

Eng. Rep.]

DENHAM V. SPENCE—GENERAL CORRESPONDENCE.

cause of action at all. I think therefore in the first place, that as the contract was not made in England, no cause of action did in this case arise within the jurisdiction. Now, as to the words of the statute on which this question arises, they are—"it shall be lawful for a court or a judge, upon being satisfied by affidavit that there is a cause of action, which arose within the jurisdiction, or in respect of the breach of a contract made within the jurisdiction," &c. Now, the effect of the construction I put upon the words "cause of action" would be, that if in the case of a contract made abroad, say for the delivery of goods in England, that contract were broken by the non-delivery of goods in England, no cause of action would arise within the jurisdiction; but in the case of a contract made in England, there a cause of action would arise, although the breach of the contract be committed abroad; but if that construction be not right, why, it may be asked, did not the Legislature, if it intended that actions should be brought here for breaches of contracts arising in England, although the contracts were made abroad, use half a dozen more words, and plainly express such intention. It seems to me, therefore, that, quite irrespective of authority, the meaning of this section is clear and obvious. But when we look at the authorities, several of which are in this court, and which terminate with the case of *Sichel v. Borch*, I think the balance of authority is in favour of my view of this section. I also look upon the case of *Allhusen v. Margarejo*, decided in the Queen's Bench, as rightly decided. There it was expressly said that the cause of action means the whole or entire course of action. There it was expressly said that the cause of action means the whole or entire course of action. My brother Martin has dealt with this case in a way that I cannot accede to. He says that the contract continued until the plaintiff and defendant came into this country; but if that were the case the same might be said of every contract if the parties to it happened to come to England, and where such an event happened there would be no necessity for the Act. Then as to the case of *Jackson v. Spittal*, recently decided in the Common Pleas, I have looked through that case with great attention, and it seems to me that they have purposely adopted such a construction of the section as would extend the jurisdiction of the superior courts. But I think such a construction would prejudicially affect thousands of persons, and would work positive injustice; and therefore, with every respect for the decision of that court, and agreeing, as I do, that it is generally a sound rule to put such a construction on an Act of Parliament as should have the effect of extending the jurisdiction of the superior courts, I am unable, for the reasons I have given, to agree with that decision. I am therefore of opinion that in the case of a contract made abroad, but broken in England, the "whole cause of action" does not arise within our jurisdiction.

CLEASBY, B. (after saying that although not in court during the whole of the case, he felt himself entitled to give judgment, as he had heard Mr. Day's argument, proceeded)—I agree with the majority of the court that the defendant's application ought to be refused. The ex-

pression "cause of action" is very intelligible, though if the words used had been "whole cause of action" that might not, perhaps, have been so clear. Now when does the cause of action arise? It seems to my mind clear that it arises when that is not done at the time at which it ought to have been done, and when that takes place in this country then it follows that the cause of action arises here, or, in other words, the cause of action arises when something takes place inconsistent with the obligations of the party; now that in contract is the breach, and therefore, I hold that the cause of action can arise nowhere except where the breach occurs. As to the inconvenience which my Lord Chief Baron suggests would arise from our holding that actions can be brought in this country in respect of contracts made abroad, but broken in England, I confess that it does not seem to me that any would arise, for such contracts would be interpreted according to the law of the country where they were made; yet, as the breach has occurred in England, it seems to me only fair and reasonable that the action should be brought in England. As to the case of contract made within but broken without the jurisdiction, if we expand the section it will read "or that there is cause of action in respect of the breach of a contract made within the jurisdiction," and the action, therefore, gives us jurisdiction over contracts made here, but of which the breach has arisen abroad.

Rule refused.

GENERAL CORRESPONDENCE.

TO THE EDITORS OF THE LAW JOURNAL.

GENTLEMEN,—Could you kindly give me an opinion as to whether a barrister can legally enter into a partnership with an attorney who is not a barrister, and hold themselves out to the world as a firm of attorneys. It seems to be an improper mode of procedure, but I cannot find any authority against it. *Query*, could they, suing as a firm, recover any fees?

By giving an opinion you will oblige,

Yours respectfully, ENQUIRER,

Guelph, December 2, 1870.

[We cannot say that there is anything illegal in the practice alluded to, nor even improper under certain circumstances, unless of course done from an improper motive or with intent to mislead clients or the public. It is very common for one member of a firm simply to do the counsel part of the work, and for the other to attend to the attorney's department, though both are responsible to the client. It would of course be very improper for the barrister to attempt to shield himself from this responsibility by the fact, probably un-