

by way of demurrer to the statement of claim, Bray, J., held that the words charged imputed that the plaintiff had been guilty of an offence punishable by fine only, which, though it involved a liability to summary arrest, nevertheless afforded no cause of action in the absence of any special damage, and the action therefore was dismissed.

LANDLORD AND TENANT—LEASE TERMINABLE ON CONTINGENCY—
NOTICE OF INTENTION TO SURRENDER—ACCEPTANCE OF SURRENDER UNDER MISTAKE OF FACT—LIABILITY OF TENANT FOR RENT NOTWITHSTANDING SURRENDER.

Gray v. Owen (1910) 1 K.B. 622 was an action by a landlord to recover rent in the following circumstances. The plaintiff let a house to the defendant, who was a naval officer, subject to a proviso "that should the tenant be ordered away from Portsmouth by the Admiralty he may determine this agreement by giving the landlord one quarter's notice in writing." The Admiralty in February, 1908, did order the defendant away, but subsequently at his request cancelled the order. On 25th March, 1908, he gave notice of his intention to quit, and the plaintiff under the belief that the defendant was under orders of the Admiralty to leave Portsmouth accepted the notice, and in June, 1908, received possession and advertised the house for sale. Subsequently the plaintiff discovered the true facts and brought the action to recover the rent from June to December, 1908. The County Court judge who tried the action thought that as the defendant had been ordered to leave Portsmouth he was entitled to give the notice notwithstanding the subsequent cancellation of the order, and that the plaintiffs' acceptance of possession effected a surrender in law of the term, he therefore dismissed the action, but the Divisional Court (Bucknill and Phillimore, JJ.) reversed his decision, being of the opinion that the defendant in giving the notice after the Admiralty order had been cancelled, was guilty of a breach of contract, and though the acceptance of possession by the plaintiff had worked a surrender of the term, and relieved the defendant from liability for rent; yet that fact did not preclude the plaintiff from recovering for the breach of contract, and the measure of damages therefor was the amount of rent which he had lost. The appeal was therefore allowed and judgment given for the plaintiff for the amount claimed.