of the houses but there was no evidence to prove any description of trees, etc. As to the value of those houses the evidence varied. Appellee, plaintiff below, in his evidence in his own behalf stated their value at $1,000.00, $500.00 and $300.00 respectively. Witness Higgins testified to the value of one of the houses which he placed at $300.00. The appellant, defendant below, testified in his own behalf that he paid £20, for one of the frame houses and $12.00 for the other. Between such divergency in the evidence on the valuation of the said houses it is difficult to accurately estimate the actual damages sustained growing out of the unlawful acts of appellant in this regard. It is however, obvious that the damages awarded are excessive and that the jury, under a misconception of the law relating to exemplary damages did not measure same in conformity with the evidence of the actual loss sustained, but went further and increased same by way of allowing exemplary damages, which as we have said could not be allowed in the case at bar.

Exercising the power granted unto this court by the law of appeals, we deem it equitable and just to amend the judgment as far as it relates to the amount of damages by reducing same to $1,000.00 which we regard as just compensation for the losses proven to have been sustained by appellee, and which it is hereby adjudged he shall recover from appellant. In all other respects the judgment should be affirmed, and it is hereby so ordered.

L. A. Grimes, for appellant.

J. H. Green, for appellee.

WENDALL P. ROBERTS, Appellant, *v.* J. AZARIAH HOWARD and MATILDA A. HOWARD, his wife, Appellees.

ARGUED DECEMBER 21, 1915. DECIDED JANUARY 10, 1916.

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

1. **Where in a case, the facts are admitted leaving only issues of law to be determined, it is not error for the court to hear and determine same, without the intervention of a jury.**
2. **A contingent remainder is one limited so as to depend upon an event which is dubious or uncertain, and may never happen or be performed, or, not until after the determination of the particular estate.**
3. **If, however, the condition is one that must happen at some time, so as to give effect at some period to the second estate, the remainder will be regarded as vested.**

4. Where an estate is devised to one, his heirs and assigns, the word "heirs" is to be regarded as one of limitation, and the estate created to be a fee simple; the word "assigns" indicating absolute ownership.
5. An estate is vested in interest where there is a present fixed right of future enjoyment.

Mr. Justice Johnson delivered the opinion of the court:

Ejectment—Appeal from Judgment. This is an action of ejectment brought by appellant, in the Circuit Court of the first judicial circuit, Montserrado County to recover from appellees, a lot in the City of Monrovia, numbered ninety-five, which he claims appellees detained from him.

The facts established, and admitted by both parties in stipulations filed by them in the court below, before the trial of the case, are substantially as follows:

J. J. Roberts from whom both parties claim title to the property in dispute, died in the year 1876, leaving a will by the sixth clause of which, he left the aforesaid lot number ninety-five with the adjoining lot to his wife Jane Rose Roberts, the remainder to his niece, Jane E. Roberts; after the death of the testator, the said Jane E. Roberts died without heirs of her body, to wit: in the year 1878, her heir being her brother John H. Roberts, who in turn married and died, leaving one legitimate daughter, Matilda A. Roberts, who, on reaching womanhood, married J. Azariah Howard, co-defendant in this action, and lastly, the aforesaid Jane Rose Roberts died in the month of January in the year 1914.

These are all the facts that are necessary to be considered to enable the court to arrive at a conclusion in harmony with established principles.

On the trial of the case in the court below, judgment was entered for defendants, and it is against this judgment that plaintiff has appealed to this court.

There are several propositions raised in the bill of exceptions and submitted for the consideration of this court, viz.:

First: that the court below erred in determining the case without a jury, although plaintiff insisted that a jury be empanelled to try the cause.

Second: that the devise to Jane E. Roberts, in the will of J. J. Roberts, created a contingent remainder in that said Jane E. Roberts died before Jane Rose Roberts the life tenant.

Third: that the devise to Jane E. Roberts is a contingent re-

mainder, in that the phrase "heirs and assigns," created a doubt and uncertainty as to who could answer to the description of "heirs" while Jane E. Roberts lived.

Fourth: the said estate is a lapsed estate in that the devise failed by the death of Jane E. Roberts without issue of her body, and

Fifth: that said devise having lapsed, and the lineal descendants of the testator, having been excluded, by force of the tenth clause of the will, and the ruling of the court in the case *Roberts v. Roberts,* from the inheritance, the estate now in dispute, descends to the oldest male representative of the whole blood, in the collateral line of the testator.

On the other hand, it is held by counsel for appellees, that the devise to Jane E. Roberts, created a vested remainder in the said Jane E. Roberts, which being an estate of inheritance and vesting immediately upon the death of the testator, passed, by operation of law upon her demise intestate and without heirs of her body, to her brother John H. Roberts, and through him to Matilda A. Howard one of the defendants in the court below. That in the event this court holds this proposition legally incorrect, the devise would lapse and pass, there being nothing in the will to the contrary, to the lineal descendants of the testator. Wherefore under any circumstances, plaintiff could not recover.

As to the first point raised in the bill of exceptions, we are of the opinion that the court below did not err in hearing and determining the case without the intervention of a jury, as the only questions for the court to determine were issues of law, all the material facts raised in the pleadings, having been admitted by both parties. (See ruling in the case *Benson v. Roberts,* I Lib. L. R. 32; also Lib. Stat., ch. VII, sec. 1.)

The rule laid down in the case *Harris v. Locket* that actions of ejectment must be tried by a jury, under the direction of the court is based upon the fact that in such cases, mixed questions of law and fact are usually involved. It is obvious however that where, as in this case, the facts are admitted, leaving only issues of law to be determined, the rule will not apply. See law maxim: *"Cessante ratione legis cessat et ipsa lex.* When the reason of the law ceaseth, so does the law itself cease."

There is no difficulty in determining the other questions which

were submitted for our consideration. The main question in the case is, what estate did Jane E. Roberts take under the will? To decide this query it is necessary to consider the difference between contingent and vested remainders, and apply the principles of law relating to these two classes of estates to the case at bar.

A contingent remainder is defined to be one limited so as to depend upon an event which is dubious or uncertain and may never happen or be performed, or, not until after the determination of the particular estate. (2 Redfield on Wills, * p. 217, sec. 5; see also 2 Washburn on Real Property, p. 54, sec. 9.)

If however the condition is one that must happen at some time so as to give effect at some period to the second estate, the remainder will always be regarded as vested. (*Idem.*)

Redfield lays it down as a rule that all estates under wills, in the absence of any provision to the contrary, are to take effect or become vested at the death of the testator. And he adds that where the will contains words in regard to any estate created by it, limiting the period of enjoyment to some future time, after the decease of the testator, it may then become a question whether the vesting of the estate is intended to be delayed or only the time for present enjoyment. (*Idem.*)

He also declares that the mere fact that one estate under a will is provided to take effect after the termination of an intervening one, does not have the effect to prevent both estates becoming vested at the moment of the decease of the testator, the one in possession, the other in prospect or remainder. (*Idem,* sec. 215.)

Now applying the facts in the case at bar to the principles herein set forth, it would seem that this case falls under the rule with reference to vested remainders. In the first place there was no doubt or uncertainty in the fact that Jane Rose Roberts would at some time die, leaving the possession of the estate to the remainderman. It is contended however by counsel for appellant that the estate was limited to the devisee and to the heirs of her body, and that failing such heirs, the estate lapsed. It becomes therefore necessary to examine this proposition and ascertain if it is legally correct.

It seems to be a settled principle of law that where an estate is devised to one, his heirs and assigns, the word "heirs" is to be regarded as one of limitation, and the estate created to be a fee

simple, the word "assigns" indicating an absolute ownership. In fact the words "heirs and assigns" are generally used, where it is intended to create a fee simple, although other words may be used to indicate this intention. (2 Redfield on Wills, sec. 326; see also 4 Washburn on Real Property, p. 52.)

The word "issue" and heirs of his body which are regarded as synonymous terms are only used when it is intended to create an estate in fee tail.

It might be useful to quote in this connection a maxim found in Coke's Littleton, viz.: *"Haeredum appellatione veniunt haeredes haeredum, in infinitum"*—"By the title of heir, come the heirs of heirs to infinity."

A lapsed devise is where the devisee dies before the testator, or although he survives him, the bequest becomes inoperative, on account of the happening of some contingency, by which the estate is defeated.

Now applying the case at bar to these settled principles of law it will be readily seen that there is no weight in appellant's contention.

Reverting to the subject of vested remainders, we must here cite a rule laid down by Washburn, that no degree of uncertainty as to the remainderman's enjoying the estate, which is limited to him by way of remainder, will render such remainder a contingent one, provided he has by such limitation a present absolute right to have the estate the instant the prior estate shall determine. He also, in illustrating by example what would be considered a vested remainder, says, an estate is vested in interest where there is a present fixed right of future enjoyment; and he cites in this connection a case analogous to the one at bar. Where a devise was made to A for life, remainder to B in fee at his death, this would be a vested remainder, if B is in esse; and if he died before A, the estate, at A's death would go to B's heirs. (Washburn on Real Property, sec. 228, par. 17; *Allen v. Mayfield,* 20 Ind. 293.)

Chancellor Kent also in giving a similar illustration, says—A grant to A of an estate for life with remainder in fee to B, or to A for life and after his death to B, in fee is a grant of a fixed right of immediate enjoyment in A, and a fixed right of future enjoyment in B. (14 Kents Com. 202.) See also the case *Carter v. Hunt* (reported in 40 Barb. 89.) The devise was as follows: "I give and

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-