M. Chambers and *Codd* showed cause against the rule:—First, this Court has no jurisdiction to stay proceedings in this action, or to strike out the counts in question, which amounts to the same thing. The county court judge decided merely that the goods were the property of the claimant, and he did not and could not award any damages for the loss sustained by the seizure. He has no jurisdiction to give damages. The cases in which the Court has interfered to stay proceedings are cases where the action has been against the bailiff, and not as here against the execution creditor, and in which the adjudication in the county court has been against the claimant, where, consequently, the county court judge had decided that the alleged trespass was a lawful entry: *Tinkler v. Hilder*, 4 Ex. 187; *Winter v. Bartholomew*, 25 L. J. Ex. 62; *ante* 246; *Jessop v. Crawly*, 15 Q. B. 212; *Beswick v. Boffey*, 23 L.J. Ex. 89; W.R. 1853-4, 156. Secondly, if this Court has a discretion to interfere, it will not do so in a case such as this, where substantial damage has been sustained.

Russell in support of the rule.—The county court judge had jurisdiction to award damages to the claimant for any loss he may have sustained by the seizure; the matter has, therefore, already been decided, and this Court will interfere to prevent its being further litigated.

Cur. ad. vult.

The judgment of the court was now delivered by

POLLOCK, C.B.—We are of opinion that this rule ought to be discharged. The action was for trespass and seizing goods. There had been an interpleader summons, the county court judge having interposed upon goods taken in execution being claimed by a third party under the clauses of the County Courts Act, giving him a jurisdiction in such cases similar to that possessed by the superior courts in cases of interpleader issue. The application was to strike out of the declaration several counts, on the ground that they were for the seizure of goods; with respect to which seizure the county court judge had adjudicated upon an interpleader summons, and the application was made on the authority of a case in this Court. It appears to us, whether or not the county court judge had the power it was contended he possessed of awarding damages to the claimant, that he has not in point of fact done so. Without, therefore, deciding whether it was competent for him to give damages, it is sufficient to say that he has not entertained that question, and that the counts ought therefore to stand.

Rule discharged.

KERNOT v. BAILEY AND ANOTHER.

County court—Jurisdiction—Mandamus—9 & 10 Vic., cap. 95, sec. 60.

A writ of mandamus will not be directed to the judge of an inferior tribunal, unless he has refused to exercise the duty which the mandamus seeks to compel him to perform. Where, on the hearing of a plaint in a county court, the judge, having heard the evidence as to the jurisdiction, thinks that the cause of action did not arise within his jurisdiction, and nonsuits the plaintiff. *Held*, that he has heard the cause, and that no mandamus will issue to compel him to hear it, his decision being final.

[4 W. R. 603.]

W. M. Cook moved for a rule *nisi*, calling upon the judge of the county court, held at Bath, to show cause why a *mandamus* should not issue to command him to hear and adjudicate upon a certain plaint between Kernot and Bailey and another. It appeared by the affidavit that the plaintiff, residing within the jurisdiction of the Bath court, had sued out a plaint, by leave of the Court, for £50 for goods sold to the defendants, who resided in a foreign district, viz., Bristol, and on the 18th of April the cause came on to be heard, and the plaintiff called his witnesses, when it was objected by the defendants that the delivery of the goods was in another district, and that the cause of action not arising within the Bath district, the judge had no jurisdiction. The case was adjourned to the next court day, when some further evidence was given, and the judge nonsuited the plaintiff on the ground that he had no jurisdiction, and ordered the plaintiff to pay the defendants' costs. It was now contended that the affidavit showed that the judge had jurisdiction to try the cause, and therefore he ought to have given judgment upon the merits. [COLERIDGE, J.—But he has heard the evidence, and upon that has decided that he has no jurisdiction.] The judge has not only decided that he has no jurisdiction, but he has given the defendants their costs and left the plaintiff without remedy. [CROMPTON, J.—But he can sue the defendants in the right district court.]

COLERIDGE, J.—I think in this case there ought to be no rule. The *mandamus* is asked for on the ground that the judge has declined to exercise his jurisdiction when he ought to have exercised it. But the facts as set forth in the affidavit do not show this. The plaintiff had to show that the cause of action arose within the jurisdiction of the Court; to prove this he brought all his evidence, upon which the judge thought he had failed; and whether he were right or wrong is not for us to say, as we are not a Court of Appeal. If the judge has heard the evidence, and has determined against the plaintiff, he has exercised his jurisdiction.

ERLE, J.—A *mandamus* never goes to command a party to do anything, unless having the power he has refused to exercise it, and to enter upon his duties. Here the judge is not within that principle. The plaint was issued, and the parties appeared; the judge entered upon the trial, and having heard it, thought the plaintiff failed to show that the complaint arose within his jurisdiction. This was properly a matter to be tried by the judge; and having decided against the plaintiff upon the evidence given, I think the cause was tried, and that we cannot interfere. There will, therefore, be no rule.

CROMPTON, J.—Jurisdiction is given generally to that Court where the defendant resides; but by sec. 60 power is given, under certain circumstances, to the Court where the cause of action arises; and it then becomes material for the plaintiff to show that what arose within that jurisdiction is a material in the cause. Here the judge hears the evidence upon this point, and he thinks that the cause of action does not arise within his jurisdiction. This is a question of fact which he has to decide upon; he has done so, and decided against the plaintiff. I think, therefore, that this case does not fall within the principle upon which this Court acts in granting a *mandamus*.

Rule refused.

MONTHLY REPERTORY.

COMMON LAW.

Q.B. REYNOLDS v. BRIDGE. *May 31.*

Covenant—Construction—Liquidated damages.

An indenture between B. and R. (two medical men) contained the following covenant: "Provided that after the determination of the said term of three years, &c., B. shall not practice as a surgeon, &c., nor see patients, except as hereinafter mentioned, &c., in W., or within 12 miles thereof; but shall before the end of that term introduce R. to his patients, and shall during the term endeavour to secure them for R.; Provided always, that in case B. shall make default in the observance of the covenant lastly hereinbefore contained, he shall pay to R. £2000, not in the nature of a penalty, but as ascertained liquidated damages. That B., after the determination of the term of three years, may attend midwifery cases in W., and within 20 miles thereof, the fees for which shall equal or exceed £1 15s., but shall pay half of the fees to R."

Held, that the sum of £2000 was not a penalty, but liquidated damages, as no one of the stipulations in the covenant