

1 Wm. 4, c. 22, which says, "in every action depending in such court", a commission may be ordered to issue. That an interpleader issue is not an action within the meaning of this Act, seems to have been decided in *Re Mersey Dock Board*, 11 W. R. 283, where the court directed an action to be brought in order that a commission might be executed. The head note in *Douglas v. Burnham*, 5 Man. 261, is wider than the judgment which was merely that "cause" included an interpleader issue. *Hamlyn v. Betteley*, 6 Q. B. D. 66, and *Mason v. Wirrall Highway Board*, 4 Q. B. D. 459, are both authorities that a proceeding may be a cause depending in a court and yet not be an action. An action is a proceeding commenced by writ of summons.

Cause is a wider term and includes "any suit, action, matter or other proceeding competently brought before and litigated in a particular court." Per Lord Selborne in *Green v. Pensance*, 6 App. Cas. 671.

*Bordieu v. Rowe*, 1 Scott, 608, is relied on for the defendant. There, an issue had been sent by the Court of Chancery to the Common Pleas for trial, and a motion was made for a commission to examine a witness abroad, which was opposed on the ground that the proceeding could not be said to be an action depending in the court. The rule was, however, made absolute, Tindal, C.J., saying, "I think an issue out of Chancery is a cause depending in the court in which it is to be tried, within the meaning of this statute." There the learned judge spoke as if "cause" was the expression in the statute and not "action."

The later authorities seem clear that an interpleader issue is not an action, and if not, then the statute does not empower the court to grant a commission.

I, therefore, discharge the summons, but as commissions have been issued before in interpleader matters, I do so without costs.

*Application refused.*

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