a joint maker in England. In 1868, the Court of Queen's Bench, in *Allhusen* v. *Malgarejo*, 16 W. R. 854, L. R. 3 Q. B. 340, following *Sichell* v. *Borch*, held that "cause of action" must mean the whole cause of action; that is, all the facts which together constitute the plaintiff's right to maintain the action. This case has been chronologically, but not otherwise, followed by the case of *Jackson* v. *Spittal*, 18 W. R. 1162, L. R. 5 C. P. 542, where the Court of Common Pleas has held that "cause of action" is satisfied by the breach of a contract arising within the jurisdiction; but that case is clearly wrong, as it proceeds on the idea of an analogy existing between the present procedure and that of outlawry. Now the foundation of the proceedings in outlawry was that the defendant must be in the jurisdiction, while the procedure introduced by the Common Law Procedure Act, is directed against those who are beyond the jurisdiction. I therefore submit that on this review of the cases, the balance of the authority is in the defendant's favour, and cause of action must mean "whole cause of action."

Petheram against the motion.—This was a continuing contract, and therefore both breach and contract were in England; but if the court is not of that opinion, then I submit that by "cause of action" is meant a substantial part of the cause of action, and that is the breach which it is admitted arose within the jurisdiction: Day's Common Law Procedure Act, 1852, 3rd edit. p. 18.

Cur. adv. vult.

Pigott, B.—I regret to say that there is a difference of opinion in this court, and as the other superior courts have also differed in the construction to be put upon the language of the Common Law Procedure Act, 1852, s. 18, of that section I am bound to express my opinion. The words which raise the difficulty are a cause of action which arise within the jurisdiction "or in respect of the breach of a contract made within the jurisdiction." In the case of *Sichell* v. *Borch* I did not then differ from the rest of the court, but contented myself with expressing my doubts as to the correctness of the decision of the court. The Court of Common Pleas, in the case of *Jackson* v. *Spittal*, have had this section under their consideration, and have affirmed those doubts. After full consideration, I adopt the language of the Common Pleas. The Legislature, no doubt, intended to give increased facilities to creditors against debtors who are out of the country, and for this I rely upon the words "or in respect of the breach of a contract made within the jurisdiction" being used in the alternative. The present case arises upon facts which were correctly stated by Mr. Day, and that statement of the facts was accepted as correct by the other side; what we now have to determine is the intention of the Legislature conveyed by the words "cause of action." Mr. Day contends that the meaning of the words is the whole cause of action or all the facts which together constitute the plaintiff's right to maintain the action. It seems to me that that is not the true meaning of the words, or the intention of the Legislature.

The expression "cause of action" means the breach of the contract. It is of course clear that a contract can be broken, but the breach alone would—and I think does—satisfy the language of the Legislature, and that is, I think made clear by the words used in the section. To exemplify them—Suppose a contract made in China to deliver goods in England and the contract is broken by non-delivery, then I say, according to this section, a cause of action would arise in England. The Act was intended to be a remedial Act, and I don't think we ought to narrow the words which the Legislature has made use of.

Martin, B.—I am of the same opinion. I think that this writ was rightly issued. The words of the section are, "It shall be lawful for the court or 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 to direct, &c." The facts of the case are very short.

It appears that the defendant wrote an offer of marriage from the Cape of Good Hope to the plaintiff at Calcutta, and she wrote from that place accepting his offer. She came to England; he followed her; but before landing at Plymouth wrote to her that he held himself disengaged from his promise. Now, in my opinion, there is this peculiarity in the contract of marriage that it is a continuing contract, and therefore when the parties were in England, the one being at London and the other at Plymouth, it seems to me that there was a valid contract in England, and then the defendant having broken the engagement it follows that a cause of action arose within the jurisdiction. We were pressed by the judgment of this court in the case of *Sichel* v. *Borch*, but I am not embarrassed by that, for I still adhere to that judgment. The circumstances of this case are easily distinguishable from those in *Sichel* v. *Borch*; there the defendant was a Norwegian, residing in Norway; he may never have been in this country in his life; he both drew and endorsed the bill on which he was sued in Norway. It would have been monstrous on account of the dishonour of the bill here to have held that there was a cause of action within our jurisdiction, I therefore think that *Sichel* v *Borch* was decided rightly, and I would decide both that case and the present, as they have been decided, if I had to decide them again.

Kelly, C.B.—I entirely agree with my brother Pigott, in regretting that there is a difference of opinion in the court on the construction of this section. In my opinion, "the cause of action" really means the whole and entire cause of action, and not merely such an act as the non-acceptance or non-delivery of goods. I think it almost obvious that that expression must include the making of a contract as well as its breach. My brethren read the words, "cause of action," as if they were equivalent to breach of contract; but it appears to me obvious that that is not the meaning, for the words breach of contract are used immediately afterwards To treat non-payment, non-appearance, or non-delivery of goods as a cause of action is a mistake, for such acts of themselves do not constitute a cause of action; that which makes them so is the contract, and without the contract there can be on