

Court of Appeals.

In a Cause—between

JAMES SWAN,
(*Defendant in the Court below,*)
APPELLANT,

AND

JOHN MOWATT,
(*Plaintiff in the Court below,*)
RESPONDENT.

APPELLANT'S CASE.

THE Respondent instituted an action in the Term of February last, in the King's Bench at Montreal, against the Appellant as indorser of certain protested bills of Exchange, drawn by Messrs. PATTERSON & Co. in favor of the Appellant, directed to H. & J. JOHNSON & McQUOID.

The Appellant pleaded as a declinatory Exception to the said action, that the said Appellant before and at the time of suing out the writ of Summons, in the said cause issued was domiciliated and resident at London, in that part of the United Kingdom of Great Britain and Ireland called England, and before and at the time of and since the suing out and serving of the said writ of summons, had not any domicile whatever within the jurisdiction of the said Court, to wit, within the district of Montreal, or elsewhere, in the Province of Lower Canada, and that no legal service whatever of the said writ was made to or upon the said Appellant personally or otherwise.

To this Plea the Respondent answered, that some short time before the issuing of the said writ of summons, in this cause issued the said JAMES SWAN was comorant, domiciliated and resident in the City of Montreal, in the said District of Montreal and Province of Lower Canada, to wit, in or about the month of July now last past and since that time. And that at the time of suing out and service of said writ of summons he the said James Swan had a domicile within the jurisdiction of this Court, to wit, at the said City of Montreal in the said District and Province aforesaid, and further because legal service was made of the said writ of summons, at the said domicile of the said James Swan, *being his last place of residence and abode within the jurisdiction of this Court.*

The Sheriff of the District of Montreal returned, upon the writ of summons in the said cause, that he had caused the said James Swan to be summoned to be and appear, on the day and at the place in the said writ contained, to answer as the said writ demanded and required, by leaving a copy of the said writ and of the declaration thereunto annexed, with a grown person, *at the last domicile* of the said James Swan, at the house occupied by the Miss Duperés, in Saint Vincent Street, in the City of Montreal, in his District, as by the said writ he was commanded.

It appears from the evidence in this Cause that the Respondent had "for many years been engaged in the business of agency which made it necessary for him to travel from place to place without having any fixed abode any where, and that when at Montreal, he lived in taverns and boarding houses"—In fact, the writ was served at the last boarding house at which the Appellant had lodged.

The Appellant contends—

1. That since the passing of the Provincial Ordinance 25th Geo. III. c. 2, service of process must be made at the *dwelling house* of the Defendant; and that service at the last domicile is not a valid or legal service.

2. That, in truth, the place at which service of the writ of summons in this cause issued was made, was not the *last domicile* of the said Appellant.

Quebec, 13th July, 1812.

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