SUPREME COURT DECISIONS

OF

JAMAICA & PRIVY COUNCIL DECISIONS,

FROM 1774—1923.

BY

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Landlord and Tenant—Res judicata.

As this case raises rather an important point, I think it desirable to state shortly what I think about it. It is an appeal from an

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.)