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JACKSON v. SPITTAL.

[Eng. Rep.]

subsequent proceedings be set aside, plaintiff to pay the defendant the costs of the former action.

On the 2nd of April, upon plaintiff's application to rescind the above order, Baron Bramwell made the following order:—"That the order made herein by Master Bennett, directing payment by plaintiff to defendant of £5 10s., be rescinded. And as to the residue of the application to rescind the said order, I make no order."

*Hughes* having obtained a rule *nisi*, calling upon the defendant to show cause why so much of the order made by Master Bennett as was not rescinded by Baron Bramwell should not be rescinded,

*Bridge* showed cause on behalf of the defendant.

*Hughes* supported the rule.

The arguments and cases are set out in the judgment.

*Cur. adv. vult.*

The judgment of the Court (BOVILL, C.J., and KEATING, MONTAGUE SMITH, and BRETT, JJ.), was delivered by

BRETT, J.—In this case the plaintiff sued the defendant, a British subject, living in the Isle of Man, upon an alleged breach of contract not to endorse a bill of exchange delivered to him as a security. The contract, it was said, was made in the Isle of Man; the breach by endorsing over took place in Manchester. The plaintiff, under the provisions of the Common Law Procedure Act, 1852 (15 & 16 Vict. c. 76), had served the writ of summons on the defendant in the Isle of Man. The defendant, without waiting for the plaintiff to take the next step of obtaining an order to proceed, took out a summons before the Master, and obtained an order to stay proceedings in this suit, on the ground that the whole cause of action did not arise within the jurisdiction of the Court. Upon this the plaintiff took out a summons before Bramwell, B., to set aside such order, and Bramwell, B., referred the matter to the Court. On the part of the plaintiff it was contended that the summons taken out by the defendant before the Master was premature, and therefore unauthorised; that the objection if otherwise valid, should only be taken when the plaintiff should apply for leave to proceed; and further, that the defendant's objection, if taken at the right time, was invalid, because in order to entitle the plaintiff to proceed, it was not necessary that he should satisfy the Court that the whole course of action, in the sense of every fact necessary to be proved in order to support the plaintiff's case, had arisen or taken place within the jurisdiction. On the part of the defendant it was contended that the summons before the Master was not premature: *Binet v. Picot*, 4 H. & N. 365, and *Diamond v. Sutton*, 14 W. R. 374; and that it was a fatal objection to any further proceedings in the suit by the plaintiff, that the whole cause of action, in the sense above-mentioned, did not arise within the jurisdiction. As to the first point we see no objection to the Master's order made with regard to the process of the Court, on the ground that it is made upon a summons taken out by the defendant instead of upon a summons taken out by the plaintiff. We agree with the decisions cited during the argument by the Court of Exchequer

(viz., the cases hereinafter considered). The second point is one of great importance. Besides, its application to shipping contracts made in all parts of the world, the daily increasing trade with the more adjacent countries of the Continent, in the course of which numerous orders are given abroad, either to firms wholly foreign, or to British subjects resident and carrying on business abroad, but which orders are to be fulfilled in England, makes the question now before the Court, one of the greatest importance for mercantile interests. During the argument several decisions of the Court were cited. If in this case and those cited there had been an appeal to a court of error, we might have felt bound to decide in accordance with the latest decisions of the court of co-ordinate jurisdiction and have left the parties to appeal. But there is no such appeal; and, moreover, we find that the decisions are far from uniform. The cases relied on by the defendant are *Sichel v. Borch*, 12 W. R. 346; 2 H. & C. 954, which was an action by the plaintiff, as indorsee, against the defendant, as indorser of a bill of exchange. The defendant, who was a native of Norway, and carried on business in Norway, drew the bill there, and endorsed it and sent it by post to London, to H. Dresser and Co., who endorsed it to the plaintiff. The defendant was served in Norway with notice that the action had been commenced against him. The Court made absolute a rule to set aside the service, on the ground that the case was not within section 19 of the statute 15 & 16 Vict. c. 76. Pollock, C.B., and Martin, B., stated that the whole cause of the action must arise within the jurisdiction; that where the contract was made abroad, and the breach took place in England, the case was not within the statute. Pollock, C.B., referring evidently to the cases upon the construction of the County Courts Acts stated that it had been laid down in an analogous matter, that the term "cause of action," means "the whole cause of action." Pigot, B., expressed considerable doubt, but acquiesced in the decision. No previous case was cited. The former decision of the Court of Exchequer in *Fife v. Round*, 6 W. R. 282, was not cited, and the attention of the Court was not called to the difference of the rule applicable to the construction of statutes in questions of jurisdiction affecting superior and inferior courts. The next case relied on was *Altheus v. Melgarejo*, 16 W. R. 854, in which the defendant, a foreigner residing abroad, entered into a contract abroad with the plaintiffs to sell them a quantity of manganese, to be delivered at Newcastle-upon-Tyne. The Court, consisting of Blackburn, Mellor, and Lush, JJ., held that the whole cause of action did not arise within the jurisdiction, and therefore the case was not within the statute. They decided on the authority of *Sichel v. Borch*, and and they seem to have doubted the authenticity of the reports of the cases of *Slade v. Nuel*, 4 F. & F. 424, and *Nettleford v. Funcke*, before Willes, J., at chambers (not reported). In the former decision of the Court of Exchequer, viz., *Fife v. Round*, a promissory note, by which the defendant promised four months after date to pay the plaintiff £150, was made in France, and delivered to the plaintiff there. The note was in the margin made payable at a London bank.