

No. , 1930.

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## 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;—11 *April*, 1930.]

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**B**E 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  
5 the same, as follows :—

**1.** (1) This Act may be cited as the "Landlord and Tenant (Shops) Act, 1930," and shall be read with the Landlord and Tenant Act, 1899.



(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,—

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“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 10 any trade or other fixture which a tenant is by law or by agreement entitled to remove.

“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 15 and profits of the demised shop payable under the lease.

“Lease” means a lease, under-lease, or other tenancy, assignment operating as a lease or under-lease or an agreement for such lease, 20 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.

“Shop” means a building in which the business of 25 selling goods by retail is carried on, and includes premises let to a tenant at one rent and in part of which only such business is carried on.

“Tenant” means any person entitled in possession 30 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.

(2) The designation of “landlord and tenant” 35 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 40 subject to a lease at a rent not exceeding six pounds per week.

(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 one rent  
5 does not exceed six pounds per week.

(3) A tenant shall not be entitled to any benefit under this Act where the tenancy of the shops is terminated for the breach of any covenant or stipulation of the lease and in pursuance of any proviso for re-entry  
10 therein contained and no relief has been granted to the tenant under the provisions of the Conveyancing Act, 1919.

4. (1) Where a lease of a shop is terminated in any way whatsoever the tenant shall, subject to this Act, if  
15 he makes claim in the prescribed manner—

(a) within one month after a notice terminating the tenancy is served on or by the tenant where the tenancy may be so terminated; or

(b) in any other case not more than twenty-four  
20 nor less than nine months before the termination of the tenancy,

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  
25 or his predecessor in title—

(i) after the commencement of this Act with the written consent of the landlord; or

(ii) before the commencement of this Act, whether with or without the consent of the landlord,  
30 and which at the termination of the lease adds to the letting value of the shop.

The sum to be paid as compensation for any improvement shall not exceed—

(a) the net addition to the value of the shop which  
35 may be agreed upon by the landlord or determined by the court to be the direct result of the improvement; or

(b) the reasonable cost of carrying out the improvement at the termination of the tenancy, subject  
40 to a deduction of an amount equal to the cost (if any) of putting the works constituting the improvement

Tenants  
right to  
compensation  
for improve-  
ments.  
cf. 17 & 18  
Geo. V, c. 35,  
s. 1.



improvement into a reasonable state of repair, except so far as such cost is covered by the liability of the tenant under any covenant or agreement as to the repair of the shop.

(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. 5

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, the court shall have regard to the effect of such demolition, alteration, or change of user on such additional letting value and to the length of time likely to elapse between the termination of the lease and the proposed demolition, alteration, or change of user. 15

(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. 20

If the court determine that on account of the intention to demolish or alter or to change the user of the shop no 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. 25

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 the lease or of a contract entered into whether before or after the commencement of this Act for valuable consideration, including a building lease; or 30
- (b) in respect of any improvement made less than three years before the termination of the tenancy; or 40
- (c)



5 (c) if within one month 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.

10 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.

(2) Where an offer of the renewal of a tenancy by a landlord is accepted by a tenant, and the rent is fixed by  
15 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  
20 irrespective of the added letting value attributable to the improvement in respect of which compensation is payable.

6. The court in determining the compensation for an improvement shall in reduction of the tenant's claim take into consideration any benefits which the  
25 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.

Matters to be considered by the court.

7. (1) Where a lease of a shop is terminated, the tenant shall, if a claim for the purpose is made in the  
30 prescribed manner—

Compensation for goodwill.

(a) in a case where the tenancy may be terminated by notice, within one month after the service of the notice terminating the tenancy on or by the tenant; or  
35 (b) in any other case not more than twenty-four nor less than nine months before the termination of the tenancy, in any way whatsoever, be entitled, subject to this Act, at the termination of the lease on quitting the shop to be paid by his landlord  
40 compensation for goodwill.

(2)



(2) No tenant shall be entitled to such compensation unless 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, for a period of not less than five years, 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. 5

Measure of  
compensation.

**8.** (1) (a) The sum to be awarded as compensation for such goodwill shall not exceed such addition to the 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. 10

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. 20

(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. 30

(c) In the case of licensed premises, the sum payable as compensation for goodwill shall not include any addition to the value of the premises attributable to the fact that the premises are licensed premises. 35

(d) The court shall in determining the amount of compensation for goodwill—

(i) have regard to the intentions of the tenant as to carrying on the trade or business elsewhere, and may make it a condition of its award that the 40 the



5 the tenant shall undertake not to carry on the trade or business within such distance of the premises as may be specified in the award, and may require security to be given by the tenant to abide by such undertaking.

10 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.

(ii) disregard any value which is attributable exclusively to the situation of the premises.

15 (e) 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  
20 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.

(f) No compensation under this section shall  
25 be payable if the tenant determines the tenancy or fails to exercise an option for a further term contained in the lease or in a collateral agreement unless in the case of an option the terms thereof are such that the tenant could not reasonably be expected to exercise it.

30 (g) Where any Government department or any statutory body representing the Crown or the council of any municipality or shire or a county council or a charity has in pursuance of the powers contained in a lease terminated the lease by resuming possession of  
35 the premises for the purpose of such department, body, council, or charity, or where premises the tenancy whereof has expired by effluxion of time are required for any such purpose, no compensation shall be paid under the section.



(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. 5

(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. 15

(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. 20

Right of  
landlord to  
offer alterna-  
tive accom-  
modation.

**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 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. 25

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Provision  
when claim  
is both for  
improvement  
and goodwill.

**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. 25

**11.**



**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 land-  
lords.

5 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 except that it shall be sufficient if the claim for compensation is made at least two months before the expiration of his term.

10 A mesne landlord shall not be entitled to make a claim under this section unless he has, within the time and in the manner prescribed, served on his immediate superior landlord copies of all documents relating to proposed improvements and claims which have been sent to him in pursuance of this Act.

20 When such copies are so served, the said superior landlord shall have, in addition to the mesne landlord, the powers conferred by or in pursuance of this Act in like manner as if he were the immediate landlord of the occupying tenant, and shall, in the manner and to the extent prescribed, be at liberty to appear before the court, and shall be bound by the proceedings.

25 Where more than one landlord is concerned and they do not agree as to whether an offer of the renewal of the tenancy in lieu of compensation for an improvement or for goodwill should be made, the matter shall be referred to the court, and the decision of the court as to whether or not such offer is to be made shall be binding on all the landlords concerned.

30 (2) In this section references to a landlord includes references to his predecessors in title, and "prescribed" means prescribed by rules of court made by the judges of District Courts.

40 **12.** (1) This Act shall apply notwithstanding any contract to the contrary made at any time after the commencement of this Act.

Restriction  
on contract-  
ing out.

But



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 5 the matter give effect to such contract.

(2) Nothing in this Act shall prevent an agreement being made for referring to arbitration under the Arbitration Act, 1902, any matter which under this Act is to be determined by the court. 10

Such an agreement may be contained in the original lease, or may be made in writing at any date subsequent to the date of the lease.

Right of  
entry.

**13.** The landlord of any shop or any person authorised by him may at all reasonable times enter on 15 the shop, or any part of it, for the purpose of making any inspection of the shop which may reasonably be required for the purposes of this Act.

Right to  
make  
deductions.

**14.** (1) Out of any money payable to a tenant by way of compensation under this Act, the landlord shall 20 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 25 the landlord by way of compensation under this Act.

Power to sell  
or grant  
leases not-  
withstanding  
restrictions.  
cf. 17 & 18  
Geo. V, c. 35,  
s. 13.

**15.** Where the powers of a landlord to sell or grant leases are subject to any statutory or other restrictions he shall, notwithstanding any such restrictions or any rule of law to the contrary, be entitled to offer to sell or 30 grant any such reversion or lease as would under this Act relieve him from liability to pay compensation thereunder, and to convey and grant the same.

Provisions as  
to reversion-  
ary leases.

**16.** (1) Where the amount which a landlord is liable under this Act to pay as compensation for an 35 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 40 payable under the reversionary lease shall, if the court

so



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:

5 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.

10 (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  
15 landlord shall not be liable to pay compensation to the tenant for goodwill under this Act.

17. (1) A landlord who is a trustee may pay or  
apply capital moneys of a trust in payment of any sum <sup>Power to</sup>  
due to a tenant of a shop under this Act held upon a <sup>apply capital.</sup>  
20 trust in respect of compensation for an improvement or goodwill and any costs, charges, and expenses incurred in respect of any proceeding or claim under this Act.

(2) When the landlord liable to pay compensation for an improvement or goodwill is a tenant for  
25 life or in a fiduciary position he may require the sum payable as compensation and any costs, charges, and expenses incidental thereto to be paid out of any capital money held in the same trusts as the shop in respect of which the compensation is paid.

30 18. (1) A landlord, on paying to the tenant the <sup>Provision as</sup>  
amount due to him under this Act, in respect of com- <sup>to charges.</sup>  
pensation for an improvement or goodwill, shall be entitled to obtain from the Minister an order in favour of himself and the persons deriving title under him,  
35 charging the shop or any part thereof with repayment of the amount paid, including any proper costs, charges, or expenses incurred by a landlord in contesting a claim for compensation, and of all costs properly incurred by him in obtaining the charge, with such interest, and by  
40 such instalments, and with such directions for giving effect to the charge as the Minister thinks fit.

(2)



(2) Where the landlord obtaining the charge is not an absolute owner of the shop for his own benefit, no instalment or interest shall be made payable after the time when the improvement or goodwill in respect whereof compensation is paid will, in the opinion of the Minister, have become exhausted. 5

(3) Where the estate or interest of a landlord is determinable or liable to forfeiture by reason of his creating or suffering any charge thereon, that estate or interest shall not be determined or forfeited by reason of his obtaining such a charge, anything in any deed, will, or other instrument to the contrary thereof notwithstanding. 10

(4) The sum charged shall be a charge on the shop, or the part thereof charged for the landlord's interest therein, and for interests in the reversion immediately expectant on the termination of the lease; but so that, in any case where the landlord's interest is an interest in a leasehold, the charge shall not extend beyond that leasehold interest. 15 20

(5) Any person may take an assignment of any charge made under this section upon such terms and conditions as may be agreed upon, and may assign any charge.

(6) Where a charge may be made under this section for compensation due under an award, the court making the award shall, at the request and cost of the person entitled to obtain the charge, certify the amount to be charged and the term for which the charge may properly be made, having regard to the time at which each improvement or the goodwill in respect of which compensation is awarded is to be deemed to be exhausted. 25 30

(7) A charge under this section may be registered in the office of the Registrar-General in manner prescribed by regulations made under the Conveyancing Act, 1919, and shall take priority over any instrument subsequently registered at such office, and shall rank *pari passu* with a charge created by or under any other Act. 35



**19.** Where any sum agreed or awarded to be paid for compensation, or any sum awarded under this Act to be paid by a landlord, is due from a landlord entitled to receive the rents and profits of the shop otherwise than for his own benefit, whether as trustee or in any other character, the sum due shall be charged and recovered as follows and not otherwise (that is to say)—

Recovery of compensation, &c., from trustee.

(a) the amount so due shall not be recoverable personally against the landlord, nor shall he be under any liability to pay that amount, but it shall be a charge on and recoverable against the shop only;

(b) the landlord shall, either before or after having paid to the tenant the amount due to him, be entitled to obtain from the Minister a charge on the shop to the amount of the sum which is required to be paid or which has been paid, as the case may be, to the tenant;

(c) if the landlord neglects or fails to pay to the tenant the amount due to him for one month after it has become due, the tenant shall be entitled to obtain from the Minister a charge on the shop to the amount of the sum due to him, and of all costs properly incurred by him in obtaining the charge;

(d) charges under this section shall be made in like manner as other charges under this Act.

**20.** (1) Where a tenant occupies a shop under a lease with a mortgagor which is not binding on the mortgagee—

Compensation to tenants where evicted by mortgagee taking possession.

(a) the tenant shall, as against the mortgagee who takes possession be entitled to any compensation which is, or would but for the mortgagee taking possession be, due to the tenant from the mortgagor as regards improvements or goodwill;

(b) if the lease is a tenancy from year to year, or for a term of years not exceeding twenty-one, at a rack rent, the mortgagee shall, before he deprives the tenant of possession otherwise than in accordance with the lease, give to the tenant



tenant six months notice in writing of his intention to do so, and if he so deprives him compensation shall be due to the tenant for any expenditure with the consent in writing of the mortgagor upon the shop which he has made in the expectation of remaining in the shop for the full term of the lease in so far as any improvement resulting therefrom is not exhausted at the time of his being so deprived ; 5

- (c) any sum ascertained to be due to the tenant for compensation or for any costs connected therewith under this section may be set off against any rent or other sum due from him in respect of the shop, but unless so set off shall as against the mortgagee be charged and recovered in accordance with the provisions of this Act relating to the recovery of compensation due from a landlord who is a trustee. 15

(2) This section shall apply only in respect of leases entered into after the commencement of this Act. 20

Hearing of claims and courts to which jurisdiction is given to hear and determine claims.

**21.** 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 :— 25

- (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 a stipendiary magistrate or police magistrate and the provisions of the Small Debts Recovery Act, 1912, shall apply to such action ; and 30
- (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. 35

The procedure before a District Court shall be as prescribed by rules of court made under the District Courts



Courts Act, 1912, and the procedure before a Court of Petty Sessions shall be as prescribed by rules made under section seventy-nine of the Small Debts Recovery Act, 1912.

5 The costs of any proceedings before the court shall be paid by such party as the court may deem just and the rules may prescribe scales of costs and make provision for the taxation thereof, and for the due enforcement of any order of the court.

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

22. (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.

15

Statement of special case by Court of Petty Sessions on question of law.

(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.

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.

**23.** The Governor may make regulations for carrying out the provisions of this Act, and in particular and without limiting the generality of the foregoing power for—

- regulating the manner in which and the time when 5  
claims for compensation for improvements and  
for goodwill may be made by tenants upon  
landlords;
- regulating the time within which an action may be  
brought for the recovery of compensation after 10  
the making of a claim;
- regulating the manner in which copies of claims  
may be served by a mesne landlord on his  
superior landlord;
- regulating the time within which an action may be 15  
brought by a mesne landlord against a superior  
landlord in respect of compensation agreed to  
be paid by the mesne landlord.

Such regulations shall—

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

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