devise to J. M., the house and lot I now occupy to be used and enjoyed by him during the term of his natural life and from and immediately after his decease, I give and devise the same to S. the daughter of J. M. her heirs and assigns forever." It was held that S. took a vested remainder in fee.

Now it was admitted by counsel for appellant, that the weight of authorities was in favor of the principle herein set forth and that the cases cited by him were excepted cases. And he suggests that we should conform our judgment to the principles that have been established in a few of the American states rather than those that fall under the general known rules of law. We are not however prepared to determine against what is the received opinion in the courts of England and the United States.

On the whole we are of the opinion that by the devise to Jane E. Roberts, the latter took an estate in fee simple in the said lot No. 95, and that on the death of the life tenant, Jane Rose Roberts, the said lot came by operation of law into the possession of Matilda A. Howard, heir of Jane E. Roberts, the remainderman, and one of the defendants in this action. This view of the case renders it unnecessary to consider the other points raised in the case.

The judgment of the court should therefore be affirmed, and it is so ordered.

A. Karnga, for appellant.

Arthur Barclay, for appellees.

THOMAS J. KING and MARIA A. KING, his wife, Appellants, *v.* P. WIECHMANN, Agent for Wiechers & Helm, Appellee.

ARGUED DECEMBER 30, 1915. DECIDED JANUARY 10, 1916.

Dossen, C. J., Johnson and Witherspoon, JJ.

1. Where defendants summoned before justices' court, fail to raise any plea they may have in their defense in their formal answer, it will be regarded by the appellate court a waiver of right.
2. The justice may adjourn a case only upon the reasonable application of either party and not otherwise.
3. The postponement of the trial of a case by a justice of the peace from day to day is not considered adjournments as provided by the Justice Code.
4. Written evidence bearing date prior to the transaction upon which the action is brought, should not be admitted by the trial judge.
5. Where a party contracts to pay a certain rate of commission to an em-

ployee, and subsequently notifies him that the rate of commission will be reduced, if the employee accepts, it will be conclusive unless the employee can prove that he openly dissented.

6. Where a party enjoys the benefit of a part of the consideration, he will not be allowed to repudiate the other.

Mr. Justice Witherspoon delivered the opinion of the court:

Debt—Appeal from Judgment. This case originated in the Justice of the Peace Court for Grand Bassa County. The justice, it appears after investigation had found for the plaintiff and rendered judgment accordingly. The defendants being dissatisfied filed their bond thereby bringing their case up to the Circuit Court of Grand Bassa County to be tried anew.

It further appears that at the May term of the Circuit Court, Grand Bassa County 1915, the trial of the case took place. And as shown by the record after a tedious and thorough investigation had by the trial judge he found for the appellee, plaintiff below, the sum of twenty dollars and ten cents as his debt, and all costs of suit; to which judgment appellants, defendants below, excepted and tendered their bill of exceptions, thereby bringing the case up to this court for final review.

The court after hearing the arguments set up by the counsel on both sides, feel safe in saying that there are but few points upon which the decision of this case should rest; it will therefore make a brief comment upon these points as they are laid in the bill of exceptions. Exception first, reads — "Because His Honor the judge, aforesaid, after having allowed appellants, defendants below, to offer a motion to dismiss the appellee, plaintiff's below, action refused to consider the motion on its merits, but disallowed same and taken up the appeal and reviewed the case *de novo,* to which appellants excepted."

Also because His Honor ruled out appellants' written evidence marked B. 11, 13, 20, 21, and 37 on the ground of irrelevancy. And also because the calculation of the percentage from the 30th day of April, A. D. 1914 at five per centum is contrary to that set out in the contract.

The motion referred to in the first exception we feel was rightly refused by the lower court, because it contained pleas not raised in the appellants' answer as required by law. Formerly, written pleadings were not had in Justice of the Peace Courts, but since the passage of the Act by the National Legislature of the Republic

of Liberia, legalizing the Justice Code, as the Code of procedure in justice courts, defendants are required when summoned before Justice of the Peace Court to set up in their answer, any plea relied upon in their defense. (Justice Code, p. 14, sec. 23.)

Appellants, defendants below, having failed to raise the plea of contract, in their answer in the justice court, could not set it up in a motion at this stage; their act in this is regarded a waiver of right.

The motion further set up that the judge should have dismissed the case because the justice of the peace allowed more than two adjournments. This brings us to consider the law of adjournment as provided for in the Justice Code. It reads as follows: "Upon the return of the writ or upon the joinder of issue between plaintiff and defendant the trial may be adjourned by the justice upon the reasonable application of either party, but no adjournment shall be for a longer period than one week; and there shall be no more than two adjournments allowed. (See Justice Code, p. 14, sec. 24.)

The court seizes this opportunity to put upon record that there is a vast difference between an adjournment of a case and a postponement of it, and it would be of vital importance to litigants as well as practitioners to strictly observe the legal technical difference between the two terms.

According to the law guaranteeing to the justice of the peace the power to adjourn a case, he has no right to do so except upon reasonable application of either party. In this case it appears from the judgment that both parties applied on the same day for an adjournment of the case, which was allowed; the postponement of the trial from day to day during the investigation can not be regarded adjournments.

This court says, that the judge below did not err when he struck from the records the written evidence referred to in the second exception; they being dated prior to the date of the contract, as appears by the copy before us. All evidence must be relevant to the issue. (Lib. Stat., ch. X, sec. 27.)

The calculation of the commission by the judge below at five per centum as set up in exception third is well founded in the mind of this court. The court observes that Mr. and Mrs. King, the appellants, entered into business jointly with Wiechers & Helm of Grand Bassa County under a written contract by the terms of

which they were to receive ten per centum commission on all sales; subsequently the agent of Wiechers & Helm informed Mrs. King, one of the partners that the commission would be reduced from ten per centum to five per centum to commence the 30th of April, 1914; Wiechers & Helm assuming the responsibility of paying the license instead of Mr. and Mrs. King as impliedly provided in the contract. In July of the same year, the agent of Wiechers & Helm wrote Mr. King informing him of the new arrangement made known to Mrs. King respecting commission in the business from April 30, 1914 at five per centum and conditioned upon Wiechers & Helm paying the licenses, and asked that he answer the letter at once for certain reasons set forth in the letter. To this letter Mr. King made no reply.

Mr. King, whilst upon the stand as a witness, in answer to question, "when Mr. Clinton (meaning the agent for W. & H.) wrote this letter in which he requested you to make immediate answer did you write him repudiating the arrangements which he therein notified you had been made between himself and your wife in respect to the reduction of the percentage you were to receive, and did you refuse to recognize the same?" Answer: "No."

This brings us to consider what Mr. King's silence in this respect amounts to in law.

Mr. Bouvier says, "pure and simple silence can not be considered as a consent to a contract except in cases where the silent person is bound in good faith to explain himself in which case silence gives consent" (Bouv. L. D., vol. 2, Silence).

This court says that whenever a man's right or interest is invaded, or concerned he will use some means of exertion to defend himself against same and in so important a point in the business between appellants and appellee as the commission involves, any unbiased mind is forced to conclude that he assented to the new arrangement. The court says reason leads it to say further that it seems very unreasonable that appellant accepted the license money which was a part of the consideration of the new arrangement, and then set up that he did not consent to it; the court feels it was the bounden duty of Mr. King in fairness to have replied to this letter if he did not consent to the new arrangement, and that he cannot enjoy the benefits of part of the arrangement and repudiate the other; the law of estoppel operates against him.

This court is of the opinion therefore that the judgment of the lower court should be affirmed, and it is so ordered.

P. J. L. Brumskine, for appellants.

C. B. Dunbar, for appellee.

ANGELINA SPILLER, Appellant, *v.* JANE ROBERTS, Appellee.

ARGUED DECEMBER 13, 1915. DECIDED JANUARY 10, 1916.

Dossen, C. J., and Johnson, J.

1. It is the privilege of a defendant, in a criminal case tried by a justice of the peace or city magistrate, to appeal from the judgment of said court; and if upon the appeal, the appellate court should hold that the charge was not proven, the responsibility for the costs incurred in both the original and appellate courts will devolve upon the complainant in the original court, notwithstanding the fact that at the original trial, judgment had been given against the defendant.
2. An act to constitute an infraction of the peace must fall within the definition of such offense as is stated in section 56 of the Code.

Mr. Chief Justice Dossen delivered the opinion of the court:

Infraction of the Peace—Appeal from Judgment. This case comes up upon an appeal from the Circuit Court, Montserrado County.

The case originated in the City Court of Monrovia and was brought against appellee, defendant below, upon the complaint of appellant, who charged appellee with committing infraction of the peace, by abusing her. The City Court sustained the charge and gave judgment against appellee, defendant in the City Court; from which judgment defendant appealed to the Circuit Court aforesaid, which court reversed said judgment and ruled the prosecutrix in the original court, now appellant, to costs. From this judgment appellant took out an appeal to this court.

At the last term of this court a motion to dismiss the appeal was entered by appellee's counsel, before the case was reached on the trial docket; which motion was denied and the case ruled to continue upon the trial docket.

The chief point now involved is the question of costs which the lower court ruled appellant should pay.

It is contended on behalf of appellant that she having proven her complaint in the original court and judgment having been