Conclusion :

In conclusion we would say that an examination of the question must necessarily result in an open answer. Our view of the desirability of joint judgments is influenced by our view of the function of the legal order. To some extent we feel that the answer will be determined by the degree of support which the investigator lends to either the Positivists or the Functionalists. We believe that any legal system must contain elements of both flexibility and certainty and that the greater the compromise between these then the more efficacious will that system be. If anything, we feel that the present emphasis on individual judgments tends to upset this balance and, in order to weigh the balance a little more in the favour of certainty, we would urge that joint judgments be introduced.

H. FORD.
G. BRETT.

LANDLORD AND TENANT: NOTICE TO QUIT: WEEKLY AND MONTHLY TENANCIES.

Grosglik v. Grant : Amad v. Grant.[1]

This note is intended to be supplementary to an Article by Mr. A. D. G. Adam in an earlier volume of this publication[2] in which he stated his conception of the law dealing with the notice to quit necessary to determine a weekly tenancy in the following four propositions :—

1. Some notice to quit is necessary :
2. The notice must expire at the end of a weekly period :
3. The notice must be of reasonable length :
4. A week's notice is not required as a matter of law.

These propositions may now be considered in the light of the decision in *Grant's Case* in which the High Court unanimously followed the Court of Appeal in *Lemon v. Lardeur*[3] and over-ruled *Mornane v. All Red Carrying Co. Pty. Ltd.*[4] The issue in *Amad v. Grant* (so far as concerns this note) was whether or not a notice to quit given on the 24th July and expiring on the 25th September was effective to determine a monthly tenancy, the monthly period of which began on the 17th day of each month. In *Grosglik v. Grant* there was evidence of a monthly tenancy and a notice to quit similar to that in Amad's case was given, but there was no evidence of the day of the month upon which the tenancy began.

Dealing first with Mr. Adam's third and fourth propositions, it appears that he based his conclusion that a reasonable notice only was necessary on the Victorian decisions referred to in his article and upon his disapproval of the contrary view, that a week's notice was required as a matter of law. This view had been stated by Lush J. in *Queen's Club Garden Estates Ltd. v. Bignell*[5] and was adopted in the subsequent English

1. [1947] A.L.R. 191.
2. *Res Judicatae*, vol. 1, p 98.
3. [1946] 1 K.B. 613 ; [1946] 2 All E.R. 329
4. [1935] V.L.R. 341.
5. [1924] 1 K.B. 117.

cases of *Precious v. Reedie*[6] and *Newman v. Slade*.[7] Although the view expressed by Lush J. was unnecessary for his decision in the *Queen's Club Case* and although Latham C.J. in *Grant's Case* was careful to point out that the question of the length of notice required was not there in issue, it is noteworthy that both the learned Chief Justice of the High Court and Morton L.J. in *Lemon v. Lardeur* unreservedly approved of Lush J.'s reasoning. It is suggested that his opinion is sound, not only on the question of the date of expiry of the notice, but also as to the length thereof. While the present legislative requirement of a certain minimum notice remains in force, it is unlikely that the question of length of notice will be raised, but should the statutory requirement be repealed, it is submitted that the Australian courts should follow the English rule in preference to that expressed in the third and fourth propositions above. This would bring the whole of this part of the law in Australia into conformity with that now existing in England.

As regards Mr. Adam's first and second propositions, *Grant's case* has now made it quite clear that some notice to quit is necessary, and also that the notice in the case of all periodic tenancies must, in the absence of any agreement to the contrary, expire at the end of a period of the tenancy. The Court rejected the contention that regulation 62 of the *National Security* (*Landlord and Tenant*) *Regulations* operated so as to validate a notice to quit complying with the requirements of the Regulations, even although it did not expire at the end of a current period of the tenancy. The Court in effect, held that a notice to quit must comply with the requirements of the common law as well as those of the Regulations. It was also decided in *Grosglik v. Grant* that the onus of proving that the notice was effective lay upon the landlord and it followed that, in the absence of proof of the date of commencement of the tenancy, such onus had not been discharged.

There is no doubt that since the decision in *Grant's case* the task of the practitioner in drawing a notice to quit has become more difficult. Mr. Adam suggested a form to simplify this matter and, with the necessary adaptation to the legislative length of notice, that form would be to quit " at the end of the period of the tenancy which will expire next after the expiration of days (the number of days required by the Regulations) from the date of service of this notice." An alternative form would be a notice to quit on a named date (being the number of days required by the Regulations calculated from the date of service) with the following words added—" but if such date does not coincide with the end of a current period of the tenancy, then at the end of the current period of the tenancy expiring next after " the named date. The use of these forms may save the landlord much trouble in ascertaining the correct date for the expiry of the notice but they will doubtless raise confusion in the minds of some tenants as to the actual date upon which they are to give up possession.[8]

One doubt resulting from the decision in *Grant's case* was as to whether or not the court had emphatically laid it down that the notice to quit must expire on the last day of the period of the tenancy and on no

6. [1924] 2 K.B. 149.
7. [1926] 2 K.B. 328.
8. See *Crate v. Miller*, [1947] All E.R. 45, at p. 47.

other day. This arose from the fact that in the case of yearly and quarterly tenancies it has long been settled that the notice may be given for the anniversary of the commencement of the tenancy as well as for the last day of the year or quarter,[9] and there was, indeed, some authority for the view that the same rule applied in the case of weekly tenancies.[10] The question was recently answered by Fullagar J. in *Quartermaine v. McCleery*.[11] His Honour held that the rule as to yearly and quarterly tenancies applies also to weekly and monthly tenancies and accordingly decided that a notice to quit to a calendar monthly tenant could expire on the first or last day of the month of the tenancy.

The Court of Appeal recently reached the same conclusion, stating the rule as follows :—. . . " a notice to quit on either the anniversary of of the date of commencement of the tenancy or on the day before can be construed as a notice to quit when the current period in question is ended."[12]

J. A. LEWIS.

9. *Sidebotham v. Holland*, [1895] 1 Q.B. 378.
10. *Newman v. Slade* (*supra*).
11. (as yet unreported).
12. *Crate v. Miller* (*supra*).

PROPERTY : SPECIAL POWERS OF APPOINTMENT

Re Crawshay, Hore Ruthven and Another v. Public Trustee[1] does not involve a decision on any new point of law but is an interesting example of the application of the well known rule that the donee of a special power is bound to exercise the power in accordance with the terms of the instrument creating it, and that if he attempts to exercise it with the intention of conferring a benefit on some person not an object of the power, the attempted exercise will be invalid.

By his will the original settlor had settled a legacy of £100,000 on trust for his daughter R. for life with remainder to her issue, but in the event of R. having no child who should attain 21 then in trust for such of the testator's grandchildren as R. should by will appoint, and in default of appointment to his grandchildren, living at R.'s death, equally.

By a codicil the testator excluded the issue of R. by W. whom she was about to marry and of whom the testator disapproved, from taking any benefit under his will. R. died in 1943 having been married once only, to W., by whom she had two sons who survived her. Four of her nephews and neices, grandchildren of the original testator, were alive at the date of her death. To one of them, a nephew J., she appointed the residue of the settled legacy.

J. had received certain property under his father's will on condition that he assigned, for the benefits of R.'s issue, any interest to which he might become entitled in the settled legacy either under the original will or under the exercise of the power of appointment. In compliance with this condition J. had executed in 1919 a deed whereby he assigned for the benefit of R.'s children all his present and future interest in the settled legacy.

1. [1947] 1 All E.R. 643.