

sell and transfer to the defendant and one Brown, and that the defendant, acting on this representation and the agreement of Williams to procure and forward the transfer, gave the promissory note; that Williams was not the owner and was not in a position to transfer any interest in these lands, as the plaintiff well knew; and that he never did transfer the lands to the defendant; that when the note was given it was agreed between Williams and the defendant, as the plaintiff well knew, that it was not to be used, negotiated, or transferred until the transfer to the defendant of the interest in these lands should be completed, and that the plaintiff, when the note was transferred to him, received it without consideration and with full knowledge of the agreement and of the fraud alleged.

W. E. Middleton, K.C., for the plaintiff.

Grayson Smith, for the defendant.

MEREDITH, C.J., held that the title to land was not "brought in question" within the meaning of sec. 22 of the County Courts Act. The reason for excluding from the jurisdiction of the County Court save in certain excepted cases, actions in which the title to land is brought in question, is to prevent a binding adjudication on a question of title being pronounced by a County Court, and applies only where the title to land in *Ontario* is brought in question. But, even if this were not so, the defendants's pleading was in substance a defence of fraud, a fraudulent representation by Williams and the plaintiff that Williams was the owner of the Wisconsin land, and was in a position to transfer the interest in it, when in fact he was not. The title to land is not necessarily brought in question by such a defence, and in fact no question of title was raised at the trial.

There being no reason to doubt the correctness of the order of Latchford, J., the motion was refused with costs.

DIVISIONAL COURT.

SEPTEMBER 21ST, 1909.

WILLINSKY v. ANDERSON.

Malicious Prosecution—Defendants not Responsible for Prosecution—Nonsuit—Malicious Issue and Execution of Search Warrant—Advice and Direction of Solicitor and Crown Attorney—All Facts not Laid before Advisers—Conflict of Evidence—Question for Jury—New Trial.

Motion by plaintiff to set aside nonsuits entered by FALCONBRIDGE, C.J.K.B., in actions brought by Sarah R. Willinsky, a mer-