contended that the act of the tenant is a cause of "forfeiture," and that therefore the landlord must exercise his right, otherwise the tenancy continues as in any other case of forfeiture. But the act of the tenant is not a cause of forfeiture. The only authority treating the unauthorised act of the tenant as operating in the way of forfeiture, as distinct from determination of joint wills, is *Blunden* v. *Baugh*, Cro. Car. 302; all the other authorities, beginning with *Carpenter* v. *Colins*, Yelv. 73, hold the tenancy not forfeited but determined. The only reason why the law requires that the landlord should know of the acts determining the tenancy, is that otherwise, when coming for his rent, he might be met by the answer that the tenancy had been determined by acts of the tenant of which he then first heard. It is unnecessary on our construction of the statute to show that there was evidence of the creation of a new tenancy at will; but if there was such a new tenancy created, then, clearly, the statute ran only from the new tenancy, as was held in *Randall* v. *Stevens*, and *Locke* v. *Mathews*. And there was evidence in the present case of the creation of a new tenancy at will. A tenancy at will exists wherever, without other title, land is occupied with a concurrence of will of occupier and owner: Watkins on Conveyancing, Bk. I. ch. 1. It is a general principle that the law will not, where it need not, attribute tenancy of land to a trespass.

A reply was not called for.

The following authorities, in addition to those cited in the argument, were also before the Judicial Committee, being referred to in the judgments delivered in the Court below:—*Pinhorn* v. *Souster*, 1 W. R. 336, 8 Ex. 763; *Doe* v. *Groves*, 10 Q. B. 486; *Doe* v. *Coombes*, 9 C. B. 714; *Tayleur* v. *Wildin*, 16 W. R. 1018; *Moss* v. *Gallimore*, 1 Sm. L. C. 543; *Doe* v. *Thomas*, 6 Ex. 854; *Melling* v. *Leak*, 3 W. R. 595, 16 C. B. 652; Shelford's Real Prop. Stat. pp. 165—172; *Wallis* v. *Delmar*, 29 L. J. Ex. 276.

July 20.—The decision of the Judicial Committee was delivered by

Sir Joseph Napier.—The appeal in this case has been brought against an order pronounced on the 1st September, 1869, in the Supreme Court of New South Wales, by which it was ordered that the verdict found for the plaintiff herein be set aside and a new trial had between the parties. The action was one of ejectment, in which the plaintiff sought to recover a plot or parcel of ground in the city of Sydney, which had formerly belonged to the late Thomas Day the elder. His residence, and the premises on which he carried on his business as a boat builder, were situate on this property. In the month of May, 1842, he gave over the business and his property to his eldest son (the late Thomas Day the younger), then of age, and went to reside at a place called Pyrmont with his family. He had other property in addition to that which he gave over to his son. Thomas Day the younger, having thus been put in possession, as ostensible owner of this property, and manager of the business of boat builder, continued in the occupation from the month of May, 1842, down to the time of his death in December, 1864. He made his will and devised the property in dispute to his wife for life; she was the plaintiff in the ejectment. The defendants claim under the will of Thomas Day the elder, who, in 1867, procured attornments from the tenants on the property, to whom Thomas, the son, had let portions.

The trial of the ejectment took place before Chief Justice Stephen and a jury, in November, 1868. Evidence was given to prove the circumstances under which Thomas Day the elder gave up the property to his son Thomas, and put him in possession in 1842; to show the character of his occupation, and what he did in building on the property and letting to tenants; and that these acts and dealings were known to Thomas Day the elder and had his sanction. He did not execute any deed of conveyance to his son, and consequently it was admitted on both sides that the estate of the latter at the commencement was, in law, a tenancy at will.

The occupation of Thomas Day (the son) having been shown to have continued without interruption for twenty-two years, after the commencement of the estate at will in May, 1842, it was submitted at the trial on the part of the defendants that as it appeared on the evidence that at various dates commencing in or about 1852, Thomas Day (the son) let portions of the property in dispute on yearly and weekly terms, and received rent for the same, and transferred or purported to transfer part of the land to his brother William, who let and received rent for the same, of which letting and transfer Thomas Day (the father) had notice, at the times at which they took place respectively; and as the portion of the land sought to be recovered continued to be to the knowledge and with the sanction of Thomas Day the elder, in the occupation of Thomas Day the younger, or of tenants paying rent to him until his death in 1864—"these facts amounted to a termination of the original tenancy at will created in May, 1842, and to the creation of a fresh tenancy, so that the Statute of Limitations began to run in favor of Thomas Day, the son, only from such determination."

A non-suit was called for, but this was refused by the Chief Justice, who, upon the close of the evidence on both sides, submitted to the jury certain questions in writing, accompanied by an explanatory charge.

In answer to these questions the jury found that the authority given by the father to the son to occupy the property was not upon condition, but in perpetuity in his own right; that the acts of letting and transferring of portions of the property by his son were not in violation of the authority given by the father; that these acts were done with his knowledge and assent, and that no fresh authority was afterwards given.

The jury having returned these answers, were directed by the Chief Justice to find a verdict for the plaintiff, which they found accordingly.

A rule *nisi* was obtained to have the verdict set aside and a new trial granted. This rule was afterwards made absolute, the Chief Justice dissenting. The majority of the Court held that the jury were misdirected as to the question whether the original tenancy at will was determined by the underletting. One of the two judges who constituted the majority, thought that the jury were not sufficiently instructed