

[r. Rep.]

REEDE AND GOODMAN V. PIPON.

[Ir. Rep.]

In that case *Dixon v. Capes*, 11 Ir. C. L. 345, was not cited, where it was held by the Court of Exchequer that the words in section 34, "or on other good and sufficient grounds," mean grounds of the same character as those enumerated.* The preamble of the Act shows that it was passed merely to simplify and amend procedure, and not to enlarge jurisdiction.† It virtually enacts the law previously existing, as declared by judicial decision regarding substitution of service. The terms of 43 Geo. 3, c. 52, s. 8, were most extensive; and yet, it was a matter of controversy whether that provision applied to a person out of the jurisdiction at all—and it was never applied unless the defendant was, at least, constructively within the jurisdiction, as by having an agent here, *Phelan v. Johnson*, 7 Ir. L. R. 527.

[FITZGERALD, J.—Your argument goes to this, that, being made without jurisdiction, the order is a nullity; and if so, that there would be no authority to enforce it, or to affect the defendant. BARRY, J.—Do you admit that the defendant has sufficient notice of the proceedings within the principles of natural justice, according to *Sheehy v. The Professional Life Assurance Co.*, 13 C. B. 787?]

That is conceded, and, therefore, there would not be a defence in that regard to an action on the judgment in Jersey. But the notice has been effected by an excess of jurisdiction, to which we are now entitled to except, and which is not cured by our appearing for that purpose, *Cookney v. Anderson*, *supra*.

[WHITESIDE, C. J., referred to *Reilly v. White*, 11 Ir. C. L. R. 142].

A defendant may be present by his agent, as well as act by an agent. But, there is no more power to serve him in person out of the jurisdiction than to substitute service on him by serving an agent out of the jurisdiction. Sections 31-33 relate to service within the jurisdiction. Section 34 relates to substitution—1st. Where the defendant is within the jurisdiction, and avoiding service; and 2nd. Where a defendant is without the jurisdiction, and has an agent within it. The words "or on other good and sufficient grounds" may receive application by dealing thereunder with defendants who are within the jurisdiction, but cannot be

served under the previous section; thus by serving a prisoner or lunatic by substituting service on the governor of the gaol or keeper of the asylum.‡

[WHITESIDE, C. J.—Must a person who has "removed to avoid service" have an agent here?]

It may be that a person cannot, in the eye of the law, be said to change his domicile within the jurisdiction by absconding, with the intention of defeating process of law;§ and if his place of abode is still to be considered as within the jurisdiction, it is unnecessary that he should have an agent here. At all events, it is unnecessary to press this argument to the extent of saying that a person so removing could not be served in person; although probably he should be served by some mode other than by service in person. In this case there is no reason why the defendant should be deprived of the right of having a suit against him disposed of in his own forum; and the argument on the other side must go to the extent of contending that a defendant may be served by sending a telegram to San Francisco.

[BARRY, J.—The English C. L. P. Act made provision for serving a foreigner in person. The Irish Act is founded on it to a great extent; and may it not be argued that it was intended in the one section of our Act to comprise everything to which the English provisions on the subject extended?]

The powers given by the English Act were carefully defined and limited, not only with a view to secure private rights, but to prevent the sovereignty of the State coming into conflict with others, C. L. P. Act, (Eng.), 1852, s. 18; Day C. L. P. A. 45. It could not have been intended that the provisions contained in three or four special enactments in the English Act were to be spelled out from as many words in the Irish. In the Irish Act no inquiry precedent is enforced as to whether the defendant is a British subject, with a view to prevent a violation of sovereignty; but, if it were in-

* By inadvertence the reference of *Hughes, B.*, to section 31 was not cited.—*Ed. I. L. T. Rep.*

† Compare title of C. L. P. A. Act, 1856. And as to construction of the Acts see *Sichel v. Borch*, 2 H. & C. 987; *Jackson v. Spittal*, L. R. 5, C. P. 550; *Carlisle v. Whalley*, L. R. 2, H. L. 416.—*Ed. Ir. L. T. Rep.*

‡ Compare on the construction of similar words in 13 & 14 Vic, 18, 9, *Sheehy v. Professional Life Assurance Co.*, 3 C. B. N. S. 597. As to substitution of service on lunatics, see *Wilmut v. Marriot*, 8 Ir. L. R. 224; *Vance v. O'Connor*, 11 Ir. 60; *Sweeney v. Shee*, 2 Ir. L. T. 574; *Kimberley v. Alleyne*, 2 H. & C. 223, 11 W. R. 757; *Dennison v. Harding*, 15 W. R. 346, 2 W. N. 17; *sed vide Ridgeway v. Cannon*, 23 L. T. 143, 2 W. R. 473; *Holmes v. Sweeney*, 24 L. J. C. P. 24; *Williamson v. Maggs*, 28 L. J. Ex. 57 W. R. 60. As to service on defendant in prison, see *Maguire v. Gardiner*, 4 Ir. L. R. 310; *Cosby v. Robinson*, 5 Ir. Jur. N. S. 37; *Dawson v. Le Capelaine*, 21 L. J. Ex. 219.—*Ed. Ir. L. T. Rep.*

§ See *Re Williams*, 28 L. T. N. S. 488.—*Ed. Ir. L. T. Rep.*