sion Court (York) exactly in this way, accompanied by these circumstances:—

A. was a freeholder, and had a good title to a quantity of cleared land, near Maple Village, Vaughan; he had a tenant in possession of it in fact,—that is, living in a house on the same land. B. takes possession of several fields of this land, perhaps twelve acres in all, pastures it, occupies it, rents it to others, and makes use of it as his own for several years, without the shadow of a title, being a mere trespasser or usurper.

A. brings an action for use and occupation for an amount within the jurisdiction of the Division Courts, say $20 or $40, or even for $100. B. by an attorney appears at the trial, and without producing any proper title whatever, or any proof, asserts that he is the owner and asks the Judge to turn A. out of the court, on the ground, that "title to land will come in question." A pretended title, set up by himself, as a mere trespasser or illegal occupant, to cover his illicit profits. The Judge, without making B. shew any title, refuses to try the case, merely upon his *ipse dixit* that he has a title, whilst A. stands ready with a surveyor's certificate, his deed, his tenant, and other proof to show that B. has no title whatever, and that his alleged title is all a fraud.

Now A. (if this ruling be law) must submit to a continual occupation of his land by B., or sue for say $20 in the Queen's Bench. Suppose the trespasser to be worthless, he has no remedy in fact, without incurring a great deal of costs. He cannot sue in the County Court, for in that court title to lands cannot be tried any more than in the Division Courts. It is true that in the County Court, B. would have to plead title to land in question, and swear to the truth of the plea.

I find upon looking at the English cases that the ruling of the Judge at Richmondhill was at least wrong to a certain extent. In England, Division Courts (or rather County Courts as they are there) cannot try questions or suits where lands *bona fide* come in question. But it must be *bona fide*, not a sham title. The judge (it is held) has a right to go so far into the title that he can see some reasonable or plausible title made out by the defendant; he will not take his mere word for it, and if the defendant cannot produce some title to satisfy him, the judge, he will give judgment for the use of the land.

Remember A. did not sue for trespass, but waiving that, he sued for the use of the land, accepting B., as it were, as a tenant at will. It is true an action for use and occupation may arise when an occupant has entered the land originally as a tenant, or under an agreement to purchase, but it will lie also where any one occupies land not his own with the tacit consent of the true owner.

If A. had produced a title in court and B. had done the same, be it ever so defective in form, provided it was a *bona fide* claim by documents or proof, then the judge upon hearing it, just so far as to ascertain that title would have to be decided by him, should of course dismiss it. At Richmondhill this was not the case.

The cases in England in the County Courts, and in Ireland under the Civil Rights Bill, all go to show that he, the judge, should go into some evidence, to see if he has jurisdiction. The decision of each case must depend upon its own circumstances. I refer to a leading English case, *Lilley* v. *Harvey*, reported in No. 14 County Court cases, page 102, decided by Mr. Justice Wightman, on an application for a writ of prohibition, and commented on by Mr. Jagoe, page 195.

The same principle is laid down and applied to Justices of the Peace, where lands come in question before them in summary trials, see *Rex* v. *Wattesley*, 1 B. & A. 648; also in *Owen* v. *Pierce*, No. 14 County Court cases, 282, July 1st, 1848; Jagoe's work, 197; also see a case, *In re Knight*, 12 Jurist, 101; *Lloyd* v. *Jones*, 11 L. T. 182. When speaking of an action for use and occupation it must not be forgotten that the action is founded not on the common law but upon the statute 11 Geo. II. chap. 19. It is also laid down in cases that an action for use and occupation cannot be supported where the holding is and has always been adverse, but in such a case trespass or ejectment is the remedy: Lord Raymond, 1216; Bacon Ab. assumpsit A.; 2 Strange, 1239; 1 Camp. 360. This, however, does not affect the question first discussed.

CHAS. DURAND.

Toronto, April 25, 1867.

TO THE EDITORS OF THE LOCAL COURTS' GAZETTE.

Assumpsit.

GENTLEMEN,—The name of E. S. appears on the assessment roll for the township of B. for the year 1866, as owner of part of Lot No. 11, in Concession 5th of said Township. The