are not necessary to be decided in this case, namely, whether the affidavits filed in the application for the attachment are properly entitled, and whether sub-sec. 7 of sec. 3 requires that the two persons to speak to the facts and circumstances constituting insolvency within the meaning of the Act, must or not be other persons than the creditor or his agent testifying to the debt. I entertain no doubt that it is proper to entitle the affidavits with the names of the plaintiffs and defendants as in the form F given in the statute. The 13th sub-sec. of sec. 11 enacts that the forms appended to the Act, or other forms in equivalent terms, shall be used in the proceedings for which such forms are provided, and it appears to me to be always best to follow the forms given by an Act. The very first paragraph of the affidavit speaks of a cause, although, strictly speaking, there is none until the writ issues, and of a plaintiff in the cause. The second speaks of "the defendant" as likewise does the third. These expressions plainly point to the cause in the title of the affidavit, and if this should be omitted the frame of the body of the affidavit would be insensible.

It appears to me also that sub-sec. 7 of sec. 3 is complied with, although the creditor or his agent deposing to the debt should be also one of the two persons testifying to the facts and circumstances which are relied upon as constituting the insolvency. I see no reason why we should introduce into the statute the word "other," which the legislature has not thought fit to introduce between the words "two" and "credible persons" so as to make it read "and also shew by the affidavits of two other credible persons," &c. It might be that a creditor and his clerk could give the clearest evidence of insolvency and liability to compulsory liquidation from the lips of the debtor himself to them in private which could not be established otherwise, and in such case, although there were two credible persons, the attachment might be deferred injuriously to the creditors, but whether it would be desirable or not desirable to have two persons other than the creditor to speak to the acts of insolvency it is sufficient to say that, in my opinion, the statute does not say that it is requisite. It is said that the preceding clause indicates the intention of the legislature that in Upper Canada the creditor should not be one of the two because it provides that in Lower Canada the creditor alone may prove the debt and the acts of insolvency. Why the creditor alone should be deemed sufficient in Lower Canada and not in Upper Canada I cannot say, but I see no necessary inference from that, that he cannot be one of the two required in Upper Canada. If the legislature intended to exclude him it would have been very easy to have done so by the insertion of the word "other," moreover the form of affidavit given is the same in Lower Canada and Upper Canada for the creditor to make, and plainly contemplates that he may state the facts relied upon as rendering the debtor insolvent.

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* The defendant shortly afterwards sold the mortgages and absconded from the country.—Rep.

COUNTY COURT CASES.

Bailey v. Bleecker.

(In the County Court of the County of Hastings, before His Honor Judge Sherwood.)

Trespass—Jurisdiction—Title to land—Ousting Jurisdiction.

One H. sold to defendant timber standing on his land, and afterwards conveyed and gave possession of the land to plaintiff. The defendant proceeded to take off the timber. *Held*, that the title to land was not in question, and that trespass to land would lie in the County Court.

This was an action of trespass. The declaration contained two counts: 1st. trespass to the N. W. ¼ of lot 26, in the 13 con. township of Huntingdon. 2nd. That defendant converted to his own use and possession certain trees of the plaintiff's.

On the trial the plaintiff after proving that defendant entered on the N. W. ¼ of lot 26, in 13 con. of Huntingdon, and cut down and cut into saw logs a certain number of trees and took them away, put in a deed from one Hicks to the plaintiff of this portion of lot 26. He also gave evidence that plaintiff had also used acts of ownership over it, by taking off building timber, staves, and waggon spokes; and that there was a fence between this and the remainder of the lot occupied by Hicks. The plaintiff finding his evidence applicable to lot 6 instead of 26 mentioned in the declaration, asked leave to amend and the defendant's counsel asked leave, if leave to amend, granted to plead anew, which was granted, on condititon that he should be at liberty to do so. The plaintiff's counsel declined the amendment on these terms. On the part of defendant, his foreman swore that he purchased the timber from Hicks, and paid him for it. The lot was shewn from the evidence to be a wild lot, not enclosed.

At the close of plaintiff's case, defendant's counsel moved for a nonsuit, on several grounds which were overruled. The case went to the jury, and verdict for plaintiff.

In last term defendant moved for a new trial on the grounds: 1st. that plaintiff did not prove that he ever possessed the land on which the alleged trespass was committed, *nor any title thereto.*

2nd. That the judge permitted plaintiff to produce and prove the consideration of a deed from one Hicks to plaintiff, without which no right of action could have been made out in plainiff. He also asked for a stay of proceedings, on the grounds that the title to lands came in question, and that on production and proof of the title from Hicks' title was at once brought in question.

Sherwood, Co. J.—It appeared in evidence that Hicks was in possession of the whole of lot number 6, as much as any person could be in possession of a wild lot, and that while in such possession, he conveyed the north-west quarter, on which the trespass was committed, to the plaintiff. This appeared to me at the trial (and I have seen nothing since to change my opinion), to give him a sufficient possession, taken with the acts of ownership exercised by himself to enable him to maintain this action. He proved a *prima facie* title, which was not in any way controverted by the defendant.

The question of jurisdiction is an important one, and on the whole, I cannot say, I am free from doubt. The County Court Act gives to that Court, jurisdiction in any action except the cases