

C. L. Cham.]

BRIDGES v. DOUGLAS—RE JACK, JACK v. JACK.

[Chan. Cham.]

that is : things which are the natural product or expected increase of something already belonging to the vendor." In *Jones v. Richardson*, 10 Metc. 481, it is held that a mortgage upon goods which the mortgagor does not own at the time the mortgage is made, though he afterward acquire them, is void, the court saying that to be able to sell property, the vendor must have a vested right in it at the time of sale. See, to the same effect, *Rice v. Stone*, 1 Allen, 566 ; *Head v. Goodwin*, 37 Me. 181 ; *Low v. Pew*, 108 Mass. 347 ; 11 Am. Rep. 357, where a sale of fish, thereafter to be caught, was held to pass no title to the fish when caught. *Wilson v. Wilson*, 37 Md. 1 ; 11 Am. Rep. 518, where a sale, for a valuable consideration, of all the property the vendor then had and might thereafter acquire, was held to convey only such property as the vendor then possessed. See, also, *Moody v. Wright*, 13 Metc. 17 ; *Holroyd v. Marshall*, 10 H. of L. 191 ; *Brown v. Tanner*, L. R., 3 Ch. 59 ; *Pennock v. Coe*, 23 How. 177 ; *Galveston R. R. Co. v. Cowdy*, 11 Wall. 489 ; *Morrill v. Noyes*, 56 Me. 458 ; *Pierce v. Lang*, 32 N. H. 484 ; *Phelps v. Winslow*, 18 B. Monr. 431 ; *Arnoult v. Aimes*, 16 La. Ann. 225 ; and cases cited in *Wyatt v. Watkins*, *supra*.—*Albany Law Journal*.

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COMMON LAW CHAMBERS.

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BRIDGES v. DOUGLAS.

Prohibition—Division Court—Jurisdiction.

When the holder of a promissory note, payable to "A. B., or bearer," endorsed it over to a third party. Held, that under C. S. U. C. cap. 19, sec. 71, an action might be brought against the maker and endorser in the Division Court for the division in which the endorser resided, and that in a motion for a writ of prohibition, the question, whether or not the endorsement was made for the purpose of giving jurisdiction cannot be enquired into.

[January 24.—MORRISON, J.]

This was a summons calling upon the Judge of the County Court of the County of Bruce, *ex officio* Judge of the First Division Court of

the said county, the clerk and bailiff of the said Division Court, and one George Bridges, plaintiff, in a suit in said Division Court, wherein said Bridges was plaintiff, and Alexander Douglas and Thomas Dixon were defendants to show cause why a writ of prohibition should not issue to prohibit said judge, clerk, bailiff and plaintiff from further proceedings in said suit upon the ground that the said Court had no jurisdiction to try the case ; that the defendant Douglas did not reside within the said division, and that the cause of action against said Douglas, if any, did not arise within said division ; and that said Douglas and Dixon were improperly joined as defendants in the same suit, and that the suit was substantially the suit of the defendant Dixon and not of the plaintiff ; and that Dixon was not really a defendant in the suit, but the form of endorsing said note was gone through with to give the appearance of said Dixon being liable as a defendant, and to enable him to have the action brought against himself, and the substantial defendant in the division in which said Dixon resided, under C. S. U. C. cap. 19, sec. 71.

The Judge in the Division Court found that the endorser took the note *bona fide* before due, and that the endorsement to the plaintiff was also *bona fide* ; stating further, that the question as to whether the endorser endorsed the note with a knowledge that he was giving a jurisdiction where none existed before was immaterial. He also held that the parties could be sued jointly, and therefore gave judgment for the plaintiff, upon which the defendant Douglas made this application.

A. Cassels, showed cause.

W. S. Smith, contra.

MORRISON, J.—On this application I cannot consider the motion of the defendant Dixon, and in endorsing the note as endorser on the note, he was liable to be joined as a defendant in the suit, and that being the case, sec. 71 of the Division Court Act gives jurisdiction to the Division Court for the division in which either defendant resides to try the case. The summons must be discharged, but, under the circumstances, without costs.

CHANCERY CHAMBERS.

RE JACK, JACK v. JACK.

Administration.

Held, following *Re Shipman*, (*ante infra* p. 17), that an administratrix has no right to an administration order on merely showing that the intestate's liabilities are in excess of his personal estate, she having now a valid defence at law to any action on the part of a creditor.