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Section 8 (2) provides that, for the purposes of the Act, " lessee " includes a person who remains in possession of premises after the termination of his lease of the premises, and " lessor " has a corresponding meaning. Assuming, then, that the tenancy which was vested in the Public Trustee came to an end upon the expiry of the notice to quit, the claimant and the Public Trustee are lessor and lessee respectively, by virtue of s. 8 (2), if it is correct to say that the Public Trustee remains in possession of the subject premises. Mrs. Denahy, of course, was in possession of the premises in her lifetime, having possession of portion of them personally and of the rest by her tenants, the defendants. When she died, her tenancy, and therefore her reversion upon the tenancies of the defendants, became vested in the Public Trustee. It follows that thereafter their possession of their respective portions was the possession of the Public Trustee. When the tenancy vested in the Public Trustee came to an end, the possession which first Mrs. Denahy, and then the Public Trustee, had had by their tenants was not restored to the claimant, and nothing occurred to change its character. The defendants did not claim to have any title to possession otherwise than by virtue of their sub-tenancies, and the Public Trustee, naturally enough, did not concern himself to eject them and thus bring to an end the possession retained by them as his sub-tenants. In my opinion the Public Trustee " remains in possession " of the premises occupied by the defendants, and accordingly the claimant and he are, by virtue of s. 8 (2), lessor and lessee within the meaning of s. 62 (1).

It is necessary then to consider whether the present action of ejectment answers the description of proceedings to recover possession of the premises from the lessee or for the ejectment of the lessee therefrom. It certainly is proceedings to recover possession of the premises. The lessee is not named as a defendant, but the effect of a judgment for the claimant will be to deprive the lessee of the possession which at present he has, and to give vacant possession to the claimant. It will take possession from the defendants, but no less certainly it will take possession from the lessee. The words of the section seem to me to be exactly satisfied.

It is important to remember that the Act is not one which protects only a personal occupation. It protects lessees against the termination of their leases whether they have sub-let or not; and when their tenancies have been determined it protects them against deprivation of possession whether they are in possession personally or not. Likewise it protects sub-lessees: whether joined as defendants or not, they are entitled to be heard (s. 82 (4)),

and their hardship and the non-availability to them of reasonably suitable alternative accommodation may be urged in opposition to the granting of an order for possession (s. 70). But if the prohibition contained in s. 62 (1) applies only to proceedings in which the lessee is a defendant, a curious, not to say absurd, position exists. Apart from the Act, where a lessee has sub-let and his lease has determined, the lessor suing in ejectment may adopt any of three courses. He may sue his own lessee alone, and if he succeeds the lessee and his sub-lessees will be ejected (*Roe* v. *Wiggs* (1); *Green* v. *Herring* (2); *Berton* v. *Alliance Economic Investment Co. Ltd.* (3)). He may join both his lessee and the sub-lessee as defendants. Or he may make only the sub-lessee a defendant, leaving him to give notice of the writ to the lessee (his own landlord) as he is obliged to do by s. 7 of the *Landlord and Tenant Act* 1899 (N.S.W.), whereupon the lessee, if he pleases, may apply to a judge under s. 214 of the *Common Law Procedure Act* 1899 (N.S.W.), to be allowed to appear and defend. Now it is clear that s. 62 (1) prevents the adoption of either the first course or the second. It is also clear that if the third course is not within the prohibition of s. 62 (1) but the lessee, upon learning of the action, obtains an order giving him leave to defend, the prohibition at once applies and the action ceases to be maintainable. But unless s. 62 (1) is so construed that the action was from the beginning not maintainable, the position is that the lessee in order to get the protection of the Act must get himself made a defendant, and the sub-lessee, although a defendant, does not get the protection of the Act unless the lessee chooses to come in and defend.

This result would rest upon no better foundation than a reading of s. 62 (1) as meaning that proceedings which, if successful, must deprive a lessee of possession are not proceedings to recover possession from him unless he himself is actually named as a defendant. It is, I think, useful to refer to the case of *Butler* v. *Meredith* (4), where the question for decision was whether, under the English prototype of s. 214 of the *Common Law Procedure Act* 1899 (N.S.W.), a landlord whose tenant was sued in ejectment was entitled as a matter of right to be let in to defend, or whether the Court had a discretion so that he could be put upon terms of giving security for costs if he were out of the jurisdiction. One argument used in support of the power of the Court to require security to be given was that it was not of much importance that an absent landlord

(1) (1806) 2 B. & P. N.R. 330 [127 E.R. 654].
(2) (1905) 1 K.B. 152.
(3) (1922) 1 K.B. 742, at pp. 759, 760.
(4) (1855) 11 Exch. 85 [156 E.R. 755].

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might lose possession as a result of being put upon terms, for he could afterwards bring an action of ejectment himself and so recover the possession. This argument was rejected for the reason that if the landlord once lost possession by the ejectment of his tenant he might not be able to show a title enabling him to succeed as claimant in a fresh action. The decision was that on the terms of the relevant statute the landlord had an absolute right to come in and defend. The judgments delivered by a powerful court (*Pollock* C.B., and *Parke*, *Platt* and *Martin* BB.) (1), are relevant here for their clear recognition that an action of ejectment against a defendant whose title to possession is as tenant of a person not a party to the action is an action which, if it succeeds, will put the lessor who is not a party out of possession and will put the claimant in. It is difficult to imagine what more could be needed to justify a description of the present action as proceedings to recover possession of the premises from the lessee, or (equally) for the ejectment of the lessee therefrom.

In my opinion the appeal should be dismissed.

Appeal dismissed with costs.

Solicitors for the appellant, *Primrose, Young & Primrose.*

Solicitor for the respondents Hogan and Williams, *C. L. Sheehy.*

Solicitors for the respondent Annabel, *George R. Vincent & Hodge.*

J. B.

(1) (1855) 11 Exch. 85 [156 E.R. 755].

[HIGH COURT OF AUSTRALIA.]

BONNINGTON AND COMPANY PROPRIETARY LIMITED . . . . . APPELLANT;
CLAIMANT,

AND

LYNCH . . . . . RESPONDENT.
DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1952.

SYDNEY, *Aug.* 1, 18.

Dixon C.J., McTiernan, Williams, Webb and Kitto JJ.

Landlord and Tenant—Lease—"Prescribed premises"—Vacant land—Lessee a "protected person"—Notice to quit—Expiry—Ejectment proceedings—Conditions—Competent courts—Landlord and Tenant (Amendment) Act 1948-1949 *(N.S.W.) (No. 25 of* 1948*—No. 21 of* 1949*), ss.* 8, 62, 67*—Landlord and Tenant (War Service) Amendment Act* 1949 *(N.S.W.) (No. 22 of* 1949*), s.* 4 (2) (4) (6).

The definition of "prescribed premises" in s. 8 of the *Landlord and Tenant (Amendment) Act* 1948-1949 does not include vacant or bare land; accordingly such land is not subject to the provisions of that Act, which impose restrictions and conditions upon the recovery of land that has been leased.

Turner v. *York Motors Pty. Ltd.* (1951) 85 C.L.R. 55, followed.

In determining whether the character of land that has been let is that of vacant land, the material date is that of the demise or letting; for this purpose, unless a building has subsequently been erected in pursuance of a term or variation of the lease, it is irrelevant that after the date of the letting the tenant may have erected a building on land which previously had been vacant land.

A "protected person" within the meaning of s. 4 (4) of the *Landlord and Tenant (War Service) Amendment Act* 1949 (N.S.W.), who was a lessee under a tenancy agreement in respect of premises not covered by the provisions of the *Landlord and Tenant (Amendment) Act* 1948-1949 (N.S.W.), and upon whom a valid notice to quit has been served and whose lease has thereby been terminated, is still entitled to the protection of s. 4 (4) of the *Landlord and Tenant (War Service) Amendment Act* 1949. An action of ejectment may be brought after the expiry of the notice to quit, and the Supreme Court would

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be a competent Court to entertain the proceedings. But before an order of ejectment can be made the claimant must satisfy the conditions prescribed by s. 4 (4) of the *Landlord and Tenant (War Service) Amendment Act* 1949.

Decision of the Supreme Court of New South Wales (Full Court): *Bonnington & Co. Pty. Ltd.* v. *Lynch*, (1951) 51 S.R. (N.S.W.) 322; 68 W.N. 296, affirmed.

APPEAL from the Supreme Court of New South Wales.

Bonnington & Co. Pty. Ltd. was the owner in fee simple of certain land, described as "vacant", known as Nos. 181-187 Harris Street, Pyrmont, having a frontage of fifty-one feet ten inches to Harris Street and a depth of about eighty feet. At the date of the granting of the lease mentioned hereunder the land was inclosed by either corrugated iron or paling fences and the walls of certain buildings. The land had been used as a wood and coal yard for a number of years, and erected thereon were about six upright posts about twelve feet from the wall of one of the brick buildings. There were a few rafters and a number of corrugated iron sheets but these did not form a roof as a number of sheets were missing and it had really collapsed. At the Harris Street end of the posts there was a brick wall at right angles to the wall of the brick building, about twelve feet long and about seven feet high. There was in addition some rubbish in the form of timber wood and coal, empty barrels and boxes, and other articles left by the company.

About September 1948, Patrick Henry John Lynch asked the company whether he could lease the land, and it was common ground between him and the company that he was told that the company intended to use the land for the purpose of erecting thereon an extension of its factory, and that for that reason it did not desire to enter into a tenancy agreement which would have the effect of binding the land for an indefinite period.

On 12th October 1948, a lease was executed whereby the company let to Lynch "all that piece of vacant land known as Nos. 181-187 Harris Street, Pyrmont", the rent being fixed at £2 per week. On the same day the parties signed an application, which was dated as of the previous day, seeking the issue of a certificate of exclusion under s. 86 of the *Landlord and Tenant (Amendment) Act* 1948 (N.S.W.). In that application the land was described as "vacant". The rent controller replied to the effect that, as the application referred only to vacant land and the Act applied only to prescribed premises, which did not include vacant land, there was not any power to grant the certificate. Either shortly

before or immediately after signing of the lease—the time being a fact in dispute between the parties—Lynch went on to the land, cleared and removed the rubbish referred to above, reconstructed and extended the old and ruined structure which then stood on the land, and used the land and that structure in connection with his business of a scrap-metal dealer.

Lynch said he had permission from the company to do that work but the company denied that it had given him the permission.

On 16th February 1951, a notice to quit was given by the company to Lynch requiring him to deliver up possession of the land on 27th February 1951. Lynch refused to comply with its terms and the company thereupon instituted proceedings in the Supreme Court by way of an action of ejectment and filed particulars of claim.

The particulars of defence filed by Lynch were: (i) that he was in possession of the property and relied upon his said possession; (ii) that the property was prescribed premises within the meaning of the *Landlord and Tenant* (*Amendment*) *Act* 1948-1949 (N.S.W.), and a notice to quit in accordance with s. 62 thereof had not been given; and (iii) that he was a protected person and the property was premises within the meaning of the *Landlord and Tenant* (*War Service*) *Amendment Act* 1949 (N.S.W.) and an order in accordance with that Act had not been made.

A summons taken out by the company under r. 504 of the General Rules of the Supreme Court for an order that the company should be at liberty to enter judgment for the recovery of the land claimed, was dismissed by *McClemens* J. and an appeal from his decision was dismissed by the Full Court of the Supreme Court (*Street* C.J., *Owen* and *Herron* JJ.): *Bonnington & Co. Pty. Ltd.* v. *Lynch* (1).

From that decision of the Full Court the company, by special leave, appealed to the High Court.

The relevant statutory provisions are sufficiently set forth in the judgment hereunder.

J. D. Holmes Q.C. (with him *R. J. M. Newton*), for the appellant. The term "lessee" in s. 4 (4) of the *Landlord and Tenant* (*War Service*) *Amendment Act* 1949, extends only to those persons who are "lessees" under the *Landlord and Tenant* (*Amendment*) *Act* 1948-1949. This conclusion arises from a consideration of the course the legislation took under National Security Regulations where the War Service Moratorium Regulations were an extension

(1) (1951) 51 S.R. (N.S.W.) 322; 68 W.N. 296.

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of the Landlord and Tenant Regulations. When the State enacted the *Landlord and Tenant* (*Amendment*) *Act* 1948, the Commonwealth retained War Service Moratorium provisions which were no longer in terms related to actual State legislation. When the State enacted the *Landlord and Tenant* (*War Service*) *Amendment Act* 1949 it copied the Commonwealth regulations and did not include a provision linking the two laws. Consequently, a valid notice to quit may be given in respect of vacant land and the tenant ceases to be a lessee within the meaning of the *Landlord and Tenant* (*Amendment*) *Act*, and, consequently, does not derive any benefit from the *Landlord and Tenant* (*War Service*) *Amendment Act*. If the subject land was vacant land at the material time, the appellant is entitled to succeed.

M. F. Hardie Q.C. (with him *J. F. Nagle*), for the respondent. An examination of the *Landlord and Tenant* (*War Service*) *Amendment Act* 1949, reveals that the word " lessee " is used as a *persona designata*. If that Act be read as contended for by the appellant there would not be any real benefit for protected persons and the alteration of the definition to include vacant land would have been of no effect at all: see *Remon* v. *City of London Real Property Co. Ltd.* (1), *Cruise* v. *Terrell* (2), *Guest* v. *Ravesi* (3) and *Christopher* v. *Wright* (4). *Simms* v. *Lee* (5) is distinguishable on the relevant regulation and should not be followed. *Fry* v. *Metzelaar* (6), should be followed. There was in fact a disputed question of fact and this being so the matter should not be determined under a r. 504 summons.

J. D. Holmes Q.C., in reply, referred to *Ex parte Begovitch*; *Re Morrow* (7).

Cur. adv. vult.

Aug. 18.

THE COURT delivered the following written judgment:—

Two questions were raised in this appeal. The first is whether s. 62 of the *Landlord and Tenant* (*Amendment*) *Act* 1948-1949 applies so that it was not competent for the appellant to maintain an action of ejectment in the Supreme Court against the respondent for recovery of possession of the appellant's land.

(1) (1921) 1 K.B. 49.
(2) (1922) 1 K.B. 664, at pp. 669, 671, 672.
(3) (1927) 27 S.R. (N.S.W.) 449; 44 W.N. 172.
(4) (1949) V.L.R. 145.
(5) (1945) 45 S.R. (N.S.W.) 352; 62 W.N. 182.
(6) (1945) V.L.R. 65.
(7) (1943) 43 S.R. (N.S.W.) 274; 60 W.N. 170.

The answer to this question depends on the application to the facts at the relevant time of the words of s. 62 " lessor of any prescribed premises " and the words " the lessee ", a question which in turn may possibly depend on fixing the relevant time.

The second question is whether, in any case, inasmuch as the respondent is a protected person entitled to the benefit of s. 4 (4) of the *Landlord and Tenant* (*War Service*) *Amendment Act* 1949, whenever that provision applies, the present is not a case falling under its application. The appellant contends that the lease by which the respondent held the land as the appellant's tenant had been brought to an end before the commencement of the action and that, as a consequence, the respondent had ceased to be a " lessee " within the meaning of s. 4 (4) of the *Landlord and Tenant* (*War Service*) *Amendment Act*, which therefore did not apply.

In the Supreme Court the Full Court, consisting of *Street* C.J., *Owen* and *Herron* JJ., decided that this was not the consequence of a termination of the lease. Upon the question whether an action in the Supreme Court was precluded by s. 62 of the *Landlord and Tenant* (*Amendment*) *Act* 1948-1949, *Street* C.J. expressed the view that the action was not so precluded because the land could not be considered to be prescribed premises, while *Owen* J. and *Herron* J. did not decide the question. *Owen* J., after referring to the possibility of there being a disputed question of fact, said that it was unnecessary to decide it. But for the purposes of applying s. 4 (4) of the *Landlord and Tenant* (*War Service*) *Amendment Act* 1949, his Honour proceeded upon the assumption that the land was not " prescribed premises ", and the further assumptions that the appellant was entitled to terminate the lease by the notice to quit in fact given and that the respondent became a trespasser on the expiry of that notice. *Herron* J. expressed the opinion that the better view was that the land was not prescribed premises and, as the premises were probably outside the *Landlord and Tenant* (*Amendment*) *Act* it was perhaps a good notice to quit. But without deciding the question his Honour proceeded on the assumption that the tenancy had been terminated.

It is convenient to deal first with the question of the application of s. 62 of the *Landlord and Tenant* (*Amendment*) *Act*. What difficulty there is about the question arises from the fact that some alteration was made in the actual condition of the land by the respondent after the time when it was first arranged between him and the appellant that he should become a tenant. According to his affidavit the change was effected before the date of the actual lease, but

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there are some passages in other affidavits not altogether consistent with this. When he applied to become tenant his purpose was to use the land as a junk yard. The actual lease described it as vacant land. The definition of " prescribed premises " in s. 8 of the *Landlord and Tenant (Amendment) Act* has been taken to show that on the land there must be some building or structure or perhaps artificial work, which colloquially might be described as " premises ", and that accordingly vacant or bare land cannot constitute " prescribed premises ". Such a view was adopted in the Supreme Court of more than one State and to it this Court subscribed in *York Motors Pty. Ltd.* v. *Turner* (1). When the respondent arranged for the lease there were the tumbledown remains of a shed or lean-to at one corner of the land. It was a flimsy ruin too dilapidated for use. It could hardly be said to form " premises " or to make the land " prescribed premises ". Doubtless the parties had this in mind in treating it as vacant land. If so, they were acting on a natural conception of its character: they were not merely making an attempt by contract to take premises, otherwise within the Act, outside its operation. But at some time or other, in the same corner of the land, the respondent put up a more substantial and extensive structure. The appellant does not agree that this had been erected by the date of the lease so as to form part of the subject of the demise and he denies that the size and substantiality of the structure were sufficient to give the land as at that date, the character of prescribed premises. This doubtless raises an issue of fact. But it may be asked whether it is a material issue of fact. Is it sufficient, for the purposes of s. 62 of the *Landlord and Tenant (Amendment) Act* 1948-1949, that the land is not bare or vacant land at the time when a notice purporting to terminate a tenancy is given or proceedings are taken to recover possession or for the ejectment of a lessee ? Suppose that at the time of the making of a lease, the land was bare and vacant and it was leased as such. Is it enough that afterwards during the currency of the lease the tenant has placed some structure of substance upon it, although the landlord has never agreed that he should or might do so ? A study of the definitions of " lessor " and " lessee " and " lease " contained in s. 8 (1) in their application to s. 62 (1) suggests that to satisfy the words " the lessor of any prescribed premises " in s. 62 (1) " prescribed premises " must form the subject of the demise. That is to say the subject of the demise must be land with a sufficient structure upon it to fulfil the definition of " prescribed premises." This may result from the land being in that condition

(1) (1951) 85 C.L.R. 55.

at the time when the lease is made. It may also result from its being put in that condition during the currency of the lease pursuant to a subsequent agreement between the lessor and the lessee amounting to a variation of the lease. But if a tenant, without the consent of his landlord, places a structure upon the land, that is another matter.

The restrictions imposed by s. 62 (1) are according to the terms of that provision applicable to "the lessor of any prescribed premises" and to "proceedings to recover possession of the premises from the lessee or for the ejectment of the lessee therefrom". Doubtless this language if there were no more would be consistent with the view that the character of the premises must be ascertained as at the date of the notice to quit or of the proceedings as well as with the rival view that it must be ascertained as at the date of the lease. But the definition of "lessor" and of "lessee" begins with the statement that the words mean the parties to a lease; and the definition of "lease" refers to contracts "for the letting of any prescribed premises". These expressions appear to make it necessary that, when the contract for letting is made, the land must at that time fill the description of "prescribed premises" by possessing the required attributes. This seems to be in accordance with what might be expected. For the result is that the application of the controls does not depend on what the tenant happens to have done to change the character of the land but upon the character in which the land was let.

Doubtless in the case of a building lease granted in respect of bare land, the character of the premises is to be determined by the condition they must assume as a result of the performance of the building covenant in the lease. In the same way it may well be the subsequent variations of the terms of a lease or of the tenancy may determine the character of the land demised. But in the present case in the Supreme Court *Street* C.J. appears to have applied to the question what was said in this Court in *Thompson* v. *Easterbrook* (1) and thus to have made the purpose of the letting a test. With great respect to the learned Chief Justice it is not easy to see how "purpose" could enter into the question whether land is to be considered vacant land or not. The condition of the land as fixed by the fulfilment of a contract to build may do so, but that is not because of the purpose of the parties but of the state in which the premises must be placed under the provisions of the lease. The case of *Thompson* v. *Easterbrook* (2) was concerned, not with

(1) (1951) 83 C.L.R. 467, at p. 482. (2) (1951) 83 C.L.R. 467.

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a question of what constituted prescribed premises, but with the question whether given prescribed premises fell within the definition of " dwelling house ". Under the definition contained in s. 8 (1) the expression means prescribed premises leased for the purpose of residence. The problem with which it was necessary in that case to deal was the test or tests for ascertaining, under the definition of " dwelling house ", the purpose for which the premises were leased.

In the present case if on the affidavits it were possible to say with sufficient certainty that at the date of the lease the land bore only the dilapidated remains of the original structure and that the respondent had not erected the more substantial and larger second structure, there would be no difficulty in adopting the conclusion that there was not a lease of prescribed premises. But it is not possible to reach that conclusion on the affidavits as they stand. The appeal arises out of an application for summary judgment under r. 504 of the Rules of the Supreme Court, a proceeding not meant for the determination of issues of fact. There are two issues of fact upon which the application of s. 62 of the *Landlord and Tenant (Amendment) Act* to this action depends. The first relates to the date when the later structure was erected and the second to its nature and substantiality. At the date of the lease was it erected and sufficiently large and substantial to change the character of the land as vacant land so that the erection might reasonably be called premises upon the land using the word " premises " in its colloquial and not its legal sense ? With this issue outstanding the dismissal of the appellant's summons was necessarily correct.

But it is desirable to decide the question whether s. 4 (4) of the *Landlord and Tenant (War Service) Amendment Act* 1949 applies to protect the respondent against the present action. The question arises upon the word " lessee " in s. 4 (4). The sub-section provides that an order shall not be made for the recovery of possession of premises from a lessee (being a protected person) or for the ejectment from premises of a lessee (being a protected person) unless the court is satisfied of one or other of certain matters which the sub-section proceeds to enumerate. The basis of the appellant's action of ejectment against the respondent is that the respondent's lease was duly determined so that he ceased to be a lessee before the action was brought. Unless s. 62 of the *Landlord and Tenant (Amendment) Act* applies this may be assumed to be the case. How then can the respondent be a " lessee " within the operation of s. 4 (4) of the *Landlord and Tenant (War Service) Amendment Act* 1949 ? If " lessee " is used in its strict sense as describing a person

who holds demised premises by virtue of a subsisting relation of tenure there can only be one answer; he cannot be such a lessee. But a consideration of the operation of s. 4 (4) will show that there never can be such a lessee who needs the protection of the provision, which, if that be the meaning of the word "lessee", is entirely futile.

The reason is that there cannot be a case in which a lessor can obtain an order for the recovery of possession or a judgment in ejectment against a tenant who holds of him under a still subsisting tenancy. It cannot be so in cases outside the operation of s. 62 of the *Landlord and Tenant* (*Amendment*) *Act* and, having regard to the interpretation s. 67 of that Act has received, it cannot be so in cases within the operation of s. 62. Yet s. 4 (4) of the *Landlord and Tenant* (*War Service*) *Amendment Act* covers cases outside the *Landlord and Tenant* (*Amendment*) *Act* and cases within it. It covers cases outside its operation for two reasons. In the first place, because the definition of "premises" in the former Act covers land in general and, unlike the definition of prescribed premises in the latter Act, does not operate to exclude vacant land. In the second place, because the definition of "prescribed premises" in the latter Act expressly excludes premises of certain descriptions and empowers the Governor to exclude other classes of premises. Now it needs no argument to show that, apart from legislation, a tenant whose lease subsists is entitled as against his landlord to retain possession and he cannot be ejected and possession cannot be recovered from him unless at or before the commencement of the proceedings his tenancy is terminated. It may have expired, it may have been terminated by notice to quit or a forfeiture may have been incurred for breach of condition. Of course if the tenant is a sub-lessee and the sub-lessor's lease has expired or been terminated the head landlord may recover possession notwithstanding that as against the sub-lessor the rights of the sub-tenant may continue. But the sub-lessee in that situation is protected against the head landlord by the express terms of s. 4 (6) of the *Landlord and Tenant* (*War Service*) *Amendment Act*, if he is a protected person.

In cases which fall within s. 62 of the *Landlord and Tenant* (*Amendment*) *Act*, by sub-s. (3) of that section the expiry of a notice to quit duly given upon one of the prescribed grounds is made a condition precedent to proceedings for the recovery of possession. Section 67 provides that "a notice to quit given in accordance with the provisions of section sixty-two of this Act shall, if the tenancy in respect of which the notice was given has not otherwise terminated, operate so as to terminate the tenancy