

TAYLOR, C.J.]

[April 9,

MCMILLAN v. WILLIAMS.

Statute of Frauds--Title to land--Jurisdiction of County Court--Pleading.

Appeal from the County Court of Deloraine.

The plaintiff's claim was for a balance of purchase money of real estate sold under a verbal agreement.

The defendant had paid \$200 cash, and was to pay the remaining \$100 when plaintiff furnished the title.

There was a dispute between the parties as to the nature of the title which defendant was to accept for part of the property.

In his dispute note defendant denied his indebtedness, and also set up his version of the agreement, and that the plaintiff had not completed the title. He also claimed that the County Court had no jurisdiction.

At the trial plaintiff proved that he had furnished the title he had agreed to furnish according to his version of the agreement; but defendant gave evidence in support of his version of it.

Plaintiff had a verdict for the full amount of his claim and interest thereon.

Held, that to oust the jurisdiction there must be a *bona fide* dispute as to a matter of title; and as the County Court judge had found a verdict for plaintiff, it must be assumed that he had decided that there was no *bona fide* dispute as to any question of title, and the appeal as to this point failed; but,

Held, also, that the appeal must be allowed with costs, on the ground that there was no agreement in writing signed by the defendant on which he could be sued for the purchase money of land, although the deed had been delivered; that this objection was open to defendant under his defence of "not indebted," although it did not appear whether it had been raised at the trial or not.

Cocking v. Ward, 1 C.B. 858; *Foster v. Reeves*, (1892) 2 Q.B. 255, followed.

Huggart, Q.C., for the plaintiff.

Patterson for the defendant.

TAYLOR, C.J.]

[April 11,

WARK v. CURTIS.

Demurrer--Contract under seal signed by one partner in firm's name without authority from the other partner--Parties to action--Breach of warranty as to authority.

The defendant demurred to the third count of the plaintiff's declaration, which set out an agreement under seal between Martin & Curtis, of the one part, and David Wark, of the other part, whereby Wark agreed to cut and saw into lumber the timber on certain parcels of land, and Martin & Curtis agreed to pay therefor on certain terms, that the defendant executed the agreement in the firm name of Martin & Curtis, of which he was a member, but had no authority from Martin to use his name in making and executing it, of which want of authority Wark had no knowledge, but that the defendant acted therein on his own authority only; also that Wark performed a large part of