

Eng. Rep.]

COATES v. THE PARKGATE IRON COMPANY.

[Eng. Rep.]

but in my opinion without costs, because it would not be just or proper to impose them upon Messrs. LeMesurier and Woods, who were only pursuing their rights, and had done no wrong, nor upon the supposed Committee, who were compulsorily put into action by the House of Assembly, nor upon the House of Assembly, because they are not parties before the Court.

HAYWARD, J.,—This application for a Writ of Prohibition came before us during the last sitting of this Court.

It was fully argued by counsel on both sides, and evidence was produced in support of the allegations set forth.

The application being a novel one, and many important points and principles involved, we took time for due consideration and investigation, with a view of arriving at a conclusion and delivering a judgment which we believe to be fully borne out by law, under all the authorities bearing on the subject.

After such consideration carefully given, I arrived at the same conclusion as that expressed by my learned brothers of this court, that the committee of the House of Assembly, for the trial of the case between the parties to this proceeding, was not appointed or constituted according to law, and therefore that it is the duty of this court to restrain them from proceeding in the trial of the election petition, by granting a writ of prohibition for that purpose.

I do not, in this judgment, intend to enter fully into the statement of the case submitted by the parties, or the particular points of law bearing upon it, as, since my return from holding the term of the Northern Circuit Court at Harbor Grace, I have had the opportunity and benefit of perusing the decisions of the Chief Justice and Judge Robinson, reduced by them to writing, and I could only repeat in mine, if I enlarged, that which they have so fully and clearly stated and expressed.

Agreeing, therefore, as I do with them in every particular in the law bearing upon this case, I am of opinion that the rule *nisi* should be made absolute.

Rule absolute, without costs.

ENGLISH REPORTS.

COMMON PLEAS.

COATES v. THE PARKGATE IRON COMPANY.

Practice—Appeal from County Court—Notice of appeal and security—Waiver—13 & 14 Vic. c. 61, ss. 14, 16.

By 13 & 14 Vic. c. 61, s. 14, a party aggrieved may appeal from a county court to a superior court of common law, "provided that such party shall, within ten days after such determination or direction, give notice of such appeal to the other party or his attorney, and also give security," &c. By the 16th section no judgment of a county court shall be removed by appeal, "save and except in the manner and according to the provisions hereinbefore contained."

Held (dubitante KEATING, J.), that omitting to give the notice and security required by the 14th section was an irregularity which could be waived.

[18 W. R. 928.]

Appeal by the defendants from a decision of the judge of the Rotherham County Court.

Kemplay, for the plaintiff, obtained a rule to strike the case out of the special paper of this court, on the ground that the defendants, being the appellants, had given neither the notice of appeal nor the security, required by 13 & 14 Vic. c. 61, s. 14.

By the County Courts Act, 13 & 14 Vic. c. 61, s. 14, a party aggrieved may appeal to a superior court of common law, "provided that such party shall, within ten days after such determination or direction, give notice of such appeal to the other party or his attorney, and also give security, to be approved by the clerk of the court, for the costs of the appeal, whatever be the event of the appeal, and for the amount of the judgment, if he be the defendant and the appeal be dismissed."

By section 15 "such appeal shall be in the form of a case, &c., and such case shall be transmitted by the appellant to the rule department of the master's office of the court in which the appeal is to be brought."

Section 16. "And be it enacted that no judgment, order, or determination, given or made by any judge of a county court, nor any cause or matter brought before him or pending in his court, shall be removed by appeal, motion, writ of error, *certiorari*, or otherwise, into any other court whatever, save and except in the manner and according to the provisions hereinbefore mentioned."

Quain, Q. C., showed cause, and contended that by the conduct of the parties the notice and security had been waived; that as the conditions of notice and security were introduced for the respondent's own benefit, and not for the good of the public, and as no rights of any third party were affected, the omission to comply with those conditions was a mere irregularity which the respondents could waive: *Graham v. Ingleby*, 1 Ex. 656; 5 D. & L. 787; *Broom's Maxims*, 4th ed., p. 670; *Quilibet potest renunciare juri pro se introducto*; and p. 187: *Consensus tollit errorem*. It is true that in *Morgan v. Edwards*, 5 H. & N., 416, sending up the case and giving notice were held to be conditions precedent to the right to appeal; but the case was distinguishable because it was an appeal from justices under *Jervis' Act*, 20 & 21 Vic. c. 43, and therefore was in the nature of a criminal proceeding.

Field, Q. C., and *Kemplay*, in support of the rule, cited also *Furnival v. Stringer*, 1 Bing. N. C. 68; *Stone v. Dean*, 6 W. R. 602, 1 E. Bl. & E. 504; 27 L. J. Q. B. 319; *Woodhouse v. Woods*, 29 L. J. M. C. 149; *Peacock v. The Queen*, 4 C. B. N. S. 264; 27 L. J. C. P. 224; 6 W. R. 517.

BOVILL, C. J.—On the facts the notice and security were waived, if they could be waived. The question, therefore, is whether on the construction of the Act of Parliament they could be waived. The 14th section confers on a party aggrieved a power of appeal, provided that, within ten days of the decision, he gives to the other party notice of appeal, and that he also gives security. Then the 16th section enacts, that no judgment of a county court judge shall be removed by appeal into any other court "save and except in the manner and according to the provisions hereinbefore mentioned." No doubt that is a prohibitory enactment, but it must be