

Sec. 69 of the Division Courts Act provides that "the Division Courts shall not have jurisdiction in any of the following cases." . . . 4. "Actions for the recovery of land, or actions in which any right or title to any corporeal or incorporeal hereditaments, . . . comes in question."

If this is applicable to the matter of the counter-claim, then, unless sec. 74 of the Act enables me, I cannot deal with the counter-claim in this Court. That section provides that "where, in any proceeding before a Division Court, the defence or counter-claim of the defendant involves matter beyond the jurisdiction of the Court, such defence or counter-claim shall not affect the competence or the duty of the Court to dispose of the whole matter in controversy, so far as relates to the demand of the plaintiff and the defence thereto, but no relief exceeding that which the Court has jurisdiction to administer, shall be given to the defendant upon any such counter-claim."

I have not been able to find any decision of material assistance to me in construing this section, and a somewhat careful examination of it has left me in doubt as to its meaning. In *Davis v. Flagstaff Silver Mining Co.*, 3 C.P.D. 228, the question of jurisdiction had reference only to the amount of the claim pecuniarily, and not to its character otherwise. Here it is not the amount claimed by the counter-claim that affects the jurisdiction, but its character as involving a question of title to land.

If all that portion of sec. 74 following the word "controversy" had been omitted, no difficulty of construction could have arisen. But to say that the court shall dispose "of the whole matter in controversy so far as relates to the demand of the plaintiff, and the defence thereto," and then to attach this rider, "but no relief exceeding that which the court has jurisdiction to administer shall be given to the defendant upon any such counter-claim," is not this to place the matter back just where it was before?—at least, as to cases where title to land would come in question. Does the last quoted clause indicate the intention of the Legislature to confine the enlarged jurisdiction to cases formerly beyond it by reason merely of the amount or sum claimed as debt or damages being too large, but not to give jurisdiction in cases where Division Courts could not, before that, administer relief, such as where the right or title to land was involved?

I am of the opinion that such was the intention of the Legislature; that a fair construction of the section supports this view, and that if in this case a question of right or title to land is involved, this Court has no jurisdiction to deal with it. In *Re Crawford v. Seney*, 17 O. R. 74, the Division Court was held to have jurisdiction. There the plaintiff agreed to sell a parcel of land for a certain price; \$10 of the purchase money was paid, and the defendant went into possession. After remaining in possession a considerable time, and not being satisfied to accept such title as the plaintiff could give him, he at length abandoned possession; and the owner then brought the action for use and occupation. The only dispute seemed to be whether the defendant had continued in possession as prospective purchaser, or had become a tenant of the plaintiff, and liable as for use and occupation, the title remaining in the plaintiff during the whole time.