It is noteworthy that plaintiff therein takes no exception to the deduction of £2 10s. though he does refer to another matter, viz.:—bad coin. It is thus clear that the plaintiff accepted £11 as the price of the second cow, thereby giving the deduction agreed on, and performing his promise in that behalf—thus changing the quality of his promise from executory to an executed promise, which, as I understand the law, is binding, even in the case of gifts, without any consideration, which have been carried out. In other words while a promise to give, without any consideration therefor, is not binding in English Law, so long as it is unperformed and executory, and cannot be sued upon, yet if the gift be delivered, and the promise performed and executed, this binds the donor, and notwithstanding the absence of consideration for the promise, the donor cannot sue to recover it back.

The defendant subsequently pays £13 10s. for the third cow, and receives delivery thereof; and afterwards pays £14 for the fourth cow, and receives delivery thereof.

After these promises the plaintiff sues the defendant to recover back £2 10s., the deduction acquiesced in by plaintiff as aforesaid. His contention is that the contract was an entire one, and that £11 paid, when the second cow was delivered, was only a payment on account of one lump sum of £54 10s. and that the alleged promise to deduct £2 10s. if so made, was a promise without consideration and not binding. This contention as to the £11 being only a payment on account of a large sum, though an ingenious attempt to get out of a promise, afterwards repented of, cannot get over the fact that the promise, assuming it was without consideration, was actually performed and executed. It is true that the plaintiff's Solicitor on the 1st November, 1919, wrote to defendant informing him that he had purchased 4 cows at prices aggregating £54 10s. a d that so far he had only received two of the cattle at £13 10s. each, and had only paid £24 10s. leaving a balance of £2 10s. on them. This letter in my opinion was valueless, and this for the reasons aforesaid. The object of it was obvious, which was for the purpose of laying a foundation for a subsequent attempt by plaintiff to recede from a promise he repented of and had actually performed. In my opinion, however, the attempt is vain and is legally disposed of by the actual performance. In the circumstances, I do not think it necessary to express any opinion on the question whether there was any consideration for the promise. The case in my opinion is within the rule of Law that money paid under mistake of Law is not recoverable. For the reasons aforesaid, I am of opinion that the plaintiff's action was not sustainable, and that his appeal from an adverse judgment should be dismissed with costs fixed at £10.

———

The following judgment was delivered by Mr. Justice Orpen:—

This is an appeal by the Plaintiff from the judgment of the Resident Magistrate for St. James.

It appears that on 22nd September last the Defendant wh is butcher agreed to purchase 4 cows from the Plaintiff, three a 10s. each, and one at £14, making an aggregate of £54 10s. T period for taking of the cows was extended over some time, but e cow was to be paid for on delivery. On 24th September the Defend paid £13 10s. to Plaintiff and received one of the cows, which butchered, but he states that the meat was bad, and he lost mon over the transaction. He had an interview over the matter with the

aintiff and he states that the Plaintiff agreed to take £2 10s. off the ice of the next cow. Plaintiff states that he only agreed to consider e matter after all four cows had been taken over by Defendant.

I accept the finding of the Resident Magistrate on this point that e Plaintiff did promise to take £2 10s. off the price of the next cow, id I think this finding is amply justified by the subsequent events and e letters written by Plaintiff. On 1st October the Defendant sent 11 to the Plaintiff which the Plaintiff accepted and delivered to efendant's messengers the second cow "Dear" which was one for hich Defendant had agreed to pay £13 10s.

The Plaintiff also wrote the letter of 1st October in which he knowledges the receipt of the £11, and makes no claim or complaint out the balance of £2 10s.; on the other hand he does make a complaint out some 3/- worth of bad coins being amongst the £11. Nothing rther happens until 1st November when Plaintiff's Solicitors write Defendant calling on him to take delivery of the other two cows d demanding the balance of £2 10s. on the second cow "Dear." n subsequent dates the other two cows are taken by Defendant and aid for by him the sums being £13 10s. and £14, respectively. In cknowledging the receipt of each of these sums the Plaintiff makes a emand for the balance of £2 10s.

The Plaintiff now sues for this balance of £2 10s.

It has been strongly urged that there was no legal consideration r the promise of payment of the £2 10s., and I agree there was such legal consideration and if the £2 10s. had not been paid and e Defendant had sued for the recovery of the £2 10s. he could not cceed. But the matter is put on quite a different footing when the romise to pay the £2 10s. has been carried out and executed as I nsider it has clearly been by the acceptance by the Plaintiff of the m of £11 for the second cow in lieu of £13 10s. the agreed price ereof. The Plaintiff cannot now recover the £2 10s. so paid by him. is obvious to me on the evidence that after the Plaintiff had ritten his letter of 1st October he made some discoveries which led im to believe he had been misled by the Defendant when he made the romise to allow the £2 10s. off the price of the second cow. If he ad established that the promise was obtained by false representations the Defendant he could have succeeded in recovering the £2 10s. hich he allowed off the price—but he did not adopt this course. He bsolutely denies having made any promise except that he would consider the matter, and in my opinion the appeal should be dismissed ith costs.

n the Full Court. *29th November*, 1920.

BEFORE C. H. BEARD, A/C.J. AND BROWN AND ORPEN, J.J.

R. *v.* MOTTA.

The following judgment was delivered:—

The Inspector of Police for the parish of Saint Andrew, assuming act under Law 21 of 1902, directed that no wheeled traffic should e allowed to remain or stand in front of Wray & Nephew's rum bar

Supreme Court of Judicature of Jamaica Judgments 1917–1932 by A. Clarke
CRIM. PRAC.
COUNCIL OF LEGAL EDUCATION NORMAN MANLEY LAW SCHOOL LIBRARY U.W.I. MONA, KINGSTON, 7 JAMAICA

at Montgomery's Corner in the parish of Saint Andrew, or rei between the car lines, but that such wheeled traffic should remaii the Market side of the road at that corner. This direction was givei the safety and convenience of the public and because in the opinion o Inspector the place was likely or liable to become thronged or obstructi

The appellant, according to the evidence before this Court, left car standing unoccupied at a prohibited place and is alleged to l failed to obey the reasonable order of the Constable requiring to remove it. He was convicted by the Supernumerary Resi Magistrate who admonished and discharged him; and from this viction he now appeals.

It was contended in the first place that Law 21 of 1902 did authorise the direction of the Inspector. We think, however, that Law is of general application and is not confined to particular c sions. It gives the Inspector power to regulate the traffic when in his opinion it is necessary to do so from the liability or likelih of the particular place becoming thronged or obstructed, and to vide for the safety and convenience of the public and to prevent gestion of the traffic. Failure to obey a reasonable order of a Const acting under the authority of the Inspector, given with the objec carrying out the provisions of the Law, is an offence punishable s marily before a Resident Magistrate. From the evidence befor it was open to the Resident Magistrate to find that the appellant failed to obey the order of the Constable and was liable to convic

It was next contended that the Resident Magistrate preju the case by announcing before the case for the defence had been h that he had made up his mind to convict, in consequence of whict appellant's Solicitor refused to proceed further with his case or cal witnesses, although invited by the Resident Magistrate to do so, stated that he was ready to hear them. It would be competent for Court, if it were necessary, to order a new trial under Section 3(Law 28 of 1904, before a different Resident Magistrate, this bei proceeding in the Resident Magistrate's Court. In view, howe of the conclusion we have come to and which will be stated later do not propose to do so. The question, however, is one of importa and we therefore consider it right to express our opinion upon it is to be regretted that the Supernumerary Resident Magistrate expre a final opinion in the way he did before hearing the defence, and we that in future such a proceeding will not occur, it being the duty Judge to hear both sides of a case before finally expressing his opi as to guilt or innocence of an accused party.

We think, however, that the appellant should have called his nesses, so that in the event of the Resident Magistrate remainir the same opinion after hearing the witnesses, and there being an ap this Court would have had the whole of the evidence before it. position is analogous to that of a jury coming to a conclusion in fa of a plaintiff and expressing it before hearing the case for the defe in which case it is not the correct course for the defendant to with and refuse to go on.

In Campbell v. The Hackney Furnishing Company, 22 T. L. R. it was held by Lord Alverstone C.J., and Ridley and Darling that the mere communication by the jury who are trying an a of an opinion in favour of the plaintiff during or at the close of plaintiff's case before the defendant's evidence is heard is not such misconduct on the part of the jury as will justify Counsel fo defendant in refusing to go on with the case before that jury and er the defendant to a new trial.

It appears, however, from the record in this case that the appellant, in addition to the charge, the subject of this Appeal, was also charged on a separate information with being noisy and disorderly. Both these informations were heard together and adjudicated upon at the same time. We do not consider such a procedure permissible. The Legislature has declared that offences under Law 21 of 1902 shall be tried by the Resident Magistrate summarily in his Court, while the offence of being noisy and disorderly is to be tried by a Justice in Petty Sessions. The appeal from conviction in either case is to a different tribunal: in the former, to the Full Court of the Supreme Court; in the latter, to the Circuit Court or a Judge in Chambers. No consent of the parties can dispense with the provisions of the Law in such a case, nor can the excuse of expedition or convenience or the evidence being the same be considered. This was not a case of two offences cognizable by the same tribunal, in which case different considerations might apply; it was a case of different offences triable in different Courts with separate rights of appeal to different appellate tribunals and with different formalities prescribed by different Laws preliminary to such appeal: in the one case by Law 28 of 1904, as far as the Resident Magistrate's Court is concerned, and by 21 Victoria chap. 22, as far as the Petty Sessions is concerned.

To what extent, if at all, the evidence on the second charge may have affected the decision on this information we do not know, and we have come to the conclusion that, in the circumstances of this case, the appeal should be allowed and the conviction quashed.

In the Full Court *29th November*, 1920.

BEFORE C. H. BEARD, A/C.J. AND BROWN AND ORPEN, J.J.

PENGELLEY *v.* JACKSON.

The following judgment, in which Brown and Orpen, J.J. concurred, was delivered by the Acting Chief Justice:—

In respect of judgment on the defendant's counter-claim, I am of opinion that the Resident Magistrate has not directed his mind to the real issues in this case, and has not found in fact what occurred on the day of the alleged trespass, consequently it is not possible to decide what was the real basis of his conclusions in favour of the plaintiffs on the defendant's counter-claim. The real issues of fact were: (1) Did the plaintiffs enter on the land let to the defendant? (2) Did the plaintiffs expel the defendant or his servants therefrom? (3) Was the defendant digging up cane roots or only cutting off the canes and cane tops? A new trial must therefore be ordered and the case sent back for re-hearing and to say what damages the defendant is entitled to if the plaintiffs are liable in trespass. The judgment for the plaintiffs on the counter-claim must be set aside, and a new trial had—the costs of the first trial to abide the result of the new trial. The appellant-defendant to have the costs of this appeal, £8.