

Eng. Rep.]

JACKSON v. SPITTAL.

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by purchase or lease, and all persons holding sittings therein by the same being let to them, * * * after the passing of this act, by the corporation of such church or chapel, and holding a certificate from such corporation of such sitting, shall form a Vestry," &c. It is said, too, with some force, that the 31 Vic. has acknowledged the validity of the constitution of the Synod of Montreal, and so it has in enacting as follows: "Sec. 2. The said incorporated Synod shall have power from time to time to amend, repeal or alter the present constitution, canons, rules and regulations of the aforesaid Synod, &c, * * * but until so amended, repealed or altered, the constitution, canons, rules and regulations of the said Synod *presently* subsisting and in force, shall be and continue to be the constitution, canons, rules and regulations of the corporation aforesaid, created by this act." I think the constitution valid and binding.

The act of the public officer, with his testimony and the other evidence of record—that is, in favour of petitioner—is stronger than the evidence for defendant, and makes a good case for petitioner, whose petition is, therefore, maintained. The defendant is declared guilty of the usurpation charged against him by Davidson, and must be ousted. The petitioner, Davidson, is declared to have been duly elected, and entitled to his seat as delegate for Christ Church aforesaid. The Synod proceedings against Davidson, complained of, were unreasonable at the time they took place, and were and are illegal, and are overruled; and order must go to the Synod to admit the petitioner, Davidson, as a lay delegate from Christ Church, Sweetsburg, and reinsert his name as such in place of the defendant Baker's, in the roll of delegates; the whole with costs against defendant.

Judgment for petitioner.

ENGLISH REPORTS.

COMMON PLEAS.

JACKSON v. SPITTAL.

Practice—Cause of action—British subject out of jurisdiction—Common Law Procedure Act, 1852, ss. 18 & 19.

The plaintiff sued a British subject living in the Isle of Man on a contract made there, the breach taking place within the jurisdiction of the Court. The plaintiff, under the Common Law Procedure Act, 1852, served the writ in the Isle of Man. The defendant, without waiting for the plaintiff to obtain an order to proceed, obtained an order to stay proceedings, on the ground that the whole cause of action did not arise within the jurisdiction.

Held, that the defendant was not bound to wait for the plaintiff to make an application to proceed before obtaining such an order.

Held also, that the phrase "cause of action" in the Common Law Procedure Act, 1852, s. 18, means the act on the part of the defendant, which gives the plaintiff his cause of complaint.

Held also, that section 19 is to be construed in the same way.

[18 W. R. 1162, C. P.]

The defendant in his affidavit stated that he had been served with a writ of summons for service out of the jurisdiction of the Court, and that the alleged cause of action, if any, wholly arose at Douglas, in the Isle of Man, out of the

jurisdiction of that Court, and that no part thereof arose within it.

The plaintiff's attorney, in his affidavit stated that the action was brought to recover damages against the defendant, who is a resident in the Isle of Man, for a breach of an undertaking entered into by him with the plaintiff, in consideration of the plaintiff endorsing to him, at the request of Drinkwater, who was then indebted to the defendant, and to be held by the defendant merely as a collateral security, a bill of exchange or acceptance drawn by a company for £1,000, which the plaintiff held as trustee for Drinkwater, by which the defendant undertook that he would not part with the bill out of his possession, but would always hold the same without recourse to the plaintiff; and further the defendant, in violation of his promise, did part with the possession of the bill, and endorsed and negotiated the same to Drinkwater in Manchester, where Drinkwater resided and still carries on business. Drinkwater endorsed the bill to Buckley, Drinkwater having had full notice of all matters relating to the same, and after acceptance became due, the bill was dishonoured, the acceptors being a company in liquidation at the time of endorsement by Drinkwater to Buckley. The plaintiff was then sued upon his endorsement by Buckley in the Court of Exchequer: the action was defended by the plaintiff at the request of the defendant, and was tried at Manchester, when a verdict was found for the then plaintiff, and the plaintiff paid the amount of the verdict and the costs for defending the action. That the defendant was a witness in *Buckley v. Jackson*, and after the trial, the defendant, whilst at Manchester, requested the plaintiff to discharge the verdict and costs, and he undertook to refund the plaintiff. That this action was also brought to recover the amount paid by the plaintiff at Manchester on behalf of the defendant there, on his promise as above stated, and calculations were made between the plaintiff and defendant, as to the amount required to discharge the defendant's obligation to the plaintiff, and the defendant said he would proceed against Drinkwater for the wrongful endorsement.

The defendant in his affidavit of March 18th, 1870, states that he resides at the Isle of Man, and denies that he entered into an undertaking not to part with the acceptance, &c.; that the acceptance was not held by him as trustee, but as security for the payment of an acceptance of Drinkwater to him for £910; that the arrangement for giving up the bill to Drinkwater was made in the Isle of Man; that the plaintiff did not defend *Buckley v. Jackson* at his request, and that he was informed that the plaintiff was sued as the drawer of the bill.

There were other allegations in the affidavits filed by both sides immaterial to the present case.

On the 9th of April an order was made by Master Bennett on these affidavits—that the plaintiff do undertake to prove a cause of action which has arisen within the jurisdiction of the court against the defendant, and that the defendant be at liberty to appear within twenty-four hours after such undertaking being given; and in default of such undertaking, the suit and all