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 referred to in the 16th sec.; and the first of them is where the title to land comes in question.

In order to the proper decision of this case, we must enquire if the title to land is here brought in question.

It is laid down in the books that the mere assertion of a title without proof of it, is not to be taken by a court as ousting it of jurisdiction In the present case no evidence of title in the defendant was given. It is true that evidence was given, that the foreman of the defendant purchased the standing timber on the lot in question from Hicks. There was nothing to shew that he, after his conveyance to the plaintiff, had any title in it. The mere fact of a person having sold the timber to the defendant, whether he once owned the land on which it stood, or not, is not evidence of title. The counsel for the defendant did state that the land had been conveyed to the plaintiff by Hicks, his stepfather, to enable him to vote at an election, but no evidence was given to substantiate it. It is doubtful if there had been evidence to that effect, if it would have been evidence of title.

The County Court Act seems to me to authorize this court to try trespasses to land, as well as other suits in which the title does not come in question. I think that no further than by the assertion of the want of title in the plaintiff by the defendan the title came in question, and I do not consider that sufficient to oust this court of jurisdiction.

The defendant is entitled, I think, to judgment, on the issue to the first count. The verdict should be amended to correspond, as it was a mistake for it to be taken as general I discharge the rule on condition of this being made a part of the rule.

ENGLISH REPORTS.

COMMON PLEAS.

Chorlton v. Lings.

(*Continued from page* 63.)

Mellish, Q. C. (*R. G. Williams* with him), for the respondent.—This is a case where the lady claims to vote for the borough of Manchester. That borough was created by the Reform Act of 1832. Now, my learned friend admits that the phraseology of that Act cannot be strained so as to include women among the electors to whom the franchise is given for the first time by that Act. Therefore, so far as the borough of Mancaester is concerned, and, therefore, so far as the present case is concerned, the contention of my friend must rest on the construction of the Representation of the People Act of 1867.

Now it is admitted that, when that Act was passed, the common opinion was that women had not the right to vote, and therefore that Act was passed in view of that opinion. But I contend that the opinion which has prevailed for so long on this subject, both among lawyers and among ordinary persons, is strictly in accordance with the common law. In the first place, this common opinion is proof of what the common law is, in the absence of any proof to the contrary. Of course there may exist strong evidence which will rebut this presumption, but I submit that no such evidence has been adduced to-day by my friend.