IRELAND.

APPEAL FROM THE COURT OF CHANCERY.

JACKSON—*Appellant.*

SAUNDERS—*Respondent.*

DEMAND for fines made under the Tenantry Act on 6th October, 1800, (after all the lives had dropped,—one in 1789, another in 1791, and the last in August, 1800; and repeated applications since 1798 for payment,) and no tender till March, 1801, after ejectment brought by the landlord. Held, that the tenant had forfeited his right to renewal;—the offer to pay and renew being considered, under the circumstances, as delayed for an unreasonable time. June 27, July 25, 26, 1814.

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Sentiente Lord Eldon, that the delay after the demand was unreasonable, though there had been no prior neglect, and (*concurrente* Lord Redesdale) that no particular formality in the demand was necessary; that it need not be of a specific sum; that it need not be in writing; that no special power was necessary to authorize an agent to make the demand and receive the fines; that a subsequent demand was no waver of a prior demand, unless the terms of the subsequent demand were complied with; and that, in considering what was a reasonable time after demand, prior applications and circumstances were to be taken into account.

Dubitante Lord Eldon, whether—where a tenant was taken bound, on the dropping of any of the lives, to pay a fine and nominate another life; or, in case of neglect, to pay interest on the fine—the meaning could be, that the tenant should have the option to postpone renewal till the last life was about to expire. *Sentiente*, if such was the meaning, that it was not a covenant which equity would specifically execute.

THIS case arose upon a bill, in the nature of a bill for specific performance, filed in Chancery, to com- Bill filed April 20, 1801.

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pel renewal under a lease for lives renewable for ever.

The lease was made in 1699 of the lands of Cumber, King's County, by a *Mr. Weaver*, the then proprietor, to two persons of the name of *Lamb*, for three lives, with covenant for perpetual renewal. In 1724 the estate and inheritance became vested in Robert Saunders, the Respondent's ancestor, to whom the joint lease was surrendered by the *Lambs;* and he granted two separate leases, one to each of them, for three lives, with covenant for perpetual renewal. The covenants in the lease of the north-west part of Cumber (those in the lease for the south-east part being the same) were in these words:—

Lease.

Covenant for perpetual renewal.

"And the said Robert Saunders doth for himself, "his heirs, and assigns, covenant to and with the "said Richard Lamb, his heirs, and assigns, that as "often as it should please God to take away by "death any of the before-named Edward Lamb, "Richard Lamb, and Thomas Mitchell, (the lives "in the said indenture named,) he the said Robert "Saunders, his heirs, and assigns, shall put in "another life of such person as shall be named by "the said Richard Lamb, his heirs, or assigns, still "to keep up three lives in the present demise."

"And the said Richard Lamb doth for himself, "his heirs, and assigns, covenant to and with the "said Robert Saunders, his heirs, and assigns, that "within four months after the death of any of the "before-named Edward Lamb, Richard Lamb, and "Thomas Mitchell, he will nominate one other "person whose life shall be added to this lease, to

" the life or lives that then should be in being; June 27, July 25, 26, 1814.
" and also then to pay to the said Robert Saunders,
" his heirs, and assigns, one full half year's rent. LEASES FOR LIVES, RENEWABLE FOR EVER.—DEMAND.—FORFEITURE.
" *And if the said Richard Lamb, his heirs, or*
" *assigns, neglect or refuse so to do, then the said*
" *Robert Saunders, his heirs, and assigns, shall be*
" *allowed interest for the said fine from the death*
" *of the person or persons so dying.*"

It was also covenanted, that the tenant should once in every six months, if required, procure and deliver to the landlord a credible certificate of the persons being alive whose names were in the lease, or might be in any farther lease by renewal thereof; and that a life being beyond seas and not heard of for three years, should be taken as dead, and renewal accordingly, &c.

In 1755 the interest in both leases became vested in Robert Jackson, Appellant's ancestor, who at that time obtained a renewal of the lease of the north-west part of Cumber, now particularly in question. One of the lives dropped in 1788, or 1789; another in 1791. No steps were taken for several years for renewal, because the tenant, as he afterwards alleged in his bill, *was then very much embarrassed in his circumstances.* Lives dropped.

The applications on the part of the landlord to the tenant to renew, of which there was any distinct evidence, began in 1798; and both in 1799 and 1800 several applications were made:—one in 1799 by the Respondent himself; another by Thomas Saunders, Respondent's solicitor, in March, 1799. Applications to the same effect were made to the Appellant's solicitor, Peter Jackson. T. Saunders Applications to renew.—Evidence.

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at length wrote to the Appellant himself, on the 9th July, 1800; stating, that unless the fines were paid immediately, Respondent would not renew, being so advised by Counsel. The Appellant wrote in answer, (17th July, 1800,) that he would give directions to his solicitor about it; but the solicitor, (Jackson,) on being applied to some time after, stated that he had got no such instructions. The last life in the lease dropped in August, 1800. Another application was made in August or September; and at length, on the 6th October, 1800, T. Saunders having obtained a warrant of attorney to receive the fines, went to Appellant's house, and demanded the fines from him in person, but without effect. An ejectment was then brought in Jan. 1801; and in March, 1801, the Appellant tendered the fines, and presented deeds of renewal to Respondent for execution; but the Respondent then refused to renew. There was some question about a draft for renewal having been presented to Appellant's solicitor by Respondent's solicitor so late as Nov. 1800. The evidence with respect to this was that of P. Jackson, who said he found the draft among his papers on Nov. 1, 1800, and marked that date on it; and that of T. Saunders, who stated that it was prepared by him, and delivered in March, 1799, or 1800. It appeared, however, to have been delivered before, or in, August, 1800; it being a draft for two lives; whereas the third life, as before stated, dropped in August, 1800.

Application, July 9, 1800, threatening to refuse renewal.

Formal demand, Oct. 6, 1800.

Tender, March, 1801, and refusal to renew.

Question as to a draft of renewal.

The bill for performance was then filed; and, after answer, &c. the Lord Chancellor, (*Redesdale*,)

by decree, Nov. 30, 1802, dismissed the bill with costs; and, on re-hearing, Dec. 1804, varied it so far as to dismiss it without costs; and the tenant appealed.

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Romilly and *Leach* for Appellant; *Hart* and *Bell* for Respondent.

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Lord Redesdale. This case depended on the construction of an Act of the Irish Parliament, commonly called the Tenantry Act, which was founded on the practice prevalent in that country of granting leases for lives, with covenant for perpetual renewal. This act was supposed to have originated from certain decisions of this House at that period, before the Union, when the appellate jurisdiction was exercised by the House of Lords in England. The case was simply this (states it as above.) It seemed to have been the idea of Saunders and his advisers, that a formal demand, with notice that it was intended to insist on the forfeiture in case of refusal, was necessary. It appeared to him, however, that there was nothing in the act to show that the demand must be of that description. The words were, that Courts should relieve against lapse of time, "unless it be proved to the satisfaction of "such Courts, that the landlords, or lessors, or persons entitled to receive such fines, had demanded "such fines from such tenants, or their assigns; "and that the same had been refused or neglected "to be paid within a reasonable time after such "demand." The true construction of this act, as it struck him, was, that Courts of Equity should re-

Observations in Judgment. Lord Redesdale.

Kane v. Hamilton, 1 Ridg. P. C. 180.—Bateman v. Murray, 1 Ridg. P. C. 187.

Irish Tenantry Act, 19, 20, Geo. 3, cap. 30.

The true construction of the act was,

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that equity should relieve in cases of mere neglect.

Not necessary for the landlord to say, in making the demand, that he insisted on the forfeiture in terms of the act.

Letter of T. Saunders, July 9, 1800.

Demand, Oct. 6, 1800.

Waver.

lieve in cases of mere neglect; that where both parties had been equally negligent, the tenant should not lose his right of renewal. But if the landlord was active, and called on the tenant to renew and pay the fines, and if the tenant neglected to do so within a reasonable time, the landlord was not bound to renew at all; and it was not necessary for him to say that he insisted upon the forfeiture in terms of the act, as the act itself gave him the benefit after demand and refusal or neglect to pay in a reasonable time. Then the case here amounted to this:—"I have often demanded my fines, and you "have not paid them; then I make a formal de- "mand, and if you do not renew, I insist on the "benefit of the act." This last proceeding was certainly candid, and might be considered as a sort of waver of the prior demand, if the fines had then been paid without farther delay. The question therefore now was, Whether, after the demand in October, 1800, Jackson took the proper steps to renew?

Evidence.

The evidence depended, first on the depositions of Mr. Thomas Saunders, the agent of Saunders the Respondent, who made the demand in October, 1800, and spoke to several prior applications to the Appellant to renew. The first of which he gave an account was in the Hall of the Four Courts, in 1799; where he said he was present when the Respondent applied to the Appellant and required him to pay the renewal fines then due. He then stated, that after making several applications personally and by letter on behalf of the Respondent, he wrote to the Appellant on the 9th July, 1800, calling upon

him to renew and pay the fines; and stating, that unless they were immediately paid, the Respondent would not renew. That would have been a sufficient demand under the act; and the agent then did, in point of fact, give notice that the Respondent had been so advised by Counsel. The deponent then stated the answer of the 17th July,—that the Appellant, Robert Jackson, would write to his agent, Peter Jackson, and give directions to have the matter concluded; that he afterwards waited on the agent, who informed him that he had no instructions; that in August following he wrote to P. Jackson, stating, that as so much time had been lost relative to the renewals, he could not, without doing Respondent injustice, avoid proceeding to prevent the Appellant obtaining any renewal of the lease as the act prescribed, and entreating a speedy answer; that this produced no effect, and Saunders, the Respondent, being pressed for money, in consequence of a decree against him in a suit with the Earl of Anglesea, the deponent went, on or about the 6th October, 1800, to the house of the Appellant, and personally demanded payment of the renewal fines from the Appellant, having previously taken a warrant of attorney from Respondent authorizing him to make the demand; but neither payment nor any effect was produced by this step.

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The demand by letter of July 9 was sufficient under the act.

Nothing effectual was done in October, November, or December, 1800; and, in January, 1801, the Respondent brought an ejectment to recover possession, the lives having dropped. The ejectment proceeded, and an application was made by the Appellant to stay it upon terms which were not

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Bill for performance, April, 1801.

acceded to; and judgment was obtained, and possession taken. The bill, which was filed in April, 1801, for the purpose of having the lease renewed, prayed that the Respondent might be obliged to execute a renewal of the lease of the north-west part of Cumber, for the lives mentioned in a deed of renewal which had been prepared, but which Saunders had refused to execute.

When this cause came on to be heard in Ireland, he had the honour to be Chancellor there; and it appeared to him that the object of the act was simply this,—that no person should suffer through neglect merely; but that if a demand were made and not complied with in a reasonable time, it converted this into something more than mere neglect, and entitled the lessor to insist in equity that the interest of the lessee was gone: and the question was, What was a reasonable time? In this case it was clear, that though a formal demand was made on the 6th October, 1800, no effectual step was taken by the Appellant to renew till after the ejectment had been brought. If no transactions had passed before between the parties, it might have been a different question. The proper construction of the act, as it appeared to him, was, that after demand the tenant should lose no time in taking the necessary steps to renew. But here he had, for two or three years, been told that it was incumbent on him to renew, and he had all that time to prepare; and therefore the demand in October could have been no surprise on him, and he ought to have renewed immediately.

No tenant to forfeit for neglect merely; but the demand, and non-compliance in reasonable time, converted this into more than mere neglect.

Reasonable time—what?

In considering what is a reasonable time after demand, the previous transactions are to be taken into account.

Some difficulty had arisen on this ground. In

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Draft of renewal—whether sent to appellant's Agent in March 1799, or 1800, or only in Nov. 1800.

a conversation which took place according to the agent Saunders's deposition in March, 1799, Jackson the Appellant, or his Agent Peter Jackson, on being asked when the Appellant would be ready to pay the renewal fines, desired Thomas Saunders to prepare a renewal; and Thomas Saunders accordingly prepared a draft of a renewal, for two lives, and before the end of the same month, (March, 1799,) as he believed, delivered it at the office of Peter Jackson, St. Andrew-street, Dublin, for his approbation. It was doubtful when this draft was sent to Peter Jackson, who gave rather an extraordinary account of it. His account of it was, that he first found it at his house, or office, in Nov. 1800; and then wrote upon it the words "Received Nov. 1, 1800," and he would have it inferred that it had not been left till then. It was singular that he did not inquire when it was left. This, it appeared, he had not done, but having seen it, as stated, he endorsed upon it the day on which he so found it. He *(Lord Redesdale)* did not however think it a matter of much consequence, even if it had not been left till that time—for he might have, the next day filled up the blanks, and then the delay would have rested on Saunders. But instead of that, he, on finding it, merely noted the time, and took no steps upon it—and it struck him that it was wholly out of the question. An attempt was made upon this circumstance to impeach the testimony of Thomas Saunders, and this was said to be a new discovery: but upon looking at his notes he found that it had been much discussed below, and that Mr. Blackburne had strongly insisted upon it as a very important feature in the

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evidence; and the answer given to it was this, that Thomas Saunders might possibly have been incorrect as to the year 1799; but that it was clear the draft must have been prepared before the third life dropped, (July or August, 1800,) the draft being for two lives only.

Decided cases.

Reference had been made to cases decided before the act; but he did not know that these were very material in a question respecting the construction of that act, because the object of the act was to obviate a supposed contradiction between the cases decided in Ireland, and the decisions in this House. The earliest case on the subject was said to be that

1722. 2. Bro. P. C. 480.

of *Anderson v. Sweet*. That was a case of mere negligence in both parties. There were other cases, in some of which the renewals had been granted, in others refused. The case which first excited

Kane v. Hamilton, 1774. 1 Ridge. P. C. 180.—

alarm was that of *Kane v. Hamilton*. That depended on very particular circumstances, which put neglect quite out of the question. Another case

Bateman v. Murray, 1777. 1 Ridge. P. C. 187.

of this class, *Bateman v. Murray*, came to this House soon after, which appeared to him to have been clearly a case of fraud, and not of mere neglect; and nothing that was said by *Lord Thurlow*, on that occasion, could go the extent of justifying the notion, that the Court here had overlooked all the cases that had been decided in Ireland before. The manner in which *Lord Thurlow* stated it was, "that equity would relieve the lessee if he lost his "right by *fraud in the lessor, or by accident on* "*his own part*, but would never assist him where "he lost his right by his own *gross laches, or neg-* "*lect*." Whether these cases ought to have any influence in the construction of the act, he left it

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to their Lordships to consider. The object was to prevent all future difficulty on this subject; and the act said, that in cases of simple neglect the tenant ought to be relieved. When after demand made, and not complied with in a reasonable time, the matter ceased to be mere neglect; and the act left it to the Judge to say what was a reasonable time. It had been said that there ought to be some fixed rule as to the time: but a fixed rule as to the time would be mischievous in such cases. What might be a reasonable time in one case, might not be so in another. In the present case, after repeated applications for two or three years, a formal demand was made on the 6th of October, 1800, and no real steps were taken to renew and pay the fines till March, 1801.—Under these circumstances it had not appeared to him, that the tenant was entitled to a renewal. A demand had been made, and the tenant had neglected to comply within a reasonable time, and therefore was not entitled to relief under the act. It was material on the dropping of a life, not only that the fine should be paid, but that another life should be nominated, otherwise the landlord might only have one fine, where if the tenant had complied with his covenant he might have received several fines; and it was material also with a view to the keeping up the tenure, and enabling the landlord to proceed for the recovery of the rent. It would have been unjust therefore to have enabled the tenant, who, after demand made, had not proceeded immediately to name the life, and pay the fine, to compel a renewal. —It would not be fitting for him to say more on the question here; but these were the rea-

The act has left it to the Judge to say, in his discretion, what is a reasonable time.

Any fixed rule as to the time would be mischievous. The question must depend on the particular circumstances of each case.

A life ought immediately to be nominated in terms of the covenant, otherwise the landlord might lose several fines.

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sons which influenced his mind in the Court below, in deciding, that, according to what seemed to him to be the sound construction of the act, the tenant, under all the circumstances, was not entitled to the relief which he claimed. This was a case of great consequence, as it affected so much of the landed property in Ireland; and it was very important that their Lordships should draw the line between those who were to pay, and those who were to receive, and point out precisely what, under the law as it stood, were the respective duties of landlord and tenant in such cases.

Lord Eldon.

Lord Eldon (Chancellor.) In this case there had been two decrees, one of Nov. 30, 1802, dismissing the bill with costs, the other of Dec. 22, 1804, varying the former decree only by dismissing the bill without costs; and their Lordships had heard stated to them the grounds upon which these decrees proceeded. The difference between the Appellant and Respondent arose upon this state of facts (states the lease 1724, and reads the words of the covenants; states also the renewal in 1755, and the dropping of two of the lives, one in 1789, the other in 1791, &c.) The Appellant then represented, "that at the time when these lives dropped he was, "and ever since has been, very much embarrassed "in his circumstances, in consequence of debts and "incumbrances incurred by his father, which af- "fected his said property; and by means of an ex- "pensive suit in which he was involved in the "Court of Chancery in Ireland; his endeavours to "extricate himself from which engaged all his at- "tention." He solicited their Lordships' attention to that passage, because he could not conceive that

any equity could be founded on these embarrassments, unless the lessor had taken them into consideration, and created a new equity between the parties. The Appellant then stated, "that in the "month of November, 1800, the Respondent, or "his agent, furnished Appellant's solicitor with a "draft of a renewal for two lives; but that when "Appellant was preparing to have them engrossed, "and to pay the fines, he was informed that the "third life had dropped in the preceding August, "and communicated this to the Respondent's soli-"citor, that the renewal might be made out for "three lives." He then stated the steps that were taken to turn him out of possession, the tender made by him of fines and arrears on March 29, 1801; and at length he filed his bill, in the nature of a bill, for a specific performance of this covenant, *(vide ante,)* to which he again called their Lordships' attention (reads the covenant.) On the terms of this covenant the Appellant insisted—1st, That he was entitled to this renewal strictly speaking, and that the real meaning of the covenant was, that if the tenant chose to renew on the dropping of the first or second life he might do so; but that, if he so chose, he might postpone it, and at any period, during the existence of the third life, call upon the landlord to renew for one or two lives, just before the expiration of the third life, and then at last pay the fines and nominate the lives. If the words of the covenant had that force, their Lordships must so give it effect: but the tenant was bound to show that such was the meaning. He did not know how it might be in Ireland, but it

Meaning of the covenant.

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would be difficult here to show that this could be the meaning, where the consequence of such a construction must be, that it would be in the option of the tenant, instead of nominating immediately on the dropping of any of the lives, and paying a fine, suppose at the end of every 10 years, to defer the nomination till the third life was about to expire, till the end, suppose, of 20, 30, or 40 years, and deprive the landlord of the additional fines which, according to the casualties of human life, he might expect to have received in the course of so many years, if always on the dropping of one life another had been immediately nominated.

Contracts.—Relief in equity on compensation made.

Then it was said that the Appellant was entitled to a renewal even if the Tenantry Act had never passed, upon the equity of relieving against lapse of time, on full indemnity being made to the landlord. That was done in equity here in many cases; (in Ireland they had gone farther;) and they were now bound to proceed on the notion, that men were not, in all cases, to be held to their contracts, but that equity would relieve where the matter lay in compensation. Where the condition was for payment of money at a certain time, the time was not of the essence of the contract; and this, it was said, was a matter which lay in compensation, and if interest should be allowed from the period when payment ought to have been made, this was considered as compensation, and equity would relieve notwithstanding the want of punctuality. Without entering at length into that subject, this must strike every one, that where the money, instead of being paid on a certain appointed day, was not paid till 12 months after, the

Imperfection of the principle of compensation as a ground of relief in equity.

consequence, in many cases, might be little short of absolute ruin to the disappointed party. In these cases of leases renewable for ever *Lord Thurlow* had, at one time, persuaded himself that he never would compel a renewal. Where a man let his lands at what was a fair rent at the time, and covenanted to renew every seven years for ever, at exactly the same rent, *Lord Thurlow* thought that such a want of understanding of the nature and effect of the contract might be presumed, as to make it unfit for a Court of Equity to interpose. It was like the horse and shoe nails contract mentioned in the books. But he found himself too much bound down by precedent to refuse; and it was true that equity here would compel the renewal, (though there was a great difference in this respect between this country and Ireland,) provided the lessee did his duty, and showed that he had done all that was obligatory on him.

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In certain cases which had been referred to, great astonishment had been expressed at the length to which the Courts in Ireland had gone, and the decisions followed which produced the Irish Tenantry Act.

Kane v. Hamilton, 1 Ridge. P. C. 180.—Bateman v. Murray, 1 Ridge, P. C. 187.

This led him to another point. The Appellant contended that in case he were not entitled to a renewal under the terms of the covenant itself, or upon the common rules of equity, he had still a right to a specific performance under the effect of the Tenantry Act, which said, that mere neglect should not deprive the tenant of his right to renewal, but that if he paid his fines within a reasonable time after demand made, he should still have a

The question considered with reference to the Tenantry Act, 19, 20, Geo. 3. C. 30.

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renewal notwithstanding such previous neglect; but here he should leave off for the present.

Lord Eldon (Chancellor.) He had before stated to their Lordships the three principal points contended for by the Appellant:—1st, That till August 1800, the time when the third life dropped, he was entitled to a renewal according to the strict terms of the covenant. 2d, That he had a right to a renewal upon principles of equity, independent of the statute. 3d, That he was entitled to a renewal under the Tenantry Act, having tendered the renewal of fines within a reasonable time after demand made, supposing that demand to have been sufficiently formal and peremptory. He believed he had gone sufficiently far into the consideration of the reasonableness of a covenant with such a meaning to enable him to say, that a covenant would not be specifically executed by a Court of Equity, if attended with the consequences which followed upon the construction contended for by the Appellant. That construction as already stated was, that the tenant was not called upon to renew and pay a fine immediately on the dropping of any of the lives, but had the option to renew at any time during the existence of the third life, to postpone the renewal for 50 years, paying interest on the fines; whereas if on the dropping of any of the lives another were always immediately nominated, five, six, seven, eight, or ten lives might fall, and as many nominations take place in the course of these 50 years, and so many fines become payable to the landlord. That could not be the meaning of

Observations in judgment resumed.

Meaning of the covenant, if such as contended for by Appellant, it would not be specifically executed.

the covenant; or if it was, such a covenant was not one for specific execution in equity. July 26, 1814.

As to the second point, that had been but faintly urged; and it appeared to him impossible to sustain it.

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And that reduced the question to this, Whether, under the Tenantry Act, relief ought to be given. The first life dropped in 1788 or 1789, the second in April, 1791, and the third in August, 1800, and then there was a proposition to renew, which was not very seriously acted on till 1801. Here he should notice some general observations which had been made with a view to take the demand in this case out of the Tenantry Act. The first was that the demand ought to be for a specific sum. There was nothing in the act which said so. It must occur that the tenant would be most likely to know the time of the death of the life, and it was his business to come forward and make the proper tender; and if, at the time of a demand made, the tenant himself did not happen to know what was the specific sum, the question then would be, what was a reasonable time for settling it.

Tenantry Act. Whether it afforded a ground of relief.

Demand.—Whether it ought to be of a specific sum.

Another point contended was, that according to the act their Lordships ought to say what, in every case, would be a reasonable time; as in foreclosure cases the Court of Chancery uniformly allowed six months for the mortgagor to redeem. That however was a very different subject: but even there, though now it was the practice on account of its antiquity, rather than the reason of the thing, to allow six months, the Court was in the habit, according to circumstances, the value of the subject,

What was a reasonable time—whether a time ought to be fixed by the Courts. Time of redemption in foreclosure cases—the time there not fixed.

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the probability of sale at a better price, &c. of enlarging the time; so that strictly speaking, even in these cases, it was not fixed what was to be held in all cases a reasonable time. Those who passed this act, (19, 20, Geo. 3, cap. 30,) the object of which was to teach the English Courts what was the proper notion of Irish equity, must have known what was the practice of Courts of Equity there; and consequently, if any fixed time had been intended, they would not have legislated in general terms, but have expressly provided for a limited and regular time.

Another consideration of great weight was this: He had before alluded to the surprise felt in this country at the extent to which the Courts of Equity in Ireland had carried the practice of giving relief in these cases of leases for lives with covenant for perpetual renewal; and it was certainly very extraordinary, that where a lessee covenanted to pay a fine in two, three, or four months, from the death of any of the lives, and where there was an express proviso, that if he did not then it should rest entirely in the option of the lessor, whether to renew or not, equity should relieve in a case of strong neglect in the tenant, and where the damage to the landlord was eventual and uncertain, and therefore not a proper subject of compensation. But to say that the act should be construed so as to apply to cases of this kind the same sort of rule as to time (six months) as had been applied to redemption in cases of mortgage, though the parties themselves had said that unless the lessee renewed in two, three, or four months, it should be at the option of

Mountnorris (Earl of) v. White *(vide post.)*

the lessor to renew or not, appeared not only not the proper construction of the statute, but it was manifest that they who passed it had no such idea, and that six months was a time which the parties themselves thought unreasonable.

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The rule as to time in foreclosure cases not applicable.

Tenantry Act.

Then they came to the terms of the statute: "Whereas great part of the lands in this kingdom "are held under leases for lives with covenants for "perpetual renewal upon payment of certain "fines, &c.; and whereas from various accidents "and causes tenants, and those deriving under "them, have frequently *neglected* to pay or render "such fines within the times prescribed by such "covenants after the fall of such lives respectively; "and whereas many such leases are settled to make "provision for families, &c.; and whereas it has "for a long time been a received opinion in this "kingdom, to which some decisions in Courts of "Equity, and declarations of Judges, have given "countenance, that Courts of Equity would relieve "in such cases against lapse of time, *upon giving* "*adequate compensation* to the persons to whom "such fines were payable, or their representatives, "to the end that such interests may not be defeated "by *mere neglect*, &c. Be it enacted, &c. that "Courts of Equity, *upon an adequate compensation* "*being made*, shall relieve such tenants, and their "assigns, against such lapse of time." He need not repeat what he had said respecting the extraordinary notion of equity as to what was compensation, but he should be very unwilling to apply in these cases the sort of rule which was adopted in cases of mortgage, when he considered that in six

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months the mortgagee might, for want of his money, be in the same gaol where otherwise his debtor would be. As to leases for lives renewable for ever, they, in England at least, found it very difficult to say what was adequate compensation; for, in cases of leases for lives with a fine payable, and a new life to be nominated on the dropping of each life, and where on the dropping of a life another had not been nominated, it was impossible to know what was the value of the life that might have been nominated, and therefore impossible to ascertain the proper compensation. But if this doctrine had been acted upon in Ireland by a common error of law and equity, he did not say but it deserved great attention in cases of *mere neglect*. But in cases of fraud, such as the concealment of the time when a life was gone, or where the tenant was under a particular obligation with respect to the landlord by being employed as his agent, the question would be different. He did not call this a case of fraud, but he did not go the length of saying that long neglect and supineness might not amount to a fraud: he gave no opinion on that point.

Long neglect and supineness—whether they might not amount to a fraud?

Then the act went on: "If no circumstance of "fraud be proved against such tenants, unless it be "proved to the satisfaction of such Courts that the "landlords, or lessors, or persons entitled to receive "such fines, had *demanded* such fines from such "tenants or their assigns, and that the same had "been refused or *neglected* to be paid *within a* "*reasonable time after such demand*." In this case there was no difficulty as to whether the per-

Demand.

son who made the demand was authorised to receive the fines; but, even if the question had arisen, he should think, that though a person had no express power for that particular purpose, but was employed to collect the landlord's revenue generally, and therefore to collect his fines, he had still sufficient authority. And as to the alleged necessity that the demand should be in writing, there was no such thing in the act, and that would not have been left out of the act if any such thing had been intended. Here there was certainly authority enough to make the demand, and a parole demand was sufficient. It was impossible to read this act, without seeing the necessity of holding the balance with an even hand, between the landlord and tenant. A life drops, and a fine is due; but the tenant holds for two other lives, and as long as either of these lasted, though the tenant rested without paying the fines, the landlord could not get possession,—and till the tenant filed a bill for the specific performance of the covenant to renew, the landlord could not show the demand, and might not be able to get the benefit of the act, unless he filed a bill to perpetuate testimony, to meet the tenant when he came for a specific performance.

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A special authority to demand and receive the fines not necessary.

Not necessary that the demand should be in writing.

Importance with reference to the Tenantry Act, of holding the balance even, as between landlord and tenant.

It had been said that some time must be fixed, as that which should be considered as a reasonable time. But what was or was not a reasonable time must depend on the circumstances of each separate case. It had also been pressed, that a subsequent demand was a waver of a previous demand. He could not however so readily accede to that doctrine. It might or it might not be a waver, and

What was a reasonable time must depend on the circumstances of each particular case.

Waver.—A subsequent de

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mand not a waver of prior demands, unless the terms of the subsequent demand are complied with.

In considering what is a reasonable time after demand, previous applications and neglect are to be taken into account.

whether it ought to be so considered or not must depend on the nature of the demand. But it was impossible, as he thought, to contest this, that after applications without effect from year to year, when they came to look at what was a reasonable time, the same time which would be reasonable after a demand made in the first year, might not be reasonable upon a demand made at the close of two or three years' neglect, and ineffectual applications. If in this case the tenant, after having so often been applied to without effect, had at the time of the demand in October urged his embarrassed circumstances, the landlord might say, "I have nothing "to do with your circumstances: I tell you, that if "you now pay your fines, and nominate a life, or "lives, (which was material,) I shall still renew, "but then there must be no farther delay." Could it be said that the landlord therefore waved the previous demands? He waved them indeed if there were no farther delay, but that there should be no farther delay was the very term and condition of the waver.

Then in the fair and reasonable construction of this act, looking at all the evidence and all the circumstances, had or had not the tenant been put in mind that he had neglected to pay fines that were due? had not a demand been made? and had there not been a refusal or neglect, for a longer period than could be properly called a reasonable time? Had there been more than a reasonable time? That was a question of fact. He (*Lord Chancellor*) said, that applications had been repeatedly made, and not complied with in reasonable

time; that the right to insist upon the previous demands had been waved in October, provided there was no farther delay; that there was farther delay, and a delay for a time which in itself was unreasonable, even if there had been no neglect before. A reasonable construction must be put on the act, for the benefit of the tenant; but not such a construction as would leave the landlord without any adequate remedy, and enable the tenant to make of his covenant just what he pleased.—(*Vide* 1 Sch. Lef. 443.)

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Decree accordingly *affirmed*. Judgment.

Agent for Appellant, LANE.
Agent for Respondent, FLADGATE.

IRELAND.

APPEAL FROM THE COURT OF EXCHEQUER.

MOUNTNORRIS (Earl of)—*Appellant*.
WHITE—*Respondent*.

WHERE, on the dropping of one of the lives, in a lease for three lives with covenant for perpetual renewal, repeated applications were made to the tenant to renew according to his covenant, particularly in 1798 and 1796, and he made no offer to renew till 1804 or 1805, when some conversations took place respecting a renewal upon the tenant's relinquishing a suit in equity, which he was carrying on against his landlord, but which conversations ended without any thing being done, and the landlord re-

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LEASE.—COVENANT.—TENANTRY ACT.