into the contract without their consent. It must be borne in mind, however, that provisions in the policy which tend to effect a forfeiture, should be construed most strongly against the insurer.[23] The company, having insured property owned by Evans individually, should be entitled to know that it is now contracting with him not individually but as a corporation. The insurer intended to contract with the individual; it cannot be presumed that it intended to contract with Evans in corporate form. In the corporate form he is vastly different from Evans as an individual; his financial liability is limited, perhaps to the extent that he is no longer a desirable risk. Furthermore, the property covered by the policy was at the disposal of the three directors of the corporation, and even though dummnies, the two other than Evans might so deal with it as to enhance the burden assumed by the insurer. Why the court should have brushed aside the fiction in the case of this one-man company is not satisfactorily explained by the decision.[24] It is to be hoped that our courts will not find it necessary to follow this doctrine as it makes for uncertainty in the legal status of this type of corporation.

NOTICE TO TERMINATE UNCERTAIN TENANCIES IN NEW JERSEY—The doctrine of notice to quit has been recognized ever since the time of Henry VIII, and is recorded in the year books, as well as the early English Reports.[1] A perusal of these shows that the ancient rule of

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erty, as in the case of partners, a transfer from one to another or the withdrawal of one without the introduction of another party, does not amount to a violation of the alienation clause. Loeb v. Fireman's Insurance Co., 77 N.Y.S. 106 (1902); Walradt v. Phoenix Insurance Co., 136 N.Y. 375, 32 N.E. 1063 (1893). This conclusion rests upon the ground that, the company having exhibited its willingness to grant insurance to all those named in the policy, a mere shifting of interest among them should not be regarded as objectionable by the company. RICHARDS, INSURANCE, *supra*, note 21, p. 350; JOYCE, THE LAW OF INSURANCE (2d ed.) p. 3914 *et seq.* But a partner selling out to an incoming member or a new partner being brought into the firm does amount to a change in interest. Drennen v. London Assurance Co., 20 Fed. 657, reversed 113 U.S. 51 *aff.* 116 U.S. 461 (1886); see also 18 L.R.A. (N.S.) 482.

[23] Precipio v. Insurance Co. of Pennsylvania, 103 N.J.L. 589 (E. & A. 1927); Hampton v. Hartford Fire Insurance Co., 65 N.J.L. 265 (E. & A. 1900); Jersey City Insurance Co. v. Carson, 44 N.J.L. 210 (E. & A. 1882).

[24] It is further submitted that since the trustee to whom Evans conveyed the premises retained legal title thereto for over two months, the presumption should arise that Evans did not originally intend to use the trustee as a mere conduit but that he intended the trustee to hold the property upon an express trust. The use of a corporation to hold the farm would then be a subsequent development. If this presumption was not rebutted, it would be sufficient to avoid the policy.

[1] 13 Hen. 8, 15b. See Right v. Darby, 1 T.R. 159, 99 Eng. Rep. 1029 (1786); Doe v. Watts, 7 T.R. 83, 85; Doe v. Daggett, 2 Bl. Rep. 1224; Ellis v. Paige, 2 Pick. Rep. 71; 2 BL. COM. 147; 4 KENT'S COM. (1st Ed.) 110; ADAMS ON EJECTMENT (Ed. of 1821) 103; *Ibid.* 129; COMYN ON LANDLORD AND TENANT BY CHILTON (2d Ed.) 303; Brown v. Van Horne, 1 Bin. Rep. 334, in note.

the common law required the notice, when necessary[2] and not otherwise limited by agreement of the parties, to be for half a year or six calendar months expiring at the end of the current year of the tenancy; and a notice expiring at any other period, whether sooner or later, was insufficient.[3] In cases of tenancies for periods running less than a year, the rule enunciated by the text writers is that the notice must be regulated by the letting and must be equivalent to a period.[4] How the rule arose is uncertain. It certainly did not have its origin in any resolution of the courts. It seems, however, to have very early shaped itself into a custom. By strict relativeness, the rule of a half year's notice in tenancies from year to year, would only require a half month's or a half week's notice in cases of monthly or weekly tenancies. The briefness of the latter, and the length of the former type of tenancies, was probably the reason for this lack of uniformity.

These, then, being the common law rules, would and actually did prevail in New Jersey, until by some act of the legislature, or by a course of decisions to the contrary they have been abrogated or modified.[5]

That the New Jersey legislature has seen fit to abrogate or modify these common law rules is quite evident.[6] However, for a more comprehensive and intelligible understanding of the effect and import of these statutory enactments, a survey of the problem from its inception in New Jersey is deemed advisable.

There is no doubt but that the relation of landlord and tenant lay at the foundation of the rule requiring notice to quit,[7] for without that relationship, the parties being but strangers, no duty could exist from one to the other in regard to the giving of notice to quit or of intention to quit. For the establishment of the landlord and tenant relationship, then, there must exist the intention and the mutual assent to regard one another in that relationship.[8] For this reason it is obvious that the

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[2] Where there is a lease for a certain period, the term terminates without notice. Cobb v. Stokes, 8 East. 358; Right v. Darby, *supra,* note 1. Likewise, a tenancy terminable on the happening of an event, ends without notification to quit on the happening of that event. Messinger v. Armstrong, 1 T.R. 54.

[3] 2 BL. COM. 147; 4 KENT'S COM. (1st Ed.) 110; Right v. Darby, *supra,* note 1; 2 TAYLOR, LANDLORD AND TENANT, §§ 475, 477; Doe *d.* Strictland v. Spence, 6 East. 120.

[4] TAYLOR ON LANDLORD AND TENANT § 478; ARCHB. ON LANDLORD AND TENANT 87. With regard to notice in monthly tenancies at common law see Doe, *ex dem.* Parry v. Hazell, 1 Esp. 94 (1794), and regarding weekly tenancies see Peacock v. Raffin, 6 Esp. 4 (1808), and Doe *d.* Campbell v. Scott, 6 Bing. 362 (1830).

[5] Den, *ex dem.* McEowen v. Drake, 14 N.J.L. 523 (Sup. Ct. 1835).

[6] Section 29, Landlord and Tenant Act, 3 COMP. STAT. p. 3077; Section 109, District Court Act, 2 COMP. STAT. p. 1989; P.L. 1884, p. 178 as amended by P.L. 1888, p. 426, 3 COMP. STAT. p. 3079, Sec. 32; P.L. 1923, ch. 72 repealed by P.L. 1927, ch. 97; Section 1, Statute of Frauds, 2 COMP. STAT., p. 2610.

[7] 2 BL. COM. 147; Den v. Westbrook and Myers, 15 N.J.L. 371 (Sup. Ct. 1836).

[8] This doctrine was first enunciated by Lord Mansfield in Right v. Darby,

mere fact of holding over after the expiration of the tenant's term could confer no privilege of notice from the landlord, because the admission of such a result would sweep away the doctrine of tenancy by sufferance, which tenancy is terminable without notice. By such holding over, the former tenant has only a naked possession. He holds by the laches of the landlord and is not in privity with him, and the latter can terminate the tenancy whenever he so pleases, without notice.[9] The consent that will give rise to the relationship, that will confer upon the tenant the right of compelling notification from his landlord, may be either express or implied, actual or constructive, by word or by some act treating him as a tenant. The mere unbroken silence and inaction of the owner will not improve or enlarge the character of the tenant's possession.[10] Likewise, a mortgagor in possession[11] or a vendee in possession[12] is not regarded as a tenant, at least in so far as notice to quit is concerned.

Further, no notice is required to terminate a tenancy at sufferance. A tenant at sufferance is one who comes into possession of land lawfully, usually by virtue of a lease for a definite period, and after the expiration of the period of the lease, holds over without fresh leave from the owner.[13] Such tenant could be ousted at common law at any time without notice.[14] The common law rule has been changed by statute in this state, so that now a tenant at sufferance is entitled to notice to quit.[15]

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supra, note 1; see also 4 KENT'S COM. 110; and has been consistently followed in Decker v. Adams, 12 N.J.L. 99 (Sup. Ct. 1830); Stanley v. Horner, 24 N.J.L. 511, 512 (Sup. Ct. 1854); Moore v. Moore, 41 N.J.L. 515 (Sup. Ct. 1879); Condon v. Barr, 47 N.J.L. 113 (Sup. Ct. 1885); Yetters v. King's Confectionery Co., 66 N.J.L. 491 (Sup. Ct. 1901); Leonard v. Spicer Manufacturing Co., 103 N.J.L. 391, 139 Atl. 15, 55 A.L.R. 284 (E. & A. 1927).

[9] Moore v. Moore, *supra,* note 8.

[10] In Maier v. Champion, 97 N.J.L. 493 (E. & A. 1922), the holding over by a tenant and the unconditional acceptance of rent by the landlord was held to constitute the landlord's assent. However, the payment of rent must be clearly referable to the relationship. Bernstein v. Demmert, 73 N.J.L. 118 (Sup. Ct. 1905).

[11] Den v. Wade, 20 N.J.L. 291 (Sup. Ct. 1844); Den v. Stockton, 12 N.J.L. 322 (Sup. Ct. 1831). This is the doctrine of the English Courts; ADAMS ON EJECTMENT, 62, 106, and cases therein cited.

[12] Ross v. Van Aulen, 42 N.J.L. 49 (Sup. Ct. 1880); Den v. Westbrook *et als.*, 15 N.J.L. 371 (Sup. Ct. 1836); Van Valkenbergh *et als.* v. Den, 23 N.J.L. 583. In Freeman v. Headley, 33 N.J.L. 523 (E. & A. 1869) it was held that a purchaser in possession under a contract to purchase is a tenant at will, for the purpose of being responsible for voluntary waste, yet the doctrine that he is not entitled to notice to quit is expressly recognized.

[13] 2 BL. COM. (Lewis' Ed.) 150; 1 WASHB. REAL PROPERTY 383; Poole v. Engelke, 61 N.J.L. 124 (Sup. Ct. 1897).

[14] 1 WASHB. REAL PROPERTY 394; Moore v. Moore, *supra,* note 8; Moore v. Smith, 56 N.J.L. 446 (Sup. Ct. 1894); Guvernator v. Kenin, 66 N.J.L. 114 (Sup. Ct. 1901).

[15] Landlord and Tenant Act, 3 COMP. STAT., p. 3072, 3073, Sections 18c and 29; 1 CUM. SUPP. COMP. STAT., p. 1773, Sec. 109, Subdiv. 18a.

Considerable uncertainty and confusion with respect to the required notice to tenants at sufferance (and also tenants at will) has been caused by attempts of the legislature to engraft on the law of landlord and tenant some restrictions and requirements through the medium of the District Court Act; but the sufficiency of notice is governed by the Landlord and Tenant Act and not by the District Court Act.[16]

The provisions for notice in the landlord and tenant cases as contained in the District Court Act are merely jurisdictional requirements.[17] An examination of our statutes will disclose the fact that there has never been any requirement in the Landlord and Tenant Act that a notice to quit be given to a tenant at sufferance any particular length of time before the date on which such tenant was required to surrender possession. In *Moore v. Moore,*[18] it was held that a tenant at sufferance is not entitled to notice at common law, and under the Landlord and Tenant Act a previous demand for possession is required only as a condition upon which a summons may issue.[19] In *Guvernator v. Kenin,*[20] Mr. Justice Fort held that notwithstanding the provisions of section 107 of the District Court Act[21] requiring notice to tenants at sufferance to be in writing and served in the manner specified by that section, section 109 modified this requirement as to tenants at sufferance and at will, and said (page 116):

> "The drafter of section 109 should have left out the words 'at sufferance' if the three months' notice was not intended to be given in such cases. To require such a notice is clearly a hardship and useless, but the statute requires it in tenancies 'at sufferance' and the facts proven in this case show a tenancy 'at sufferance'."

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[16] Van Vlaanderen Machine Co. v. Fox, 95 N.J.L. 40 (Sup. Ct. 1920); Standard Realty Co. v. Gates, 99 N.J.Eq. 271 (Chanc. 1926).

[17] The provisions of the Landlord and Tenant Act requiring notice to tenants a sufferance in force today is to be found in 1 CUM. SUPP. COMP. STAT., p. 1773, Section 109, Subdiv. 18a and it will be noted that that act requires no more than a demand for possession and that such demand would be sufficient if made immediately preceding the issuance of summons. Sections 107 and 109 of the District Court Act of 1898 provide for certain notices to quit in cases of tenancies at sufferance or at will as jurisdictional requirements for ouster of a tenant in possession by process of that court. Section 109 as originally drafted, required three months notice both to tenants at sufferance and to tenants at will. (Guvernator v. Kenin, *supra.*) What is now Section 107 of the District Court Act was section 123 of the first general District Court Act of 1877 and the present section 109 was section 126 of the original act. The jurisdictional requirements of three months notice to tenants at sufferance and at will was contained in that act. Rev. 1877, p. 1300.

[18] 41 N.J.L. 515 (Sup. Ct. 1879), citing P.L. 1876, p 76, ¶1 (Rev. p. 576). See also Moore v. Smith, *supra,* note 14.

[19] See note 17.

[20] 66 N.J.L. 115 (Sup. Ct. 1901).

[21] 2 COMP. STAT. p. 1988.

He then held, however, that verbal notice given to such a tenant was sufficient. That case was decided in February, 1901, and at the then session of the legislature section 109 of the District Court Act was amended so as to omit the words "at sufferance," evidently because of this decision.[22]

At no time in the history of this state, therefore, either at common law or by statute, has there been any requirement of notice for any particular length of time to tenants at sufferance, except during the period when section 109, formerly section 126 of the District Court Act as originally enacted, was in force, and this merely a jurisdictional requirement in that court.[23]

A consideration of tenancies from month to month and for lesser periods presents no real problem today, in that it is well established, that in such tenancies a month's notice to quit, or a week, as the case may be, is sufficient;[24] and further, that the requirement of a notice to terminate such tenancies is mutual. Neither landlord nor tenant can terminate them except upon one month's or one week's notice.[25] Accordingly, the common law doctrine of mutuality in regard to notice to terminate uncertain tenancies has not been disturbed today, at least in so far as month to month and week to week tenancies are concerned.

There exists in New Jersey, however, a statute[26] affecting month to month tenancies, which provides that in any letting where no term is agreed upon and the rent is payable monthly, so long as the tenant pays the rent as agreed, it shall be unlawful for the landlord to dis-

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[22] This section of the District Court Act as it appeared in the original act of 1877, and as was continued until 1901, is the only statutory requirements of notice for any specified time in tenancies at sufferance. At the time this act was in force there was no similar provision in the Landlord and Tenant Act, nor has any such provision since been inserted in that act by the legislature, but in 1903 the legislature amended the Landlord and Tenant Act requiring three months notice to quit in tenancies at will and from year to year. 3 COMP. STAT. p. 3072, section 18c. The notice required in tenancies at sufferance, however, must be in writing and must be served "either personally upon the tenant or such person in possession, by giving him a copy thereof or by leaving a copy thereof at his usual place of abode with some member of his family above the age of 14 years; or where for any reason such service cannot be had, then the same may be served by affixing a copy of such notice to the door of any dwelling on such demised premises occupied by such tenant." 1 CUM. SUPP. COMP. STAT., p. 1774, sec. 109, 18a subdiv. 1. Van Vlaanderen Machine Co. v. Fox, *supra*, note 16. As for tenancies at will or from year to year, a notice served by mail or even verbal notice is sufficient. Guvernator v. Kenin, *supra*, note 14.

[23] There is some mention in the books of a three days notice in tenancies at sufferance, but we find no statutory or common law authority for this sort of notice except for non-payment of rent. NIX. DIG. (1868) 422; Schuyler v. Trefren, 26 N.J.L. 213 (Sup. Ct. 1857); Fowler v. Roe, 25 N.J.L. 549 (Sup. Ct. 1856).

[24] Steffens v. Earl, 40 N.J.L. 128 (Sup. Ct. 1878); Finkelstein v. Herson, 55 N.J.L. 217 (Sup. Ct. 1893).

[25] Hanks v. Workmaster, 75 N.J.L. 73 (Sup. Ct. 1907).

[26] P.L. 1884, p. 178 as amended by P.L. 1888, p. 426; 3 COMP. STAT. p. 3079, section 32.

possess the tenant before the first day of April succeeding the commencement of such letting without giving the tenant three months notice in writing to quit. As to the right to dispossess him after the first of April, the statute is entirely silent. If, therefore, the tenancy commences on April 1st, 1934, no dispossess could be affected before April 1st, 1935, without three months' notice. If, however, the tenancy commenced January 3rd, 1934, the terms of the statute would not apply at any time subsequent to April 1st, 1934.[27]

It is probable that this act was passed with a view to aid farm tenants. The courts, however, have not so confined its application, but rather have applied it in any instance where the facts warrant, regardless of the nature of the letting, and this, despite the fact that the courts view it as a "curious act".[28] If the original purpose were as stated, and its application confined to that purpose, there is no doubt that it would be a useful one; but its application to the ordinary letting of a dwelling house does nothing more than to further confuse the law on this point.[29]

Tenancies at will and from year to year might well be considered together, for, by a long course of judicial decisions, the estates at will, for the purpose, at least, of entitling the tenant to notice to quit, have been constructively held to be tenancies from year to year.[30]

An estate at will, in the primary and technical sense of that expression, was created at common law by grant or contract, whereby one man let lands to another to hold at the will of the lessor, which will the lessor might at early common law, revoke without notification.[31] There later developed by custom and judicial decision a duty on the part of the landlord to give the tenant six months notice to quit.

Although by the Statute of Frauds,[32] it is enacted that all leases by parol for more than three years shall have the effect of estates at will only, such a letting may be made to enure as a tenancy from year to year.[33] It has been held that the subsequent payment of rent and the unconditional acceptance thereof by the landlord under the agreement creates a tenancy from year to year. Payment of rent, indeed, must be

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[27] See Shaw v. Schietinger, 51 N. J. L. 152 (Sup. Ct. 1888) and Trela v. Novak, 4 N.J.Misc. 854 (Sup. Ct. 1926).

[28] This act was so termed by Mr. Justice Reed in Shaw v. Schietinger, *supra* note 27.

[29] It is to be noted that the statute passed shortly after the World War to prevent landlords from taking undue advantage of the great demand which then existed for dwelling houses and to alleviate tenants of the coercion on the part of the landlords to accede to their demands for higher rents on the threat of being removed on one months notice, by requiring three months notice to quit, (P.L. 1923, ch. 72) was repealed in 1927 (P.L. 1927, ch. 97) and is consequently no longer in effect today.

[30] 2 BL. COM. 147, 149; 4 KENT'S COM. (1st Ed.) 111, 112.

[31] 4 KENT'S COM. (1st Ed.) 100.

[32] 2 COMP. STAT. p. 2610, section 1.

[33] Doe v. Weller, 7 T.R. 478; Clayton v. Blakey, 8 T.R. 3. For a further discussion of the English common law on this point, see 3 SMITH'S LEADING CASES, p. 1347 *et seq.* notes to Clayton v. Blakey.

understood to mean payment with reference to a yearly holding.[34] Likewise, a tenant holding over after the term of his demise and paying rent which is unconditionally accepted by the landlord becomes a tenant from year to year,[35] or from month to month,[36] depending upon whether or not the rent was reserved annually or monthly.

In the uncertain tenancies, at common law, a reasonable notice to terminate was necessary, which had from the time of Henry VIII been six months.[37]

In the case of *Steffens v. Earl,*[38] Mr. Justice Reed said, at page 133, in reiterating the common law rule as applicable then in New Jersey:

> "The habit of giving and requiring reasonable notice, in cases of tenancies, not for a single term, but for recurring periods, which reasonable notice, when the periods were from year to year, was, according to Lord Ellenborough, very early held to be six months, was, probably by custom equally as old, in tenancies for less periods, established as now stated by the books."

In *Zabriskie v. Sullivan,*[39] Mr. Justice Voorhees, in referring to the *Steffens* case, *supra,* stated at page 675, that:

> "The common law rule undoubtedly was as stated in that case, that in tenancies from year to year, landlords were obliged to give and might require six months' notice to end them."

This represents the common law rule as it existed in New Jersey prior to any legislative regulations affecting the same,[40] and was applied to all uncertain tenancies in this state, whether rent was reserved or not.[41]

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[34] Drake v. Newton, 23 N.J.L. 111 (Sup. Ct. 1851). Estates from year to year have been developed gradually from estates at will by judicial legislation. McEowen v. Drake, 14 N.J.L. 523 (Sup. Ct. 1835); 1 WASHB. REAL PROPERTY 382.

[35] Right v. Darby, *supra,* note 1; 2 BL. COM. 147. In New Jersey see Steffens v. Earl, *supra,* note 24; Zabriskie v. Sullivan, 80 N.J.L. 673 (Sup. Ct. 1910); Standard Realty Co. v. Gates, *supra,* note 16; Decker v. Adams, *supra,* note 8; Doepfner v. Snyder, 109 N.J.L. 21, 160 Atl. 313 (Sup. Ct. 1932); Leonard v. Spicer Mfg. Co., *supra,* note 8; Stanley v. Horner, *supra,* note 8; Moore v. Moore, *supra,* note 8; Condon v. Barr, *supra,* note 8; Yetters v. King's Confectionery Co., *supra,* note 8; Maier v. Champion, *supra,* note 10.

[36] See note 35.

[37] See note 3.

[38] 40 N.J.L. 128 (Sup. Ct. 1878).

[39] 80 N.J.L. 673 (Sup. Ct. 1910).

[40] Den, *ex dem.* McEowen v Drake, *supra,* note 5; Den v. Blair, 15 N.J.L. 181 (Sup. Ct. 1835); Finkelstein v. Herson, *supra,* note 24; Doepfner v. Snyder, *supra,* note 35.

[41] Den, *ex dem.* McEowen v. Drake, *supra,* note 5.

In 1840,[42] the legislature effected a change by statute in this common law rule, and provided that in those tenancies where the tenant is entitled by law to notice to quit the premises in order to terminate his tenancy, three months notice to quit shall be deemed and taken to be sufficient.[43] It is to be noted that the statute is devoid of any mention of the notice to be given by the tenant of his intention to quit such a tenancy, as a result of which, there exists some diversity of opinion on this point.

In *Zabriskie v. Sullivan,*[44] *supra,* the court points out that at common law a tenant was charged with the *reciprocal* duty of giving his landlord a six months notice of his intention to vacate, if he had been permitted to hold over, in order to rid himself of the obligation of a tenant; and the court further said that the *reciprocal* nature of this duty has not been altered by statute,[45] and still prevails in this state as at common law, and it failed to see why the exclusion of the tenant's duty should make the statute apply only to the landlord, as the common law basis was the idea of reciprocity in regard to the notice tendered by one to the other. From this it appears that if one be a tenant from year to year, or at will, his right to a continued possession and the landlord's right to receive rent would cease only upon a three months notice to quit, or a three months notice of an intention to quit.[46]

However, the more recent cases have not followed this rule of reciprocity and mutuality, but rather have applied the doctrine that a statute in derogation of the common law must be strictly construed; and since the act,[47] makes no mention of the tenant's obligation in regard to the notice of intention to vacate, the courts have recently construed the Act to mean that the landlord is required to give but three months notice to quit to the tenant; whereas the tenant, the statute being silent as to him, is bound by the common law rule and must give his landlord six months notice of his intention to quit. Such was the finding in the case of *Katz v. Inglis,*[48] and Mr. Justice Trenchard, speaking for the Court of Errors and Appeals in that case, in referring to Section 29 of the Landlord and Tenant Act, said, at page 55:

> "But that section merely declares that, where any tenant is entitled to notice to quit, in order to determine his tenancy, three months' notice to quit shall be sufficient. That does not alter the common law rule above stated, because that statute merely changes the obligation of the landlord and not the ten-

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[42] P.L. 1840, p. 104.
[43] 3 COMP. STAT. p. 3077, section 29, Landlord and Tenant Act.
[44] 80 N.J.L. 673 (Sup. Ct. 1910).
[45] The court here is referring to section 29, Landlord and Tenant Act.
[46] This view was also applied in Mitchell Fertilizer Co. v. Armour, 78 N.J.L. 118 (Sup. Ct. 1909) and in Pfeiffer v. Peters, 80 N.J.L. 661 (Sup. Ct. 1910).
[47] Section 29, Landlord and Tenant Act.
[48] 109 N.J.L. 54, 160 Atl. 314 (E. & A. 1932) and followed further in Doepfner v. Snyder, 109 N.J.L. 21, 160 Atl. 313 (Sup. Ct. 1932).

ant, and in this respect is like section 109 of the District Court Act."[49]

This view seems now to be the prevailing interpretation of the statute, as it was followed by the New Jersey Supreme Court, without further comment in the recent case of *Heckel v. Griese*.[50]

The situation thus presented is a peculiar one. In the earlier cases,[51] one finds the courts attempting to construe the statute in the light of the common law, with an utter disregard for the rules of statutory interpretation, and although this method of approach is incorrect, it certainly has reached the conclusion intended by the common law, which conclusion rests upon the principle of mutuality. Now, in the later cases,[52] one observes that the courts are wont to give the statute its true meaning, to the destruction of its common law basis. Yet certainly one cannot find fault with this method of approach, for a statute in derogation of the common law must be strictly construed. Consequently, one must look elsewhere for the appropriate remedial measure, which of necessity rests with the legislature, namely, to amend section 29 of the Landlord and Tenant Act to include the obligation of the tenant and thereby give true cognizance to the common law background of the enactment.

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[49] "No judgment for possession shall be ordered in a case of tenancy at will or from year to year unless the judge shall be satisfied by due proof that such tenancy has been terminated by giving three months notice to quit, which notice shall be deemed and taken to be sufficient, and in tenancies from month to month, one month's notice shall be deemed and taken to be sufficient." 2 COMP. STAT. p. 1989, District Court Act.

[50] 12 N.J. Misc. 211, 171 Atl. 148 (Sup. Ct. 1934).

[51] See notes 44 and 46.

[52] See notes 48 and 50.