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DENHAM V. SPENCE.

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to be obvious objections. However, the question is decided by implication. Considering the extraordinary absurdities which would arise under the contrary construction, I think the two acts ought to be read together.

MONAHAN, C.J.—I also had considerable difficulty in arriving at a conclusion. I am of opinion that we must have regard to the nature of the Act. I think it impossible not to construe the two Acts together, since they must be regulated by the same terms of common law procedure.

Order granted.

EXCHEQUER CHAMBER.

DENHAM V. SPENCE.

Practice—Action against British subject residing abroad —“Cause of action”—Common Law Procedure Act, 1852 (15 & 16 Vict. c. 76), ss. 18 and 19.

A marriage contract was entered into by the plaintiff and defendant abroad. The plaintiff came to England, and was there followed by the defendant. Immediately on his arrival in England, the defendant wrote to the plaintiff that he did not intend to fulfil the contract, and subsequently refused to marry the plaintiff.

A rule to set aside a suit issued against the defendant under section 18 of the Common Law Procedure Act, 1852, was refused by the court (Kelly, C. B., *dissentiente*).

Contra (per Kelly, C. B.), “Cause of action” means the whole and entire cause of action, both contract and breach.

Semble (per Martin, B.), a marriage contract creating a personal relation between the parties to it, is a continuing contract down to the time of its breach.

Sichell v. Borch, 12 W. R. 346, 2 H. & C. 954; *Allhusen v. Margarejo*, 16 W. R. 854, L. R. 3 Q. B. 340; *Jackson v. Spittal*, 18 W. R. 1162, L. R. 5 C. P. 542, commented on.

[Ex. 19 W. R. 162.]

Motion for rule to show cause why writ and subsequent proceedings in the above action should not be set aside, on the ground that the cause of action, if any, did not arise within the jurisdiction of the superior courts, under section 18 of the Common Law Procedure Act, 1852. The said section enacts as follows:—

In case any defendant, being a British subject, residing out of the jurisdiction of the said superior courts, in any place except in Scotland or Ireland, it shall be lawful for the plaintiff to issue a writ of summons in the form contained in the Schedule A to this Act annexed, marked No 2, which writ shall bear the indorsement contained in the said form, purporting that such writ is for service out of the jurisdiction of the said superior courts; and the time for appearance by the defendant to such writ shall be regulated by the distance from England of the place where the defendant is residing; and 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, and that the writ was personally served upon the defendant, or that reasonable efforts were made to effect personal service thereof upon the defendant, and that it came to his knowledge, and either that the defendant wilfully neglects to appear to such writ, or that he is living out of the jurisdiction of the said courts in order to defeat and delay his creditors; to direct, from time to time, that the plaintiff shall be at liberty to proceed in the action in such manner, and subject to such conditions as

to such court or judge may seem fit, having regard to the time allowed for the defendant to appear being reasonable, and to the other circumstances of the case; provided always that the plaintiff shall, and he is hereby required, to prove the amount of the debt or damages claimed by him in such action, either before a jury upon a writ of inquiry, or before one of the masters of the said superior courts, in the manner hereinafter provided, according to the nature of the case, as such court or judges may direct, and the making such proof shall be a condition precedent to his obtaining judgment.

This was an action for breach of promise of marriage. The offer and acceptance of marriage were contained in letters which passed between the plaintiff and defendant at the time that the former was living in Calcutta and the latter at the Cape of Good Hope. The plaintiff came to England, whither she was followed by the defendant. When off Plymouth the defendant wrote a letter to the plaintiff, dated the 8th of April, in which he informed her of his intention not to fulfil his engagement. He subsequently refused to marry the plaintiff. The letter of the 8th of April, was posted in Plymouth, and received, in due course of post, by the plaintiff on the 9th of April.

Day, in support of the motion.—The question turns on the construction of the words “a cause of action which arose within the jurisdiction or in respect of the breach of a contract made within the jurisdiction” of section 18 of the Common Law Procedure Act of 1852. The contract in this case was certainly made out of the jurisdiction, therefore the defendant is not within the latter part of the sentence, nor is he, I submit, within the meaning of the words “a cause of action which arose within the jurisdiction,” for even admitting the breach to have occurred in England, “cause of action” means the whole cause of action, and embraces the contract as well as the breach; and the former was not subsisting at the time that the defendant landed in England, for he had broken it by letter before disembarking. The authorities are divided as to the construction of the words in question. In 1858, this court, *Fife v. Round*, 6 W. R. 282, held that the dishonour in England of a promissory note made and delivered to the plaintiff in France, but payable in England, was within the section. But in 1864, this court, in *Sichell v. Borch*, 12 W. R. 346, 2 H. & C. 954—where the defendant, a foreigner residing in Norway, there drew a bill of exchange on E., after endorsing it to D.’s order, sent it by post to D. in London, who endorsed it to the plaintiff—held that the cause of action did not arise within the jurisdiction. However, in 1865, in *Chapman v. Cottrell*, 13 W. R. 843, 3 H. & C. 865, 34 L. J. Ex. 186—where the defendant, a British subject residing in Florence, signed two promissory notes there as joint and several maker with his brother in London, to whom he sent them by post, and his brother thereupon signed the notes and delivered them to the payees in England—this court held that the “cause of action” had arisen within the jurisdiction; but this case is, it is submitted, distinguishable from that preceding it, as the defendant’s contract was not complete until the notes were signed and delivered by his brother,