NOTE

Rent Control and the Pennsylvania Eviction Laws

A plan for the regulation of evictions is essential to every effective rent control program.[1] Accordingly, it was provided in the rent control provisions of the Emergency Price Control Act of 1942 that the Administrator might "regulate or prohibit . . . speculative or manipulative practices or renting or leasing practices (*including practices relating to recovery of the possession*) . . . which in his judgment are equivalent to or are likely to result in price or rent increases . . ." [2] The program of eviction control created by regulations issued under this broad power provides for the intervention by the O. P. A. in eviction proceedings brought in the state courts.[3] Thus, control of evictions is made to depend in the first instance upon the willingness of state judges to cooperate with the federal regulatory agencies in suspending normal remedies of the landlord, and in the second instance upon resort to injunctive and criminal proceedings in the federal courts against recalcitrant lessors. The writers of this note contemplate an analysis of the problems arising from the operation of O. P. A. rent control in Pennsylvania. Such an analysis requires a preliminary examination of the common law and statutory methods of eviction in this Commonwealth.

Proceedings to Recover Possession in Pennsylvania

One feature of Pennsylvania landlord and tenant law that is immediately apparent to one who makes merely a casual study of it is the numerous provisions by which a landlord may speedily eject his tenant. These repossessory remedies early appeared, being noted in both statutory enactments and common law interpretations.[4] They have been preserved by the courts of this state which have maintained a sympathetic attitude toward the rights of property-owners; and this attitude has not been demonstrated alone in the application of repossessory remedies.[5] The landlord's remedies can be classified according to the tribunal in which action is instituted. Generally, the common law proceedings are prosecuted in the courts of record, while the statutory actions are brought before magistrates, justices of the peace, and aldermen.

---

1. Borders, *Emergency Rent Control* (1942) 9 LAW AND CONTEMP. PROB. 107, 119. See also Winnet, *Rent Control—The Philadelphia Experiment* (1942) 14 PA. BAR ASS'N. Q. 71. In evaluating the experience of Philadelphia with its voluntary rent control program, Judge Winnet says: "A voice of authority was needed, either to stay a clear legal right to possession or to direct a desperate tenant to remain in unsatisfactory quarters until the occupant of his new and better quarters could find some other place for himself. . . . And yes, authority was needed if the situation got more desperate even to stop sales of property by denying possession as long as the occupant could find no other place." *Id.* at 74.

2. Pub. L. No. 421, 77th Cong., 2d Sess. (Jan. 30, 1942) § 2 (d). (Italics supplied.)

3. Maximum Rent Regulation No. 28, June 30, 1942, § 1388.1806, 7 FED. REG. 4915 (July 1, 1942); Maximum Rent Regulation No. 60, Dec. 11, 1942, § 1388.786, 7 FED. REG. 10451 (Dec. 15, 1942). The provision for intervention in eviction proceedings may be inferred from § 6 (d), providing for notice thereof to the Area Rent Office of the O. P. A. within 24 hours after notice to the tenant.

4. See BINNS'S JUSTICE (12th ed. 1928) 666-667.

5. *E. g.*, Pile v. Pedrick, 167 Pa. 296, 31 Atl. 646 (1895) (encroaching buildings); Thompson v. Baltimore & Ohio Ry. Co., 218 Pa. 444, 67 Atl. 768 (1907) (trespassing children), overruled by Thompson *et al.* v. Reading Co., 243 Pa. 585, 23 A. (2d) 729 (1942).

Proceedings in Courts of Record

The oldest procedure by which a landlord can regain possession from his tenant is the common law action of ejectment.[6] This remedy may be brought only at the end of the term,[7] or upon a showing that for some reason the tenant has forfeited his lease and the landlord is thereby entitled to immediate possession.[8] Because of the slow and cumbersome nature of the action, the expenses incident to a jury trial, and the opportunity for a "troublesome tenant" to "harass his landlord", common law ejectment has become obsolete as a device to effect dispossession.[9]

Despite the fact that few adverse actions of ejectment are litigated between landlords and their tenants, leases in this state are commonly drawn with a broad power of attorney enabling the landlord to obtain a judgment in an amicable action of ejectment.[10] As early as 1822, Chief Justice Tilghman said in upholding a judgment by confession entered in an amicable action, "I make no doubt, that thousands of judgments have been entered in this way; and they must not now be questioned."[11] This policy to uphold judgments obtained by confession has been retained by the Pennsylvania courts.[12] How firmly the procedure has become imbedded in the law of this state is illustrated by the following language of Justice Paxon in *Reams v. Pancoast:*[13]

> "It would have been better if the learned judge of the court below had omitted from his charge the expression of his personal dislike to the lease [which contained a warrant authorizing confession of judgment in ejectment] . . . It was not material to the issue upon trial. Moreover, it was well calculated to prejudice the case of the defendant. The average juryman would not be likely to regard a lease of this nature with much favor, and when the court adds the weight of its condemnation, there is danger of the real merits of the case being lost sight of."

A statute of 1806[14] prescribed a procedure by which judgments could be entered by confession. A similar statute was passed in 1836,[15] and numerous other acts have since been passed to perfect the procedure.[16] However, none of these statutes has been applied to the exclusion of the

6. BINNS'S JUSTICE (12th ed. 1928) 667.

7. Stofflit v. Troxell, 8 W. & S. 340 (Pa. 1845); *accord,* Evans v. Hastings, 9 Pa. 273 (1848).

8. Penn v. Divellin, 2 Yeates 309 (Pa. 1798); *see* Kline v. Johnston, 24 Pa. 72, 75 (1854).

9. BINNS'S JUSTICE (12th ed. 1928) 667. The remedy still seems valuable in cases where, because there is no definite landlord-tenant relationship, there might be difficulty in obtaining an eviction by some other dispossessory remedy. Steininger v. Spaid *et al.,* 300 Pa. 428, 150 Atl. 620 (1930).

10. For illustrations of the form of such leases see KLEIN, JUDGMENT BY CONFESSION IN PENNSYLVANIA (1929) 206-209.

11. Cook *et al.* v. Gilbert, 8 S. & R. 567, 568 (1822).

12. The subject of amicable actions in ejectment receives its most recent exhaustive treatment in the cases from Pittsburgh Terminal Coal Corp. v. Potts, 92 Pa. Super. 1 (1927) to Youghiogheny-Pittsburgh Coal Co. v. Carlet, 92 Pa. Super. 40 (1927). The subject is given textbook treatment in KLEIN, JUDGMENT BY CONFESSION IN PENNSYLVANIA (1929) 206-234.

13. 111 Pa. 42, 47, 2 Atl. 205, 206 (1885).

14. PA. STAT. ANN. (Purdon, 1931) tit. 12, § 738.

15. Act of June 13, 1836, P. L. 568.

16. The various acts are collected and indexed in KLEIN, JUDGMENT BY CONFESSION IN PENNSYLVANIA (1929) 297.

common law;[17] and, if the amicable action is instituted in conformity with the practice existing prior to the passage of the acts, the judgment obtained is valid despite variance from the statutory procedure.[18] In this connection, it must be noted that the process of obtaining a judgment by confession in an amicable action of ejectment is subject to the general limitations applicable to all judgments by confession; *e. g.*, that, although the terms of the power of attorney may be as broad as the parties desire,[19] upon exercise of the warrant the power will be strictly construed;[20] that once exercised the power is exhausted and cannot support a second judgment.[21]

Ejected tenants have occasionally made attempts to attack the validity of judgments by confession entered against them. Almost without exception these attacks have failed. So long as the judgment is regular on its face, the courts will refuse to strike it off.[22] Frequently all right to appeal has been expressly waived in the lease, and such waiver will be enforced regardless of the hardship on the tenant,[23] who probably was unaware of its full meaning when he signed the agreement. Moreover, the judgment may not be attacked collaterally. Since it is regarded as a conclusive determination between the parties,[24] the judgment may be pleaded in bar to an action of trespass brought against the landlord by his dispossessed tenant.[25] However, if a showing of fraud, mistake, or some other meritorious defense can be made, the courts will honor the appropriate motion and will open the judgment;[26] but this equitable remedy is not available in the vast majority of cases.

Proceedings in the Magistrates' Courts

"The legislature have carefully avoided giving to magistrates any jurisdiction upon question of *title* to lands, and have confined their authority to cases requiring prompt remedy, leaving the right of trial by jury to the judicial tribunals, in all cases involving the right of ownership. To have subjected a landlord to the delay of ordinary trials in a court of law, in the cases provided for before justices of the peace, would have been to jeopard the collection of rent in arrear, and deprive landlords of their right of possession, without any adequate security for redress of such wrongs. The jurisdiction of magistrates extends only to restore or change *possession* of real estate; and the various acts of assembly prescribe the

17. McCalmot v. Peters, 13 S. & R. 196 (1825); Pittsburgh Terminal Coal Corp. v. Potts, 92 Pa. Super. 1 (1927); Mould v. Shade, 2 Berks 327 (Pa. 1906).

18. Peerless Soda Fountain Service Co. v. Lipschutz, 101 Pa. Super. 568 (1931); Hillman Coal & Coke Co. v. Metcalfe, 92 Pa. Super. 14 (1927); Vesta Coal Co. v. Jones, 92 Pa. Super. 30 (1927).

19. For a good example of a broad warrant see the one before the court in Consumer's Min. Co. v. Chabak, 92 Pa. Super. 17 (1927). In that case the lessee's waiver of all right to appeal was held binding upon him, regardless of the nature of defect or error in the proceeding.

20. Deibert v. Rhodes, 291 Pa. 550, 140 Atl. 515 (1928); Jordan v. Kirschner, 94 Pa. Super. 252 (1928); Disanto v. Rowland, 83 Pa. Super. 155 (1924).

21. Philadelphia v. Johnson, 208 Pa. 645, 57 Atl. 1114. *But cf.* Morris v. Beiswanger, 22 Del. 34 (Pa. 1931).

22. Dikeman v. Butterfield, 135 Pa. 236, 19 Atl. 938 (1890); Rochester & Pittsburgh C. & I. Co. v. Maydock, 7 Pa. D. & C. 312 (1925).

23. Consumer's Min. Co. v. Chabak, 92 Pa. Super. 17 (1927).

24. Usmik *et al.* v. Pittsburgh Terminal Coal Corp., 305 Pa. 355, 157 Atl. 787 (1931).

25. Dickson v. Wood, 209 Pa. 345, 58 Atl. 668 (1904).

26. Mutual Building & Loan Ass'n v. Walukiewicz, 322 Pa. 240, 185 Atl. 648 (1936); Dikeman v. Butterfield, 135 Pa. 236, 19 Atl. 938 (1890).

circumstances and the manner under which this jurisdiction shall be exercised." [27]

(1) *Recovery of possession at expiration of term*

In the year 1772 a statute was enacted permitting a landlord to bring proceedings before a magistrate to recover possession at the expiration of his tenant's term.[28] Nearly a century later, in 1863, a second statute established a somewhat different procedure for obtaining similar relief.[29] Both of these statutes are still in force in Pennsylvania. Inasmuch as they exist as concurrent remedies,[30] it is important to examine the provisions of each.

Under the act of 1772 the landlord is required, three months prior to the time the premises are to be vacated, to serve his tenant with a notice to quit possession.[31] The three months having passed and the tenant having persisted in his refusal to vacate, the landlord may go before the appropriate magistrates; [32] there, upon proof of the lease,[33] its termination, and three months' notice given, he obtains a warrant in the nature of a summons commanding the sheriff [34] to summon twelve "substantial freeholders" [35] and the lessee to appear within four days, at which time the lessee may make his defense. If upon this hearing before the magistrate and the twelve freeholders the landlord makes out a case,[36] or the lessee fails to appear, judgment is given for possession and damages,[37] and a writ of possession is issued.

The fundamental provisions of the act of 1863 closely parallel those of the act of 1772. However, certain significant differences should be noted. First, under the later act notice must be given three months prior to the expiration of the term,[38] while under the act of 1772 it may be given after the term has expired, so long as the tenant is given three months to vacate. Secondly, under this act only one magistrate is required to hear the case, whereas under the older act two were required in all places other than Philadelphia. Finally, the act of of 1863 has dispensed with the requirement that twelve freeholders be summoned to determine the facts of the case.

The provisions of the act of 1863 have been extended to cases involving leases for less than one year by an act of 1905.[39] The only significant difference between this act and that of 1863 is that the required notice need be given only thirty days before proceedings may be instituted.[40]

(2) *Recovery of possession for non-payment of rent*

Not only do landlords need a procedure to evict tenants who hold out at the end of their terms, but they also need a means of dispossessing ten-

27. BINNS'S JUSTICE (12th ed. 1928) 666-67.
28. PA. STAT. ANN. (Purdon, 1931) tit. 68, § 361.
29. *Id.*, § 364.
30. Gavit v. Hall, 75 Pa. 363 (1874); Rich v. Keyser, 54 Pa. 86 (1867).
31. The notice need not be a written one. Wilgus v. Whitehead, 89 Pa. 131 (1879).
32. ". . . any two justices of the city, town or country where the demised premises are situate. . . ."
33. Leases for a year, less than a year, or from month to month are within the act. Shaffer v. Sutton, 5 Binn. 228 (Pa. 1812); Spidle v. Hess, 13 Pa. Dist. 449 (1903).
34. Ayres v. Novinger, 8 Pa. 412 (1848).
35. Rhoads v. Wesner, 1 Woodw. 79 (Pa. 1863).
36. DeCoursey v. Guarantee Trust & Safe Deposit Co., 81 Pa. 217 (1876).
37. Damages are awarded only for unjust detention. Watts v. Fox, 64 Pa. 336 (1870).
38. Rich v. Keyser, 54 Pa. 86 (1867).
39. PA. STAT. ANN. (Purdon, 1931) tit. 68, § 366.
40. Robinson v. Kuhen, 83 Pa. Super. 337 (1924).

ants who default in rent payments.[41] Consequently, statutes have been enacted to fill this need, and a summary procedure before a magistrate has been afforded the landlord. Under the act of 1830,[42] as amended by the act of 1861,[43] when the lessee fails to pay the rent as contracted for and the tenant's personal property on the premises is insufficient to pay the arrearages, the lessor begins dispossessory action by serving a notice on the lessee to quit the premises.[44] If the lessee fails to comply with this notice, the landlord, upon proof of rent due and owing, may have the local magistrate issue an order to the sheriff to summon the lessee to appear for a hearing. If the landlord fails in his burden of proof on the hearing,[45] he must bear the costs thereof; if he obtains judgment in his favor, a writ of possession will be granted five days thereafter. However, the tenant may avoid dispossession by paying his arrearages at any time before the writ is executed.

(3) *Other applicable statutes*

Complementing the above-mentioned dispossessory statutes is a group of miscellaneous enactments. An act of 1905 [46] establishes the procedure for executing the writ of possession. Where the tenant retains the premises against the constable serving the writ, the latter may return it "unserved because the occupant forcibly detained possession of the premises." Whereupon, ten days after judgment has been entered, the constable gives notice to the tenant that an *alias* writ, authorizing the use of force, will be issued. If the tenant persists in his refusal to vacate for ten days after receiving the notice, the *alias* writ is issued and such force as necessary is used to eject the tenant.[47]

An act of 1913 provides a means of serving an absent tenant.[48] Other statutes establish form of proof of a lost lease,[49] and a procedure for dispossession where the tenant has failed to perform certain required services,[50] or where he has removed from the premises without leaving sufficient property to secure three months' rent.[51] Some of these acts are expressly limited to particular localities; and some of them will require discussion for our present purpose.

(4) *Review of proceedings before magistrates*

Difficulty of obtaining a review of the summary eviction proceedings outlined above is another illustration of the way the Pennsylvania law has, as a practical matter, operated beneficially for the landlord. There are two general methods by which a tenant may secure a review of an

41. See page 652 *supra*.
42. PA. STAT. ANN. (Purdon, 1931) tit. 68, §§ 391, 392.
43. PA. STAT. ANN. (Purdon, 1931) tit. 68, § 393.
44. To save the tenant inconvenience the time of notice is varied according to the season of the year. Between April 1st and September 1st a fifteen days' notice will suffice; between September 1st and April 1st, the notice must be given thirty days before the tenant is asked to vacate.
45. He must establish *inter alia* a lease with a certain rent reserved, said rent in arrears, insufficiency of chattels of tenant on the premises to pay the rent, and the tenant's refusal to surrender the premises.
46. PA. STAT. ANN. (Purdon, 1931) tit. 68, § 368.
47. Use of excessive force subjects the constable to an action for damages. Warcho v. Rogers, 70 Pitts. L. J. 671 (Pa. 1922).
48. PA. STAT. ANN. (Purdon, 1931) tit. 68, § 370.
49. *Id.*, § 374.
50. *Id.*, § 395.
51. *Id.*, § 396.

adverse judgment given by a magistrate: (1) certiorari to the court of Common Pleas or the Supreme Court; (2) appeal to the court of Common Pleas.

The act of 1772 prescribes no method for reviewing the determination of the magistrates and the twelve freeholders. Nevertheless, it has been held that a party may obtain a review of the proceedings by writ of certiorari under the common law.[52] Moreover, both the act of 1830 and that of 1863 expressly preserve the writ with its usual form and effect.[53]

The writ of certiorari is never granted as a matter of right, but is given in the discretion of the court to which application has been made.[54] Except in Philadelphia County, where application for the writ must be made within ten days of the magistrate's judgment,[55] there is uncertainty as to the time within which an application will be considered.[56] It has been held that an application made twenty days after judgment is seasonable;[57] on the other hand, a delay of one hundred and two days has been held to be too great.[58] The scope of review on certiorari is extremely limited. The regularity of the proceedings alone can be examined.[59] Though no inquiry may be made into the facts found by the justice nor any new evidence accepted relative thereto,[60] depositions may be introduced to show fraud, oppression, or want of jurisdiction.[61]

Thus it can be seen that the writ of certiorari is not a particularly valuable method of review for the evicted tenant.[62] Moreover, the fact that it is not a *supersedeas,* except in Philadelphia County,[63] makes it an even less effective weapon. The tenant may find himself in the street long before he obtains a ruling on the proceedings. Finally, in Philadelphia County, where certiorari will stay execution of the writ of possession, to obtain that benefit the tenant must post bond for "all costs that have accrued or may accrue, and of the rent which has already or may become due, up to the time of final determination of said certiorari." [64]

Whereas the act of 1772 contains no express provision for a review of the proceedings before the magistrates and the freeholders,[65] both the act of 1830 and that of 1863, in addition to preserving the writ of certiorari, provide for an appeal to the court of Common Pleas. This appeal is to be tried "in the same manner that other suits are tried." The appeal provisions of the act of 1863 have been extended to the act of 1905 by judicial decision.[66]

If the eviction proceedings are instituted for non-payment of rent, the appeal must be taken within five days from the entry of judgment;[67] if

---

52. Lenox v. McCall, 3 S. & R. 95 (1817).
53. PA. STAT. ANN. (Purdon, 1931) tit. 68, §§ 392, 364.
54. McGinnis v. Vernon, 67 Pa. 149 (1871).
55. PA. STAT. ANN. (Purdon, 1931) tit. 68, § 397.
56. The acts are silent on the question.
57. Mogg v. Stone, 1 Lack. Jur. 232 (Pa. 1889).
58. Ristau v. Crew Levick Co., 109 Pa. Super. 357, 167 Atl. 800 (1933).
59. Wilmington Steamship Co. v. Haas, 151 Pa. 113, 25 Atl. 85 (1892).
60. *Ibid.* Castle v. Weber, 2 Pears. 79 (Pa. 1870).
61. McMullen v. Orr, 8 Phila. 342 (Pa. 1871).
62. It is also available to the landlord. Ansthal v. Patterson, 3 Pennypacker 25 (Pa. 1882).
63. PA. STAT. ANN. (Purdon, 1931) tit. 68, § 397; Grubb v. Fox, 6 Binney 460 (Pa. 1814); Wright v. Clendenning, 6 Phila. 329 (Pa. 1867).
64. That such bond may be of an amount so great as to preclude the tenant from resort to the remedy, see page 664 *infra.*
65. See page 655 *supra.*
66. Lehman v. Lehman, 19 Pa. Dist. 590 (1910).
67. PA. STAT. ANN. (Purdon, 1931) tit. 68, § 392.

to recover possession at the end of the term, the period is ten days.[68] In both instances if the proper bond is posted, the appeal must be heard as a matter of right, and the appellant is entitled to a trial *de novo*.[69]

Originally, appeals taken under the act of 1863 did not operate as a *supersedeas* in any case,[70] but in 1869 the act was amended so that appeals taken in Philadelphia serve to stay execution of the magistrate's judgment.[71] The appellant must give bond for all costs that have accrued, or may accrue, and all damages that have resulted from the wrongful detention of the premises.[72] In order to perfect his appeal under the act of 1830, the tenant must give "good, sufficient, and absolute security, by recognizance, for all costs that may have and may accrue . . . and also for all rent that has accrued or may accrue, up to the time of final judgment. . . ."[73] It has been held that an appeal taken under this act will serve as a *supersedeas*.[74]

Rights of Tenants Under the O. P. A.

The rent control regulations enacted under the Emergency Price Control Act of 1942[75] constitute the first attempt to regulate rents on a national scale in this country. However, governmental regulation of rents is not without precedent elsewhere.[76] Four major types of regulatory legislation have been tried:[77] (1) commission to regulate rents and evictions;[78] (2) admission of the defense of unreasonableness in an action for rent;[79] (3) the Australian method of a Fair Rent Board;[80] (4) rent-

68. Tripp v. Barnes, 1 Luz. L. T. (O. S.) 73 (Pa. 1874).

69. Palethorp v. Schmidt, 12 Pa. Super. 214 (1899); Maxwell v. Castiello, 130 Pa. Super. 390, 197 Atl. 536 (1938).

70. That is still the law everywhere but in Philadelphia County. White v. Long, 289 Pa. 525, 137 Atl. 673 (1927); Wertz v. Romberger, 33 Dauph. 75 (Pa. 1929).

71. Pa. Stat. Ann. (Purdon, 1931) tit. 68, § 372.

72. Tripp v. Barnes, 1 Luz. L. T. (O. S.) 73 (Pa. 1874).

73. Pa. Stat. Ann. (Purdon, 1931) tit. 68, § 392; Brown v. Schwartz, 146 Pa. Super. 472, 23 A. (2d) 69 (1942).

74. Rubicum v. Williams, 1 Asbm. 230 (Pa. 1831).

75. Pub. L. No. 421, 77th Cong., 2d Sess. (Jan. 30, 1942).

76. A number of European nations had some form of governmental rent control during and subsequent to World War I. See *European Housing Problems Since the War*, 1914-1923, International Labour Office, Studies and Reports, Series G, No. I (1924). For early state statutory regulation see Borders, *Emergency Rent Control* (1942) 9 Law and Contemp. Prob. 107. See note 1 *supra*. Also the Soldiers' and Sailors' Civil Relief Act of the last war, 40 Stat. 440 (1918), was a step in the direction of governmental rent control.

77. As classified in Borders, *Emergency Rent Control* (1942) 9 Law and Contemp. Prob. 107.

78. The first attempt at this type of regulation was in the District of Columbia. Ball Rent Law, 41 Stat. 297 (1919). The commission was empowered to determine upon complaint or its own initiative whether rents were fair and reasonable. The Act was held constitutional as a proper exercise of the police power under an existing emergency. Block v. Hirsh, 256 U. S. 135 (1921). But later in Peck v. Fink, 2 F. (2d) 912 (1924), *cert. denied* 266 U. S. 631 (1925) a 1924 statute continuing the operation of the statute in question was held unconstitutional on the ground that the emergency had, in fact, passed.

79. Emergency Housing Laws, New York Laws 1920, cc. 942, 130-139, as amended by *id.* cc. 942-947. In Edgar A. Levy Leasing Co. v. Siegel and 810 West End Avenue, Inc. v. Stern, 258 U. S. 242 (1922) the constitutionality of Chapter 136 of the New York Laws of 1920 was upheld.

80. Statutes of New South Wales, 1915, No. 66, set up "Fair Rent" courts to administer the law. Any lessor or lessee, not in default, could apply to the court to have the fair rent determined in accordance with a scheme set forth in the Act.

pegging by reference to a designated normal rent date.[81] The plan adopted in the Emergency Price Control Act is a combination of the above means. It provides for the pegging of rents by reference to a fixed date;[82] it sets up eviction control under the direction of the Administrator[83] with an appeal to the three-judge Emergency Court of Appeals.[84]

One would expect to find the problem of constitutionality arising in connection with legislation of this sort. Previous legislation has been declared constitutional as an exercise of the emergency power[85] and the requirement of reasonableness is not too indefinite a standard to satisfy the due process clause.[86] Not unexpectedly, various attempts have been made to attack the rent provisions of the present Act as being unconstitutional.[87] What will perhaps become the leading case on this question was recently decided by the district court of Kansas.[88] It is expected that the case will be taken to the Supreme Court of the United States by *certiorari* in the near future.[89] In that case, *Henderson v. Kimmel,* an injunction was sought to restrain a landlord from collecting a rent higher than those authorized by the regional office and from maintaining any action in the state court to evict his tenant. The landlord defended on the ground that the O. P. A. was unconstitutional,[90] and by counterclaim asked that it be enjoined from interfering with his pursuance of Kansas remedies. The relief prayed for in the counterclaim was denied and the Act was declared constitutional as an exercise of the War Powers of the Constitution.[91] It is emphasized in that opinion that the power to regulate rents is properly

81. This is the procedure followed in England since 1915. The Act of 1920, 10 & 11 GEO. V, c. 17, is a consolidation of several laws; it is known as the "Principal Act." Canadian statutes are of this type also. Order-in-Council, P. C. 4616, Sept. 11, 1940; Order-in-Council, P. C. 5003, Sept. 24, 1940; Order No. 33, Wartime Prices and Trade Board, Feb. 14, 1941; Order-in-Council, P. C. 8965, Nov. 21, 1941.

82. Pub. L. No. 421, 77th Cong., 2d Sess. (Jan. 30, 1942), § 2 (b), in which April 1, 1941, was set as the date of reference.

83. Pub. L. No. 421, 77th Cong., 2d Sess. (Jan. 30, 1942), § 2 (d).

84. Pub. L. No. 421, 77th Cong., 2d Sess. (Jan. 30, 1942), § 204 (c): "There is hereby created a court of the United States to be known as the Emergency Court of Appeals, which shall consist of three or more judges to be designated by the Chief Justice of the United States from judges of the United States district courts and circuit courts of appeals. . . . The court shall have the powers of a district court with respect to the jurisdiction conferred upon it by this Act; except that the court shall not have power to issue any temporary restraining order or interlocutory decree staying or restraining, in whole or in part, the effectiveness of any regulation or order issued under section 2 or any price schedule effective in accordance with the provisions of section 206."

85. Block v. Hirsh, 256 U. S. 135 (1921).

86. Edgar A. Levy Leasing Co., Inc. v. Siegel and 810 West End Avenue, Inc. v. Stern, 258 U. S. 242 (1922).

87. The case bearing the most weight is the case decided by the Supreme Court of Alabama, Kittrell v. Hatter, 10 S. (2d) 827 (Ala. 1942). See also Henderson v. Kimmel, 47 F. Supp. 625 (D. Kan. 1942), 1 Price Control Cases (C. C. H. War Law) ¶ 51,706.

88. Henderson v. Kimmel, 47 F. Supp. 635 (D. Kan. 1942), 1 Price Control Cases (C. C. H. War Law) ¶ 51,706.

89. Legal Intelligencer, Nov. 17, 1942, p. 1, col. 4: ". . . since the recent decision of a three-judge federal court in Kansas, first to consider the rent and price control program, may be taken direct to the Supreme Court."

90. The charge of unconstitutionality was based upon the contention that the Act and the administrative regulations made pursuant thereto resulted in depriving the complainant of his property without due process of law and imposed such a burden upon his property rights as to constitute a taking for public use without just compensation.

91. The war powers are derived from the following parts of the Constitution: Congress is given in Art. I, § 8, cl. 1, power to "provide for the common defense"; *id. at cl.* 12, 13, "to raise and support armies" and "to provide and maintain a Navy"; *id.* at cl. 14, "to make Rules for the Government and Regulation of the land and Naval

implied from the extremely broad war powers[92] and that the O. P. A. administrative framework and procedure is an appropriate means to enforce that power within the limitations of due process.

Another attempt to attack the constitutionality of the Act was made in the case of *Diffenbaugh v. Cook*. The issue there raised first came up in a lower Indiana court.[93] No definite decision was given there, the court stating it was willing to presume the act constitutional. That court was of the opinion that it was not an appropriate unit to test legislation of nation-wide import. The plaintiff then went to the Federal District Court and sought a declaratory judgment on the validity of the provision of the Act prescribing exclusive jurisdiction of the Emergency Court of Appeals to determine the validity of regulations issued pursuant to the Act. That court upheld the O. P. A., citing *Henderson v. Kimmel*.[94] Thus it would appear that the validity of the Act must be tested by the Court which it created.

Up to this point we have been concerned with the constitutionality of the Act; we now consider judicial interpretations and decisions arising under the *Regulations* promulgated by authority of the Act. It is provided that no tenant can be removed from any housing accommodations by any legal proceeding instituted by his landlord, regardless of the fact that his lease may have expired or none ever existed, so long as the tenant continues to pay rent.[95] There are certain exceptions: (1) where a tenant, formerly being in possession under a written lease, has refused to re-execute the lease on the same terms and conditions for a period of not longer than one year, provided that the terms are consistent with the Rent Regulations; (2) where the tenant, occupying under a lease which permits the landlord's access to the premises for purposes of inspection or re-letting, has refused his landlord access for such purposes; (3) where the tenant has violated an obligation, other than that to pay rent, to his landlord and persists in such violation after the receipt of written notice to desist therefrom; (4) where the tenant is committing or permitting a nuisance on the premises or is using or allowing them to be used for an illegal or immoral purpose; (5) where the landlord in good faith seeks to recover the premises for the purposes of demolition, reconstruction, or substantial remodeling, which cannot practicably be done with the tenant in possession;[96] (6) where the landlord seeks the premises for his own dwelling; (7) where at the time of

---

Forces"; *id.* at cl. 11, "to declare War, grant Letters of Marque and Reprisal, and make Rules converning Captures on Land and Water"; *id.* at cl. 10, "to define and punish Piracies and Felonies committed on the high Seas and Offenses against the Law of Nations"; *id.* at cl. 18, "to make all Laws which shall be necessary and proper for carrying into Execution the foregoing powers."

Art. II, § 2, cl. 1, makes the President Commander-in-Chief of the Army and Navy, and Art. II, § 3, cl. 1, empowers him to appoint and commission officers of the United States.

92. In United States v. Macintosh, 283 U. S. 605, 622 (1930) the Court says, "From its very nature, the war power, when necessity calls for its exercise, tolerates no qualifications or limitations, unless found in the Constitution or in applicable principles of international law. In the words of John Quincy Adams, 'This power is tremendous; it is strictly constitutional; but it breaks down every barrier so anxiously erected for the protection of liberty, property and of life.'"

93. Dieffenbaugh v. Cook, 1 Price Control Cases (C. C. H. War Law) ¶ 51,704 (Ind. Super. Ct. 1942).

94. Dieffenbaugh v. Cook, 1 Price Control Cases (C. C. H. War Law) ¶ 51,712 (N. D. Ind. 1942).

95. Maximum Rent Regulation No. 60, Dec. 11, 1942, § 1388.786, 7 FED. REG. 10,451 (Dec. 15, 1942).

96. Provided that the plans have been approved by proper authorities, according to the requirements of the local law.

the expiration of the lease the premises are in the possession of sub-tenants. In all of the exceptions above listed the landlord can utilize any method available for dispossession under the local law without interference by the O. P. A. Division of Rent Control.[97]

If the landlord wishes to evict for any purpose other than those seven grounds, he may petition the Administrator for permission to do so.[98] The Administrator has the power to authorize him to pursue any remedy he might have under local law if it is sufficiently proved that the eviction is for a purpose not in conflict with the purposes of the Price Control Act.[99] However, in all cases, including eviction for non-payment of rent, the landlord must give written notice to the tenant and to the Area Rent Office at least ten days prior to the time specified for the surrender of the premises and to the institution of any repossessory action. This notice must contain a statement of the ground relied on for removal of the tenant and specify the time when the tenant is asked to vacate the demised premises.[100] A second notice must be given when suit is actually instituted; it must contain the title of the case, number, court, etc., and the ground on which removal is sought. This gives the legal staff of the Area Office an opportunity to intervene and resist any eviction [101] which does not comply with the Regulations. In this connection it is to be noted that a landlord must give 10 days notice even where he exercises a power in the lease to confess judgment.

There has been a paucity of judicial decisions on the interpretation of the foregoing provisions. However, the few decisions which have been handed down, coupled with various official Rent Control Interpretations, will serve as some indication of the liberality with which evictions will be permitted. Apparently one of the most common grounds advanced by the landlord to justify the dispossession of his tenant is that the tenant is permitting a nuisance to exist on the premises. In a recent case in the Philadelphia area [102] where premises twenty feet square were occupied by six persons, a cat, and a dog, the landlord was sustained in his contention. In

97. Maximum Rent Regulation No. 28, June 30, 1942, § 1388.1806, 7 FED. REG. 4915 (July 1, 1942), as amended on Oct. 20, 1942, § 6, 7 FED. REG. 8505 (Oct. 21, 1942). *See* Mulder, "Explanation of Eviction Provisions of Amended Maximum Rent Regulation," Legal Intelligencer, Oct. 29, 1942, p. 639, col. 3.

98. Maximum Rent Regulation No. 28, June 30, 1942, § 1388.1806, 7 FED. REG. 4915 (July 1, 1942), as amended Oct. 20, 1942, § 6, subsec. b (1), 7 FED. REG. 8505 (Oct. 21, 1942): "No tenant shall be removed or evicted on grounds other than those stated above unless, on petition of the landlord, the Administrator certifies that the landlord may pursue his remedies in accordance with the requirements of the local law."

99. Those purposes as set forth in the Emergency Price Control Act, 56 STAT. 23, 50 U. S. C. A. § 901 (Supp. 1943): "It is hereby declared to be in the interest of the national defense and security and necessary to the effective prosecution of the present war, and the purposes of this Act are, to stabilize prices and to prevent speculative, unwarranted, and abnormal increases in prices and rents; to eliminate and prevent profiteering, hoarding, manipulation, speculation, and other disruptive practices resulting from abnormal market conditions. . . ."

100. O P. A. Rent Control Form No. 104.

101. Such intervention is usually made by entering an appearance as *amicus curiae*. Ricciardi v. Henley, 1 Price Control Cases (C. C. H. War Law) ¶ 51,702 (Waterbury, Conn., Mun. Ct. 1942); Vecchio v. One Kelly, 1 Price Control Cases (C. C. H. War Law) ¶ 51,705 (Mich. C. C. 1942). Or the division office may seek an injunction against the landlord's action. Henderson v. Kimmel, 45 F. Supp. 635 (D. Kan. 1942), 1 Price Control Cases (C. C. H. War Law) ¶ 51,706; Flora v. Wilder, 1 Price Control Cases (C. C. H. War Law) ¶ 51,710 (Kan. Dist. Ct. 1942).

102. Henderson v. Gandy, 1 Price Control Cases (C. C. H. War Law) ¶ 51,708 (E. D. Pa. 1942).

the language of the court, "to give legal sanction to whatever the arrangement was, would be to defy the very spirit and purpose of the legislation."[103] In that instance the tenant was ordered to vacate the premises within two weeks, thereby abating the nuisance. On the other hand, the mere fact that the tenant has children is not a nuisance and therefore not sufficient grounds to permit eviction by the landlord.[104] Nor did the landlord succeed where the activity complained of was a "pounding upstairs" and "causing fire-pot in the furnace to become broken by putting water in it."[105]

Under the Regulations prior to the issuance of Maximum Rent Regulation No. 57 on November 27, 1942,[106] a ground frequently resorted to by landlords was that the demised premises were needed as a residence for his own family or dependents. An official rent control interpretation defined family to mean "father, mother, brother, sister, spouse, or descendant";[107] all relatives of the landlord are not included. Dependents are limited to those in fact dependent upon the landlord for support.[108] A recent decision under the District of Columbia Emergency Rent Act[109] offers some indication of how courts will interpret this provision. It was there held that the claim for personal use must be made in good faith and that landlords must do more than prove an intent to move into the premises. In that case the landlord and his son-in-law, who was to take the lease and share the premises, already had comfortable, adequate quarters. It was there held that the eviction was not justified as being for a personal use.

However, the provision permitting resumption of possession where the premises are to be used by the landlord's dependents has been superseded by Maximum Rent Regulation No. 57 which warrants repossession by the landlord only where the premises are to be used by himself. In any other situation he must petition the Administrator for permission to remove the tenant.[110]

Apparently there has been no judicial construction of the exception authorizing eviction where the landlord desires to make a substantial alteration in the premises.[111] However, a Rent Control Interpretation of August 15, 1942[112] answers four hypothetical cases: (1) desire to change two six-room apartments into three four-room apartments will warrant eviction; (2) desire to change two apartments into a single dwelling will not justify eviction; (3) desire to furnish an apartment, previous unfurnished, will justify eviction; (4) desire to change a furnished apartment into an unfurnished apartment will not justify dispossession. The related question of refusing the landlord access to the premises is discussed in an interpre-

---

103. *Ibid.*

104. Ricciardi v. Henley, 1 Price Control Cases (C. C. H. War Law) ¶ 51,702 (Waterbury, Conn., Mun. Ct. 1942).

105. Kinkopf v. Martoni, 1 Price Control Cases (C. C. H. War Law) ¶ 51,703 (Ohio C. P. 1942).

106. 7 FED. REG. 9958 (Dec. 1, 1942).

107. Rent Control Interpretation No. 7, July 31, 1942 (C. C. H. War Law) ¶ 49,258 (D. C. Mun. Ct. 1942).

108. *Ibid.*

109. Hagmuller v. Reid, 1 Price Control Cases (C. C. H. War Law) ¶ 51,709 (D. C. Mun. Ct. 1942).

110. Maximum Rent Regulation No. 57, § 1388.586, Nov. 7, 1942, 7 FED. REG. 9963 (Dec. 15, 1942).

111. Maximum Rent Regulation No. 60, § 1388.786 (a) (5), Dec. 11, 1942, 7 FED. REG. 10,452 (Dec. 15, 1942). The controlling questions are the good faith of the landlord and the necessity for an eviction to make the repairs possible.

112. Rent Control Interpretation No. 25, Aug. 15, 1942 (C. C. H. War Law) ¶ 49,276.

tation handed down in September 1942.[113] Other official interpretations have been released on the questions of changes in ownership of the property by sale,[114] execution of mortgages, leases in violation of restrictive covenants, trespassers, etc.

It is interesting to note that although the landlord may not evict a tenant who refuses to execute a new lease for a rent which is higher than that which the tenant had been paying, the landlord may write into the new lease, to which the tenant voluntarily accedes, a provision calling for an automatic increase of the rent in the event that the O. P. A. is discontinued or the rent-ceiling is raised. An interpretation has been issued indicating various acceptable forms in which conditions of this type may be drafted.[115] In view of the fact that rent control is expected to last for the duration of the present emergency only, it is to be anticipated that this provision will appear rather frequently in leases.

Authority to Intervene in State Eviction Proceedings

As has been pointed out above, the power to freeze rents has been upheld under the War Power.[116] Some question may still remain as to whether the authority of the Administrator to intervene in state procedings for eviction will be recognized. In most instances it will probably be upheld as a necessary incident to rent control itself, for, as one court has pointed out, "If landlords were allowed to proceed to remove tenants without any restriction, such practice might very well result in manipulation of rents, possible collusion and probable increase of rents".[117] Concerning this problem there is authority for the proposition that the rent office may restrain eviction actions commenced, but still pending, at the time of the effective date of the Act.[118] However, the usual procedure is for the rent authority to file a brief as *amicus curiae* by leave of court. When that line of action is followed it is an interesting speculation whether the court has any discretion to refuse to allow the Administration to become a party to the action. To the writers' knowledge this issue has not yet been raised.

As has already been indicated the three-judge Emergency Court of Appeals established by the Act has exclusive jurisdiction to stay, restrain, enjoin, set aside, or pass upon the constitutionality of the Act or any regulation promulgated thereunder. And, therefore, the regulations regarding interference in state proceedings would seem to be no exception to the general rule. In view of the fact that State and Federal District Courts to which appeals have been made have declared themselves bound by these provisions,[119] it is to be presumed that it will be the Emergency Court of

---

113. Rent Control Interpretation No. 40, Sept. 4, 1942 (C. C. H. War Law) ¶ 49,291.

114. Rent Control Interpretation No. 39, Sept. 4, 1942 (C. C. H. War Law) ¶ 49,290.

115. Rent Control Interpretation No. 49, Sept. 26, 1942 (C. C. H. War Law) ¶ 49,300.

116. See note 88 *supra*.

117. Ricciardi v. Henley, 1 Price Control Cases (C. C. H. War Law) ¶ 51,702 (Waterbury, Conn., Mun Ct. 1942).

118. Flora v. Wilder, 1 Price Control Cases (C. C. H. War Law) ¶ 51,710 (Kan. Dist. Ct. 1942); Rent Control Interpretation No. 2, July 31, 1942 (C. C. H. War Law) ¶ 49,253.

119. Kittrell v. Hatter, 10 S. (2d) 827 (Ala. 1942); Henderson v. Kimmel, 45 F. Supp. 625 (D. Kan. 1942), 1 Price Control Cases (C. C. H. War Law) ¶ 51,706; Dieffenbaugh v. Cook, 1 Price Control Cases (C. C. H. War Law) ¶ 51,712 (N. D. Ind. 1942); Scopline *et ux.* v. Heyer, 1 Price Control Cases (C. C. H. War Law) ¶ 51,713 (Wis. C. C. 1942).

Appeals which will answer all problems concerning intervention in the state proceedings.

Adequate methods of enforcement being so imperative to the success of a program of this sort,[120] it is to be expected that the Act should contain some such provisions. Accordingly, Section 205 of the Act has set forth three sanctions to be employed for enforcement purposes. The first of these, found in subsection (a) provides: "Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond." By virtue of that provision, a landlord was recently enjoined from violating the maximum rent regulation by a Pennsylvania district court despite the fact that he had discontinued the practices complained of.[121] By virtue of the second sanction appearing in subsection (b), any person who wilfully violates any provision of the Act or makes a false statement in any document required of him under the Act is subject to criminal prosecution and a maximum fine of $5000. There are indications that that provision will be enforced against uncooperative landlords.[122] The final sanction, provided for in subsection (e), permits a tenant who has paid excessive rent to bring an action either for $50 or three times the damage he has suffered, whichever is the greater, plus costs and attorneys' fees.[123]

Conclusion

From the foregoing analysis the difficulties in O. P. A. rent control in Pennsylvania become apparent. It is not surprising that a rent control program, a vital part of an integrated plan to prevent prices from rising too rapidly, would be hampered by age-old procedures evolved for the purpose of giving the landlord quick and effective evictions. Two features of the Pennsylvania law have proved to be an unusual handicap: first, the difficulty of obtaining an effective review of the summary proceedings before magistrates; and second, the procedure by which a landlord may enter judgment in an amicable action of ejectment.

As has been indicated above, to obtain a review of most summary proceedings before magistrates, the tenant must post a bond covering rentals due and to accrue, as well as costs in the action. This works a hardship on the tenant. In many cases the fact that the tenant is seeking a review of the judgment obtained against him will not alone prevent his being ejected. The writ of certiorari does not always operate as a *supersedeas*. The only weapon of the Area Rent Administrator to combat the harshness of this prerequisite to review is by eliminating any necessity therefor. This

120. See note 1 *supra*.

121. Henderson v. Baldwin, 1 Price Control Cases (C. C. H. War Law) ¶ 51,711 (W. D. Pa. 1942). See also Henderson v. Detweiler *et ux.*, 1 Price Control Cases (C. C. H. War Law) ¶ 51,715 (D. Neb. 1942).

122. Legal Intelligencer, Dec. 14, 1942, p. 891, col. 6.

123. This action can be brought in any court of competent jurisdiction. Whatley v. Love, 1 Price Control Cases (C. C. H. War Law) ¶ 51,716 (New Orleans City Ct. 1942). See also Berndt v. Shaw, 1 Price Control Cases (C. C. H. War Law) ¶ 51,707 (People's Ct. of Baltimore 1942).

result might be accomplished by intervening in the magistrate's courts, by enjoining the institution of proceedings, or by enjoining the execution of any judgment obtained therein.

The current regulations of the O. P. A. expressly outlaw judgments by confession unless entered with the approval of the Area Rent Office. In many states this provision would create no controversy because such judgments have long been refused recognition. It is to be presumed that the sharp conflict between the Pennsylvania practice and the O. P. A. regulation will ultimately be resolved in favor of the federal agency.

The Pennsylvania remedies arose at a time when the national interest did not sharply conflict with the interests of property-owners. The provisions of our national rent control program are not designed to favor tenants as a class over landlords, but rather to provide adequate housing in defense areas and to promote general economic stability by preventing inflationary rental charges. Thus, it does not necessarily mean that there has been a congressional determination that the Pennsylvania remedies are not appropriate for more normal times. Nevertheless, the experiences under the current rent control program may serve as a guide for future modifications in Pennsylvania eviction procedure.

M. E. H.*
E. W. V.

* Written by Mary Elizabeth Hatton and Ellis William Van Horn, while editors of the UNIVERSITY OF PENNSYLVANIA LAW REVIEW, before their graduation in February, 1943.