17 and subsections (1) and (2) of section 38) should be construed as references to an agreement in writing. At first sight it might be thought that "a tenancy agreement"mentioned in section 69 (1) came within the operation of this subsection, but Mr. Brown, for the Appellant, did not feel able to support this suggestion and admitted that subsection (2) was dealing only with agreements between land- lord and tenant such as were contemplated, for example, by sections 32 to 35 inclusive. I need not, therefore, trouble your Lordships further with sub-section (2).

With these sections in mind I turn to the arguments which were addressed to your Lordships. It was common ground between the parties that there were two questions which your Lordships had to decide-

1. When the present proceedings were commenced was the relation-ship between the parties that of a tenancy at will? Unless it was, it was common ground that the Appellant was entitled to succeed. But if it was, then the second question arises.

2. Is a tenancy at will a tenancy within the meaning of the Act?

My Lords, on the first question I find myself in complete agreement with the learned County Court Judge when he says:-

In my opinion the Defendant was a typical tenant at will, conforming to all the classical definitions of such a tenant. I refer to Woodfall's Law of Landlord and Tenant, 23rd ed., p. 283, 284; Foa 7th ed., p. 3, and Hill and Redman, 10th ed., pp. 16 and 17, and the cases cited by those authorities. She was not in my view a

mere licensee because she was in exclusive possession with the consent of the owner; nor was she a tenant at sufferance because I think the landlord's positive assent must be implied from the circumstances."

I would, therefore, answer the first question in the affirmative, and I turn to the second question.

Mr. Megarry, for the Respondent, says that a tenancy at will is a tenancy "agreement" within the meaning of section 69 (1) since a tenancy at will is a tenancy and agreement is of the essence of a tenancy at will; it is indeed the feature which distinguishes a tenancy at will from a tenancy at sufferance. I am prepared to accept that the expression a tenancy agreement may comprise a tenancy at will, but I think that it might also be the apt language to use where the draftsman had in mind only a tenancy for a fixed term and a periodical tenancy. The question of the sense in which it is used in a particular statute must be answered by construing the statute as a whole, and in my opinion the language of section 25 is consistent only with the adoption of the narrower construction I have indicated. It is, I think, clear, reading subsections (2), (3) and (4) together, that sub-sections (3) and (4) are intended to comprise all the tenancies to which the Act applies. Subsection (3) deals only with tenancies which could be determined by notice to quit, and it was common ground between the parties that a tenancy at will is not such a tenancy since a tenancy at will is determined not by a notice to quit but, for example, by death, bankruptcy or a demand for possession.

Subsection (4) is to apply in the case of any other tenancy. This is an omnibus phrase covering all tenancies to which the Act applies except such as are determinable by a notice to quit. It is clear, however, from the language of the subsection that it cannot comprise a tenancy at will because such a tenancy could never come to an end by effluxion of time.

In the Court of Appeal their Lordships sought to avoid this conclusion by treating subsection (2) as governing the matter in the case of any tenancy falling outside the scope of subsections (3) and (4). My Lords, I am unable to find anything in the language of subsections (1) and (2) which justifies me in ignoring what I think to be the plain meaning of subsections (3) and (4), nor am I able to find any indication in

any other section which would lead me to place the wider meaning on the expression tenancy agreement for which Mr. Megarry argues.

He relied on the case of *Morgan* v. *William Harrison. Limited* (1907) 2 Ch.137, which was a case where the Court held upon the construction of certain correspondence that the Defendant, who had been tenant of a coal-mine and remained in possession after the expiration of his lease, wasa tenant at will with a right to get the coal and a right to exercise a way-leave and that he held on all the terms and conditions of the original tenancy so far as applicable to a tenancy at will, including an arbitration clause. Mr. Megarry submitted that such a case was clearly within the policy of the 1954 Act, but would be excluded from its operation unless a tenancy at will were held to fall within the definition of tenancy in section 69 (I). My Lords, I agree with Mr. Megarry that on the construction which I have placed on the 1954 Act tenancies such as that under consideration in the case cited would be outside the scope of Part II of the Act, but I believe them to be rare. Certainly your Lordships' attention was not directed to any other such case and I console myself with the reflexion that mining leases are in any event excluded by section 43 (1).

I derive some support for the conclusion I have reached from the decision of the Court of Appeal in *Martinali v. Ramuz* (1953) 1 W.L.R. 1196. That was a case under the Leasehold Property (Temporary Provisions) Act, 1951. Section 10 of that Act enabled an occupier of shop premises to apply for, and in certain circumstances to obtain, the grant of a new tenancy where the expiring tenancy would come to an end immediately before the Act came into force or within two years beginning from that date, and would so come to an end by effluxion of time or by the expiration of a notice to quit given by the landlord. The Act contained in section 20 a definition of tenancy the same in all material respects as that contained in section 69 (1) of the 1954 Act. The tenant died and his executors applied for a new lease under section 69 (I). The County Court Judge heard a preliminary objection that the occupier was a tenant at will, and that as his occupation had not been determined by notice to quit and it was not a tenancy which expired by effluxion of time, it was not covered by section 10 of the 1951 Act. The learned County Court Judge decided the case on the ground that no

notice to quit had been given, but he expressed the opinion *obiter* that a tenancy at will did not fall within the protection afforded by the 1951 Act. In the Court of Appeal. Singleton. L.J.. expressed the same view ; the other members of the Court did not deal with the point.

My Lords, the wording of section 10 of the 1951 Act is no doubt more definite than anything to be found in the 1954 Act. but section 25 of the 1954 Act, as I read it, also indicates that the protection afforded by that Act was intended only to apply to tenancies determinable by effluxion of time or notice to quit.

For these reasons I would allow the appeal and discharge the Orders in the Courts below save so far as they ordered the Appellant to pay the costs of the Respondent. The Appellant is entitled to an Order for possession and mesne profits. Each party will bear his own costs of the appeal.

Lord Somervell of Harrow

My lords.

I agree that the Respondent was a tenant at will. The question remains whether a tenancy at will is within the Act. If the definition of "tenancy" in section 69 plainly excluded a tenancy at will, that would be an end of the case. I do not think it does. Nor do I think it plainly includes it. Tenancies at will have such special characteristics that it would be convenient if definitions expressly stated whether they were included or excluded. One turns, therefore, to the other provisions of the Act.

Section 25, in my opinion, makes it clear that tenancies at will are excluded. Subsections (3) and (4) provide in effect that the statutory notice must not take effect at a date earlier than that on which the tenancy would end or could be ended. The opening words of subsection (4) show that all tenancies covered by this Part of the Act are covered by these two subsections. Tenancies at will are not brought to an end by a notice to quit and are therefore outside subsection (3), nor by effluxion of time and are therefore outside subsection (4). They are, therefore, outside the Act. Hodson, L.J.clearly felt that these subsections created a

considerable difficulty. He thought, and here I differ, with respect, that tenancies at will were clearly within the definition. That being so, he felt that section 25 could not, except by express words, exclude them. It left them in the air. If, as I think, the definition is at best ambiguous, the effect of section 25 is to resolve the ambiguity.

There may be some tenancies at will, and this may be one, which one would have expected to find covered by the Act, but it would be surprising if the Act were applicable to tenancies at will generally. It would be absurd if a prospective purchaser who had entered into possession pending completion was within the Act, and yet such a purchaser, in the absence of agreement to the contrary, is a tenant at will. Permissive occupation without payment of rent would also be a relationship one would not expect to find within this Part of the Act.

It was submitted with, I thought, some force that as under paragraph 8 of the Ninth Schedule a tenant who had got an order for extended possession under section 5 (13) of the Landlord and Tenant Act, 1927, was protected, so should, also, a tenant be protected who had been allowed by the landlord to remain in possession without an order. Parliament may have assumed that in such cases possession would have continued on the basis of a periodical tenancy to which the 1954 Act would apply, and not as here on a tenancy at will. The fact that paragraph 10 provides expressly for the preservation of the right to compensation under section 4 of the 1927 Act suggests that Parliament assumed that the more favourable rights conferred by the new Act for new tenancies would apply. It has, however, for the reasons which I have given, excluded tenancies at will, and on the facts of the present case I cannot think that the Respondent has any real grievance.

I would allow the appeal.