

Ir. Rep.]

REEDE AND GOODMAN V. PIPON.

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## IRISH REPORTS.

## COURT OF QUEEN'S BENCH.

REEDE AND GOODMAN V. PIPON.

*C. L. P. Act, 1853, ss. 31, 34—Extra territorial jurisdiction—Substitution of service—Service on defendant in person, out of the jurisdiction—Conclusiveness of decisions in the Court where made.*

The Courts of Common Law have jurisdiction to order that service of a writ of summons and plaint by serving the defendant in person, out of the jurisdiction, shall be deemed good service.

*Kelly v. Dixon*, Ir. R. 6 C. L. 25, discussed; and (dub., Fitzgerald and Barry, J.J.), followed.

[Ir. L. T. Rep., Feb. 14, 1874.]

Cause shown against making absolute a conditional order, obtained by the plaintiffs, that service of the writ of summons and plaint and order upon the defendant in Jersey be deemed good service of the writ.

The action was brought to recover £100, 15s. 6d. for work done by the plaintiffs, as attorneys for the defendant, and for money paid, and on accounts stated. The order had been obtained upon an affidavit of the plaintiffs, stating that the defendant, Thomas Le Breton Pipon, permanently resided at La Maissonette, St. Peter's, in the island of Jersey, out of the jurisdiction of the Court, and that he was possessed of property in that island; that he had no agent, place of business, or property within the jurisdiction of the Court; that the causes of action arose within the jurisdiction; that part of the services respecting which the action was brought were rendered in defending certain actions brought in Dublin against the defendant's son, while he was a minor, upon the defendant's retainer; and that other part of said services were rendered in defending another action in Dublin against defendant's son after he had come of age, and also for miscellaneous professional services, in reference to his son's affairs, rendered upon the defendant's retainer; that the defendant attended as a witness upon some of the trials; that when the costs were being taxed, the plaintiffs intimated to the defendant the fact, and received from him a communication, forwarding a banker's draft for £55, and requesting to be furnished by them with, as soon as convenient, their account for professional charges; and that the plaintiffs were advised and believed that the recovery of said costs and money would be attended with great difficulty, expense, and delay in Jersey, but that, in the event of procuring a judgment in the Court in

Ireland, it could, without difficulty and at a trifling expense, be made available against the property of the defendant in Jersey. The motion stood over from Consolidated Chamber, by direction of Morris, J., and now,

*Cleary*, on behalf of the defendant, showed cause. The Court has no power to order service to be had upon the defendant in person out of the jurisdiction; but, even if the Court have the power, it is one which should not be exercised, in the discretion of the Court, in this instance. It does not appear that the defendant is a British subject, or that he was ever personally in this country; and he cannot be said to be constructively within or subject to this jurisdiction, since he has no agent, place of business or property in this country—and, if a judgment were had against him here, there is nothing to show that it could be made to attach either his person or property. Unless, therefore, jurisdiction has been given by the express language of the Legislature, its exercise here would contravene the general principles upon which territorial jurisdiction depends, *Cookney v. Anderson*,\* 1 De G. J. & S. 365, 379. *Morris, J.*, in Chamber, when directing that the motion should stand over, intimated that his impression had heretofore been that the Irish Courts had no power to effect service of process upon a defendant in person out of the jurisdiction; and in *Knox v. Lord Rosehill*, not reported, *Dowse, B.*, questioned whether service could in such case be ordered to be made merely by a registered letter.†

[O'BRIEN, J.—We decided the contrary in *Kelly v. Dixon*, Ir. R. 6 C. L. 25; and as I have been informed by an officer of the Common Pleas, that Court has followed our decision. BARRY, J.—It may be said that "substitution of service" is a different thing from an order directing personal service. I may mention that, in granting the conditional order in this case, I had regard to section 31 of the C. L. P. Act, 1853. FITZGERALD, J.—The words "or other sufficient grounds," in section 34, seem to mean for substitution of service.]

The Court of Exchequer refuses to grant orders on the authority of *Kelly v. Dixon*.

\* See as to this decision, *Steele v. Stewart*, 33 L. J. Ch. 190; *Foley v. Maillardet*, 9 L. T. N. S. 643; *Osborne v. Osborne*, 2 Ir. L. T. 58; *Newland v. Arthur*, ib., 316; *Frizelle v. Cotton*, ib. 4105. In Bankruptcy, see *Re O'Loughlin*, L. R. 6 Ch. Ap. 406; *Re Williams*, 28 L. T. N. S. 488; *Re Vaughan*, 3 N. R. 298.—Ed. Ir. L. T. Rep.

† See reply of *Morris, J.*, to the Eng. and Ir. L. and Ch. Com. (1863), 71 R. L. T. 494. See also *Barre v. M'Neight*, 8 Ir. L. T. 64 bis; and observations in *Knox v. Lord Rosehill*, 7 Ir. L. T. 504.—Ed. Ir. L. T. Rep.