order of a judge of a District Court refusing a new trial, which was applied for by the defendant.

The facts of the case are as follows: The defendant rented from the plaintiff certain premises in Montego Bay for three months certain, at the rent of £2 per month; this term of three months, beginning April 8th, expired on the 8th July, and the defendant paid the rent, but continued to occupy the premises though possession was demanded. He continued this occupation up to the 8th October, and gave up possession on the 9th. Under these circumstances the plaintiff sued him for £12, viz., £6 for the three months from the 8th July to the 8th October, and £6 for a quarter in lieu of notice. The defendant paid £6 into Court, and the case came on for trial before Mr. Baird on the 6th November, 1882. After taking time to consider, the learned judge gave judgment for the defendant, on the ground, I presume, that the £6 paid into Court fully satisfied the plaintiff's claim, and that he was not entitled to claim the second sum of £6 in lieu of a quarter's notice. Subsequently the plaintiff again sued the defendant to recover this sum of £6 which Mr. Baird had decided he was not entitled to recover, and Mr. Gibbon, the acting judge, gave judgment in the plaintiff's favour.

Now in my opinion Judge Baird's decision was wrong and Judge Gibbon right as regarded the merits. I think the plaintiff was entitled to recover the quarter's rent in lieu of notice.

But there is this important point to consider, viz., that Mr. Baird decided wrongly a matter within his jurisdiction, whereas Mr. Gibbon decided rightly in a matter in which he had no jurisdiction. The matter was *res judicata* as far as he was concerned, and he had no power whatever to alter the judgment of his predecessor, as it is alleged he did, by altering the judgment for the defendant into a judgment of non-suit. Whether he did so or not I cannot say, but it is plain that he had no jurisdiction whatever to rehear a case already decided by a judge of co-ordinate jurisdiction.

It has been suggested that this case is met by the proviso at the end of s. 85 of Law 22 of 74, which runs: "Provided always that no judgment, decree, or order of a District Court shall be altered, reversed, or remitted where the effect of the judgment shall be to do substantial justice between the parties to the cause." I cannot take this view. I think that the "judgment, decrees, or orders" mentioned in the proviso mean "judgments, decrees, or orders" which the District Court judge has jurisdiction to give or make, and I do not think the proviso can apply to a case where a judge acting wholly without jurisdiction, nevertheless decides a case rightly. Suppose a District Court judge were to hear and adjudicate on a claim for seven or eight thousand pounds,

or to try an action of ejectment to recover a valuable sugar estate, could his decision in either of these cases be propped up by this proviso, even if the effect of his decisions would be that substantial justice would be done between the parties to the cause? I think not, and as we have the fullest power in these appeals, I think that we should order that Mr. Baird's judgment be reversed on the ground that it was incorrect in point of law; that Mr. Gibbon's judgment be reversed on the ground that it was made without jurisdiction, and that he be directed to replace the case in his list, costs of the rehearing to be costs in the cause.

(*Cornaldi* v. *Minot* (1883), S. C. J. B., Vol. 3, p. 229, Curran, J.)

Brown & Silvera

Action for Rent—Landlord and Tenant—Recovery of Possession —Agreement not under Seal.

In this action the plaintiff sued for £5 for two months alleged arrears of rent, or in the alternative, for the recovery of the possession of certain premises, together with a claim for mesne profits.

By an agreement in writing bearing date 21st February, 1894, the plaintiff agreed to rent to the defendant as from the 1st April, 1894, the premises in question at a rent of £23 a year, payable monthly, for the term of one, three, five or seven years. An agreement for a lease was drawn, one copy was signed on behalf of the plaintiff, the other copy was signed by the defendant. The agreement was not under seal. The defendant entered into possession and regularly paid his rent at the rate of £1 18*s*. 4*d*. a month.

On 6th September, 1897, the plaintiff served on the defendant a notice to quit on 1st April, 1896, and notifying him, if he retained possession after that date, the rent of the premises would be £30 a year.

The defendant continued in possession after April, 1898, and refused to pay the higher rent. He tendered the monthly rent of £1 18*s*. 4*d*. regularly. The plaintiff refused to receive it. Hence the present action.

The Resident Magistrate was of opinion that the case was governed by that of *Walsh* v. *Lonsdale* (1882), 21 Ch. D. 9, by which it was decided that since the Judicature Acts the rule no longer holds, that a person occupying under an executory agreement for a lease not under seal is only made tenant from year to year by payment of rent. He is to be treated in every Court as holding on the terms of the agreement. The Resident Magistrate concluded that the defendant ought to be treated as if he were holding under the terms of a lease, and should be protected

accordingly. Judgment was given for the defendant. The plaintiff appealed.

It was argued in this Court, on behalf of the plaintiff, that the agreement not being a lease, could not operate for more than three years; that, accordingly, the plaintiff was entitled to regard the defendant as tenant from year to year, and that the notice to quit was a good notice. It was urged that the principle laid down in *Walsh* v. *Lonsdale* (1882), 21 Ch. D. 9, did not apply to the present case, as no evidence of the value of the premises was given in the Court below; and that inasmuch as the Resident Magistrate had no jurisdiction to decree specific performance of the agreement, he had no power to treat the defendant as holding on the terms of the agreement. The case of *Foster* v. *Reeves*, (1892) 2 Q. B. 255, was cited in support of this view.

By s. 3 of 8 Vict. c. 19, it is enacted that no lease in writing of freehold or leasehold land shall be valid unless it shall be by deed; "but," the section goes on to provide, "any agreement in writing to let any such land shall be valid and take effect as an agreement to execute a lease; and the person who shall be in possession of the land in pursuance of any agreement to let, may, from payment of rent or other circumstances, be construed to be a tenant from year to year."

Dismissing from our minds the first clause of the section, which has no application to the present case, the section goes on to deal with agreements in writing to let land, and with the rights of the parties thereto under such agreements. An agreement of the kind specified in the section is to take effect as an agreement to execute a lease giving a right to specific performance, and until such specific performance is decreed, the party in possession is from payment of rent, or otherwise, to be regarded at law as a tenant from year to year. That was the state of the law before the passing of the Judicature Law, 1879; and in view of the language of the section of Law 8 Vict. c. 19, above quoted, the defendant should be regarded as holding under an agreement for a lease, of which specific performance would be decreed in a Court of Equity of competent jurisdiction.

By the Judicature Law, 1879, law and equity are fused. That law contains provisions for the concurrent administration of law and equity in the Supreme Court; and under those provisions a defendant can avail himself of an equitable defence in a common law action brought in the Supreme Court. If this action had been brought in the Supreme Court, it is, I think, clear that the defendant would have been able to avail himself of an equitable defence to the effect that he was holding in the terms of the agreement, and *Walsh* v. *Lonsdale* would apply. The action was, however, brought in the Resident Magistrate's Court, and turning to the Resident Magistrate's Law of 1889, we find that s. 185 prescribes the different kinds of common law and equity actions, and matters of which a Resident Magistrate may take

cognisance; and s. 186, sub-s. 9, provides that where there is any conflict between law and equity, the rules of equity shall prevail. Hence it might, at first sight, be thought that if a Resident Magistrate had once seisin of a claim, he could deal with it in exactly the same manner as if the action were in the Supreme Court. This view has, however, been modified by the English decisions above referred to. (*Foster* v. *Reeves*, (1892) 2 Q. B. 255, C. A.) The defendant in that case entered into possession of a house, the value of which exceeded £500, under an agreement for a lease of three years to commence at a future date. He afterwards gave notice to quit, and quitted at the end of the first year. The landlord, treating him still as his tenant, sued in the County Court for the quarter's rent accruing after he had quitted; but the Court of Appeal held that, although in the High Court the plaintiff would, by reason of the Judicature Acts, have been able to maintain the action, he could not do so in the County Court, because the judge had no jurisdiction to decree specific performance of the agreement, the value of the property exceeding £500, the judges expressly holding that the decision of Jessel, M. R., in *Walsh* v. *Lonsdale* applied only to the High Court. But whatever the nature of a plaintiff's claim may be in a County Court, the defendant is no longer limited to defences valid at law, or to equitable defences falling within the narrow limits put upon them by the Common Law Courts. The 89th section of the Judicature Act, 1873 (36 & 37 Vict. c. 66), compels the judge of a County Court to grant in every proceeding before him the same relief and remedy and combination of remedies, and to give effect to the same defences, equitable and legal, as if the action were in the High Court itself. S. 90 of the same Act deals with counter-claims in County Courts, and transfers therefrom to the High Court.

Foster v. *Reeves* is no authority for saying that a County Court judge cannot apply the equitable principle laid down in *Walsh* v. *Lonsdale*, when it is set up by way of defence, even though the subject-matter exceeds his jurisdiction.

It remains only to be determined whether the Resident Magistrate in this Island is in the same position as the County Courts in England with reference to the exercise of jurisdiction in matters of defence.

Our Judicature Law, 1879, contains no sections corresponding to ss. 89 and 90 of the Imperial Judicature Act, 1873. Ss. 185 and 186 of the Resident Magistrate's Law, 1887, are the sections which empower a Resident Magistrate to administer law and equity concurrently in his Court. S. 185, sub-ss. 1, 3 and 4, appear to me those most in point. But after a careful perusal of sub-s. 1, it will be seen that that sub-section does not give the Resident Magistrate the power of entertaining a defence involving matter beyond the jurisdiction of the Court, which is given to the County Court judge by ss. 89 and 90 of the Imperial

Judicature Act, 1873. Sub-s. 3 enacts that a Resident Magistrate shall take notice of all equitable estates, titles and rights, and all equitable duties and liabilities, appearing incidentally in the course of any proceeding; and sub-s. 4 enacts that in any proceeding, every matter of equity on which an injunction might have been obtained in the Court of Chancery may be relied on by way of defence.

The plaintiff in the present case has put forward a case, which on the face of it showed that the defendant had certain equitable rights. Upon those rights appearing, it would be contrary to the spirit of s. 185, as well as of the Judicature Law, 1879, if the plaintiff by choosing her own tribunal—by selecting that portion of the agreement which suited her, and rejecting the rest—should be able to prevent the Court from dealing with the whole matter in controversy, and should, by strategy of this sort, be allowed to recover possession of the premises. Putting forward the case in the way she did, it lay upon the plaintiff to prove the value of the premises, the subject-matter of the agreement, in order to show that the Court had jurisdiction. In the absence of such proof, she was in the same position as the plaintiff in the case of *Foster* v. *Reeves*, for the equitable right to specific performance appeared incidentally, and the Court had no power to deal with it, owing to want of proof of jurisdiction by the plaintiff. The Resident Magistrate, however, decided the case upon the footing that he had jurisdiction in the matter; and the proper course for this Court to adopt, in the circumstances, is to remit this cause to the Resident Magistrate's Court, with instructions that the plaintiff's claim to recover possession of the premises, with mesne profits, should be struck out for want of jurisdiction.

Turning now to the claim for £5 for rent, it seems that the defendant has never denied that the sum of £3 16*s*. 8*d*. is due to the plaintiff for two months' rent under the agreement. There is evidence that this amount was tendered, and that it was refused by the plaintiff, but the tender was never completed by payment into Court as provided by Ord. X. r. 5; and, accordingly, the plaintiff was entitled to judgment for £3 16*s*. 8*d*. for rent due.

The case abounds in snares and pitfalls. The Resident Magistrate delivered a strong, well-thought out judgment, quite unanswerable when one considers the way in which the case was put before him, for *Foster* v. *Reeves* was never brought to his attention.

The proper order to make in the circumstances is, I think, appeal allowed, but without costs, upon the ground that the case is decided in this Court upon a point not raised in the Resident Magistrate's Court. Cause remitted to the Resident Magistrate's Court, with instructions that the claim to recover possession of the premises with mesne profits should be struck out. Judgment is entered for the plaintiff for £3 16*s*. 8*d*., with

such fees as are properly payable in the Resident Magistrate's Court, in order to obtain a judgment for that amount.

(*Brown* v. *Silvera* (1898), S. C. J. B., Vol. 7, p. 196, Northcote, Ag. C. J., and Vickers, Ag. J.)

Lease from Year to Year—Six Months' Notice.

The lease from year to year granted to the plaintiff by the testator was binding upon his devisees.

The notice of 21st August, 1908, not being a six months' notice terminating at the end of a year of the tenancy, was not sufficient to determine the lease, and there was, in the opinion of this Court, no evidence of a disclaimer by the plaintiff which would dispense with the necessity for a proper notice.

What the plaintiff stated on being served with the notice was not a renunciation by her of her character as tenant, but merely the expression of a natural wish for reliable information as to who was the right owner entitled to receive the rent.

The further point raised for the respondent, that by removing part of her things from the premises the plaintiff agreed to accept the position, cannot be sustained. The threat contained in the notice sufficiently accounted for her taking steps to find another lodging.

The appeal is allowed, and the judgment of the Court below is reversed and judgment entered for the plaintiff.

The parties having agreed as to damages in accordance with a memorandum signed by counsel and deposited in this Court, judgment is in accordance with such memorandum to be entered for the plaintiff for £2, with costs and solicitor's costs in the Court below. The plaintiff to have the costs of the appeal fixed at £10.

(*Adams* v. *Scott* (1909), S. C. J. B., Vol. 9, p. 76, F. Clarke, Lumb and Beard, JJ.)

LAPSE OF TIME. *See* WILL.

LAPSED GIFT. *See* WILL.

LANDS CLAUSES LAW. *See* LAND.