

501

PROOF

No. , 1929.

A BILL

To provide for the payment of compensation for improvements and goodwill to outgoing tenants of shop premises; to amend the Landlord and Tenant Act, 1899, the Small Debts Recovery Act, 1912, and the District Courts Act, 1912; and for purposes connected therewith.

[MR. LEE;— , 1929.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

1. (1) This Act may be cited as the "Landlord and Tenant (Shops) Act, 1929," and shall be read with the Landlord and Tenant Act, 1899. Short title.

502

(2) This Act shall commence upon a date to be appointed by the Governor and notified by proclamation published in the Gazette.

Interpreta-
tion.

2. (1) In this Act, unless the context or subject-matter otherwise requires,—

5

“ Court ” means the court to which by this Act jurisdiction is given to determine an action brought under this Act.

“ Improvement ” means an improvement to a shop, and includes a building, but does not include any trade or other fixture which a tenant is by law or by agreement entitled to remove. 10

“ Landlord ” means any person who under a lease is as between himself and the tenant or other lessee for the time being entitled to the rents and profits of the demised shop. 15

“ Lease ” means a lease, under-lease, or other tenancy, assignment operating as a lease or under-lease or an agreement for such lease, under-lease, tenancy, or assignment, and includes a lease made before as well as after the commencement of this Act, and “ leased ” has a corresponding meaning. 20

“ Shop ” means a building in which the business of selling goods by retail is carried on. 25

“ Tenant ” means any person entitled in possession to a shop under any contract of tenancy whether the interest of such tenant was acquired by original contract, assignment, operation of law or otherwise. 30

(2) The designation of “ landlord and tenant ” shall continue to apply to the parties until the conclusion of any proceedings taken under or in pursuance of this Act in respect of compensation.

Application
of Act.

3. (1) A tenant shall not be entitled to the benefit of this Act unless the shop of which he is the tenant is subject to a lease at a rent not exceeding six pounds per week, and the lease may be terminated by notice to quit. 35

(2)

(2) Where a shop forms part only of premises and the premises are wholly leased to one tenant at one rent the tenant shall not be entitled to the benefit of this Act in respect of the shop, unless such rent does not exceed six pounds per week, and the lease may be terminated by notice to quit.

4. (1) Where a lease of a shop is terminated by notice to quit the tenant shall, subject to this Act, if he makes claim in the prescribed manner within one month after the notice was served on him be entitled at the termination of the lease on quitting the shop to be paid by the landlord compensation in respect of any improvement to the shop made by him or his predecessor in title after the commencement of this Act with the written consent of the landlord or made by him or his predecessor in title before the commencement of this Act, whether with or without the consent of the landlord, and which at the termination of the lease adds to the letting value of the shop.

Tenants
right to
compensatio
for improve-
ments.

The sum to be paid as compensation for any improvement shall not exceed the net addition to the letting value of the shop which may be agreed upon by the landlord or determined by the court to be the direct result of the improvement.

(2) The court, in determining the amount of such net addition, shall have regard to the purpose for which it is intended that the shop shall be used after the termination of the lease, and, if it is shown that it is intended to demolish or to make structural alterations to the shop or to use the shop for a different purpose, shall also have regard to the effect of such demolition, alteration, or change of user on the additional value attributable to the improvement and to the length of time likely to elapse between the termination of the lease and the demolition, alteration, or change of user.

(3) In the absence of agreement between the parties, all questions as to the right of compensation under this section, or as to the amount thereof, shall be determined by action brought in the court. If the court determine that on account of the intention to demolish or alter or to change the user of the shop no compensation

504

compensation or a reduced amount of compensation shall be paid, the court may authorise a further application for compensation to be made by the tenant if effect is not given to such intention within such time as is fixed by the court.

5

Limitation of tenant's right to compensation in certain cases.

5. (1) A tenant shall not be entitled to compensation under this Act—

(a) in respect of any improvement made in pursuance of a statutory obligation or of any improvement which the tenant or his predecessor in title was under an obligation to make in pursuance of a contract entered into whether before or after the commencement of this Act for valuable consideration, including a building lease; or

15

(b) if within two months after the making of the claim under section four the landlord serves on the tenant notice that he is willing and able to grant to the tenant or obtain the grant to him of a renewal of the lease at such rent and for such term and under such conditions as failing agreement the court may consider reasonable.

20

Where such a tenant does not within one month from the service of such notice serve upon the landlord an acceptance in writing of the offer, the tenant shall be deemed to have declined the offer.

25

(2) Where an offer of the renewal of a tenancy by a landlord is accepted by a tenant, and the rent is fixed by the court, it shall be such as in the opinion of the court a willing lessee other than the tenant would agree to give, and a willing lessor would agree to accept, for the shop, having regard to the terms of the lease, but irrespective of the added letting value attributable to the improvement in respect of which compensation is payable.

35

Matters to be considered by the court.

6. The court in determining the compensation for an improvement shall take into consideration any benefits which the tenant or his predecessors in title may have received from the landlord or his predecessors in title in consideration expressly or impliedly of the improvement.

40

7.

7. (1) When a lease of a shop is terminated by notice to quit, the tenant shall, if a claim for the purpose is made in the prescribed manner within one month after the service of the notice to quit on the tenant, be entitled at the termination of the lease on quitting the shop to be paid by his landlord compensation for goodwill, if he proves to the satisfaction of the court that, by reason of the carrying on by him or by his predecessor in title at the shop of a trade or business, goodwill has become attached to the shop by reason whereof the shop could be let at a higher rent than it would have realised had no such goodwill attached thereto.

8. (1) (a) The sum to be awarded as compensation for such goodwill shall not exceed such addition to the letting value of the shop at the termination of the tenancy as may be determined to be the direct result of the carrying on of the trade or business by the tenant or his predecessor in title.

In determining such addition the court shall, if it is proved that the shop will be demolished wholly or partially or used for a different and more profitable purpose, have regard to the effect of such demolition or change of user on the value of the goodwill to the landlord.

(b) A tenant shall not be entitled to compensation in respect of goodwill, if, within two months after the making of the claim, the landlord serves upon the tenant notice in writing that he is willing and able to grant to the tenant or obtain the grant to him of a renewal of the lease of the shop at such rent and for such term not exceeding five years and under such conditions as failing agreement the court may consider reasonable; and if the tenant does not within one month from the service of the notice serve upon the landlord an acceptance in writing of the offer the tenant shall be deemed to have declined the offer.

(c) The court shall in determining the amount of compensation for goodwill have regard to the intentions of the tenant as to carrying on the trade or business elsewhere.

If

506

If in the opinion of the court it appears that the tenant intends to carry on the same trade or business within such proximity to the said shop that the goodwill would be substantially retained by the tenant no compensation for goodwill shall be payable to the tenant. 5

(d) Where the landlord proves that the value of the goodwill has been created or increased owing to restrictions imposed by the landlord, whether by agreement with the tenant or not, upon the letting for a competitive trade or business of other premises in the neighbourhood owned by or under the control of the landlord, the court shall have regard thereto and may refuse the application for compensation or may determine a reduced amount of compensation. 10 15

(2) For the purposes of this section a shop shall be deemed to be used for a more profitable purpose if, but not unless, the rent which the landlord could obtain for the shop if used for that purpose would be greater than the rent which could be obtained if it was used for the purpose of the trade or business carried on by the tenant. 20

(3) Where an offer of the renewal of a lease by the landlord is accepted by the tenant, and the rent is fixed by the court, it shall be such as in the opinion of the court a willing lessee other than the tenant would agree to give and a willing lessor would agree to accept for the shop, having regard to the terms of the lease, but irrespective of the value of any goodwill which may have become attached to the shop by reason of the tenant or his predecessor in title having carried on thereat a particular trade or business. 25 30

(4) In the absence of agreement between the parties all questions as to the right to compensation under this section and as to the amount thereof shall be determined by action brought in the court. 35

Right of landlord to offer alternative accommodation.

9. The tenant shall not be entitled to compensation under section seven of this Act if within one month after the tenant has made a claim under that section the landlord serves on the tenant notice that he is willing to grant to the tenant at such rent and for such term and 40 and

and under such conditions as the court may consider reasonable a lease of other premises which in the opinion of the court would reasonably preserve to the tenant the goodwill of his business.

5 **10.** Where, in respect of any shop, a claim for compensation has been made both for improvements and for goodwill, and the landlord has offered, in lieu of compensation for either such claim, to grant to the tenant, or obtain the grant to him, of a renewal of the lease, the rent under such renewal if both claims are valid shall be fixed irrespective of any increased value of the shop attributable whether to the improvements or to the goodwill.

Provision when claim is both for improvement and goodwill.

15 **11.** (1) Where, in the case of any shop, there are several persons standing in the relation to each other of lessor and lessee, the following provisions shall apply:—

Rights of mesne landlords.

20 Any mesne landlord who has paid compensation under this Act shall be entitled to recover compensation from his immediate landlord in like manner and on the same conditions as if he had himself made the improvement or created the goodwill in question provided that the claim for compensation is made within three months after the compensation has been so paid.

25 **12.** This Act shall apply notwithstanding any contract to the contrary made at any time after the commencement of this Act.

Restriction on contracting out.

30 But if on the hearing of a claim or application under this Act it appears to the court that a contract made after such commencement, so far as it deprives any person of any right under this Act was made for adequate consideration, the court shall in determining the matter give effect to such contract.

35 **13.** The landlord of any shop or any person authorised by him may at all reasonable times enter on the shop, or any part of it, for the purpose of making any inspection of the shop which may reasonably be required.

Right of entry.

Right to
make
deductions.

14. (1) Out of any money payable to a tenant by way of compensation under this Act, the landlord shall be entitled to deduct any sum due to him from the tenant under or in respect of the lease.

(2) Out of any money due to the landlord from the tenant under or in respect of the lease, the tenant shall be entitled to deduct any sum payable to him by the landlord by way of compensation under this Act.

Provisions as
to reversion-
ary leases.

15. (1) Where the amount which a landlord is liable under this Act to pay as compensation for an improvement has been determined by agreement or by the determination of the court, and the landlord had before the commencement of this Act granted or agreed to grant a reversionary lease commencing on or after the termination of the then existing tenancy, the rent payable under the reversionary lease shall, if the court so directs, be increased by such amount as, failing agreement, may be determined by the court having regard to the addition to the letting value of the holding attributable to the improvement:

Provided that no such increase shall be permissible unless the landlord has served on the reversionary lessee copies of all documents relating to the improvement when proposed which were sent to the landlord in pursuance of this Act.

(2) Where a landlord who would have been liable to pay compensation for goodwill under this Act had, before the commencement of this Act granted or agreed to grant a reversionary lease commencing on or after the termination of the then existing lease, the landlord shall not be liable to pay compensation to the tenant for goodwill under this Act.

Hearing of
claims and
courts to
which juris-
diction is
given to hear
and deter-
mine claims.

16. The following courts shall have jurisdiction to hear and determine any action under this Act and to determine all questions as to the right to compensation and as to the amount thereof and to give judgment accordingly, that is to say:—

- (a) where the total claim for compensation does not exceed the sum of one hundred pounds the Court of Petty Sessions in and for the district within which the shop is situate held by

509

Landlord and Tenant (Shops).

by a police magistrate or stipendiary magistrate and the provisions of the Small Debts Recovery Act, 1912, shall apply to such action ; and

- 5 (b) where the total claim for compensation exceeds one hundred pounds the District Court in and for the district within which the shop is situate.

The judgment of the court in any proceeding under this Act shall be final.

- 10 **17.** (1) A Court of Petty Sessions may at any stage of the proceedings under this Act before it state in the form of a special case for the opinion of the Supreme Court any question of law arising in the course of the proceedings. Statement of special case by Court of Petty Sessions on question of law.

- 15 (2) The Court of Petty Sessions shall give a copy of the special case to each of the parties to the action within five days after stating the same. a Court of Petty Sessions to give copy of special case to parties.

- 20 (3) The Supreme Court for the purpose of hearing any such case may consist of one or more judges.

The Supreme Court shall hear and determine the question or questions of law arising on such case, and shall remit the matter to the Court of Petty Sessions with its opinion thereon.

- 25 The Supreme Court may make such order as to costs as it thinks just, provided that no magistrate who has stated a case in pursuance of this Act shall be liable to any costs in respect of such case.

- 30 (4) The judges of the Supreme Court or any two of them may make rules with regard to the setting down of any case for argument, and the hearing and decision of the same, and its return with the decision of the Supreme Court thereon.

- 35 (5) The decision of the Supreme Court on the hearing of any such special case shall be final, and shall be binding upon the Court of Petty Sessions and upon the parties to the proceedings.

Regulations.

18. The Governor may make regulations for carrying out the provisions of this Act, and in particular for—
regulating the manner in which and the time when claims for compensation for improvements and for goodwill may be made by tenants upon 5
landlords;
regulating the time within which an action may be brought for the recovery of compensation after the making of a claim ;
regulating the manner in which copies of claims 10
may be served by a mesne landlord on his superior landlord ;
regulating the time within which an action may be brought by a mesne landlord against a superior landlord in respect of compensation agreed to 15
be paid by the mesne landlord.

Such regulations shall—

- (a) be published in the Gazette ;
- (b) take effect from the date of publication or from a later date to be specified in the regula- 20
tions ;
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the com- 25
mencement of the next session.

If either House of Parliament passes a resolution at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part 30
shall thereupon cease to have effect.
