

Div. Ct.]

GILBERT V. GILBERT—ROUTLEDGE V. LOW.

[Eng. Rep.]

the balance due on the notes and the account not exceeding the jurisdiction of the Division Court. Robinson, C. J., in giving judgment says:—"the plaintiff's claim as first delivered in stating an account of which the debit side exceeded £73, stated a case not within the jurisdiction of the court, according to the 59th section, although the balance claimed was only £25—that is if the whole account is to be taken as unsettled, notwithstanding there were among the items two notes, which in themselves were liquidated demands." I have known cases to be brought in the Division Courts for the balance of an unsettled account exceeding \$1000, but reduced by payment to \$100; if the Court had jurisdiction in such a case, there would be this anomaly, that a case *could* be tried in a Division Court which would be above the jurisdiction of a higher court, the County Court. The intention of the Legislature to give jurisdiction to the Division Court in such a case as this, must be very clear and decisive of the point, more express than in *Miron v. McCabe*, before I would assume the jurisdiction claimed on behalf of the plaintiff.

GILBERT V. GILBERT EXECUTRIX OF W. GILBERT.

Splitting cause of action.

Claims, such as promissory notes, which would each constitute a distinct cause of action if sued upon directly, become within the rule as to splitting of causes of action in Division Courts, when the nature of the action upon them is changed to an indirect action as for money paid by an endorser to the use of the maker.

[Hamilton, 7th Sept., 1868.]

At the June sittings of the Court, an action was brought to recover the amount of two promissory notes, made by the deceased Wm. Gilbert to other parties; the plaintiff claiming that he had signed the notes as security for Wm. Gilbert, and had to pay them. The claim was allowed to be amended, to one for money paid for the use of the defendant as administratrix, &c. A set-off was put in and proved, and the plaintiff had judgment for a small balance. At the trial the plaintiff produced another note made in the same way, which he said he had paid, but did not give it in evidence. At the last sittings of the court, he brought another action for money paid on that note, and objection was made that he could not recover, on the ground that it was a splitting of a cause of action. For the plaintiff it was contended, that the three notes being all payable to different persons, formed different causes of action, and therefore the plaintiff was entitled to recover.

LOGIE, Co. J.—In *Wickham v. Lee*, 12 A. & E. N. S. 526, Erie, J. says:—"It is not a splitting of actions to bring distinct plaints, where in a Superior Court there would have been two counts. I am not sure that the Court of Exchequer puts it so, but that is the true construction of the Act." All the cases on the subject, illustrate the correctness of the rule laid down by Mr. Justice Erie, and I have always acted upon that rule in deciding upon what constitutes a splitting of a cause of action.

In this case the actions are not brought upon the notes directly, for then they would form distinct causes of action, but for money paid by the plaintiff for the use of the defendant in taking up the notes. In a Superior Court there would have

been one count for money paid, under which the amounts of the three notes could have been recovered, making one cause of action though the notes were payable to different persons; as in *Grimsby v. Aykroyd*, 1 Ex. 479, where the orders were given to different persons, but were held to give only one cause of action. The plaintiff should have sued for the whole at once, and not having done so, he cannot now recover the amount claimed in this action.

ENGLISH REPORTS.

HOUSE OF LORDS.

ROUTLEDGE ET AL. V. LOW ET AL.

Copyright—Alien author—Temporary residence in British colony—5 & 6 Vict. c. 45

A domiciled subject of the United States took up her temporary residence in Canada, while a book of which she was the authoress was being published in England by Messrs. S. L. and Co., the respondents. The appellants, Messrs. R. and Co., having subsequently printed and sold copies of the same work, a bill was filed against them to restrain the publication, to which defendants demurred: Held (confirming the decision of the court below), overruling the demurrer, that under the 5 & 6 Vict. c. 45, an alien friend who first publishes in the United Kingdom a work, of which he is the author, it at the time of publication he is resident in the British dominions, even though such residence should be only temporary: and the fact that the temporary residence is in a colony with an independent legislature, under the laws of which he would not be entitled to copyright, does not prevent his acquiring this privilege.

Per the Lord Chancellor (Cairns) and Lord Westbury, Lords Cranworth and Chelmsford dissenting: The protection of copyright is given to every author who first published in the United Kingdom, wheresoever he may be resident, or of whatever state he may be the subject. *Jeffereys v. Boosey* commented on.

[18 L. T., N. S., 874.]

This was an appeal from a decree of the Lords Justices made on the 24th Nov. 1865, and the question in dispute was, whether an author of a book, who was an alien, and not domiciled within any part of the British dominions, and between whose Government and that of Her Majesty no convention pursuant to the International Copyright Act (7 & 8 Vict. c. 12) was in existence, had acquired, by a temporary residence in a British colony, such residence being during and merely for the purpose of the publication of the book in England, the protection of the law of English copyright. A further question was, whether by the Copyright Act (5 & 6 Vict. c. 45) protection is given throughout all the British dominions, and especially whether it extends to colonies having a local and independent legislature by the statute law of which such alien author acquired no copyright.

The facts were these:—A Miss Cummings, who was domiciled in the United States, transmitted to the respondents, Messrs. Sampson Low, and Co., the MS of a book composed by her, called *Haunted Hearts*. She then went to Montreal and purposely resided there for a few days, while the book was being published. Immediately after the book had been published in London it was also published in America Messrs. Routledge and Co. subsequently printed and sold copies of it at the rate of 2s. each, Messrs. Low's price being 16s. A bill for an injunction was filed to restrain the rule and for an account. The appellants demurred; but the Vice-Chancellor overruled the demurrer, and the injunction was grant-