he acquired the freehold of the tenement by purchase secondly, that before removal he acquired the soil on which the tenement was erected, &c.; and, thirdly, that the building was not plaintiff's, as alleged. (*Reynolds* v. *Offett*, *coram* Chewett, Co. J., 3 U. C. L. J. 169.)

After the defendant has, under our statute, sworn that his plea is not pleaded vexatiously, the judge is not at liberty to entertain the surmise that it means nothing. The defendant pleads it at his peril, and the County Court is without jurisdiction to inquire into the truth of it. (*Powley* v. *Whitehead*, 16 U. C. Q. B. 592, 5 U. C. L. J. 15.) If the plea be not accompanied by such an affidavit, the court may order it to be taken off the file, because of its irregularity; but when the defendant swears that it is necessary for his defence upon the merits to have the title brought in question, then the jurisdiction ceases. (*Ib.* per Burns, J.)

If the title be not raised on the pleadings, but suggested by defendant in evidence, it is for the judge to inquire into the case, in order to satisfy himself that the action will bring title to land in question. (*Cowen* v. *Pierce*, 1 C. C. Chron. 282; Cox & Lloyd's County Courts, 254.)

It is certainly not enough for defendant merely to assert that he disputes title, in order to withdraw an action from the cognizance of a County Court. The judge must be satisfied, not that the claim is a good one, but that it is preferred with *bona fides*, and is sufficiently substantial to have an existence, however dubious may be its value, (but see *Marsh* v. *Dewes*, 7 Jur. 558.) For this purpose he may hear the objection and investigate the claim of title, so as to ascertain whether it be *bona fide* and substantial. It is plain that the court cannot ascertain whether title is really in dispute in the action, so as to be unable to decide the action without deciding upon the disputed title, unless it institutes an inquiry into the fact. (*Lilley* v. *Harvey*, 5 D. & L. 648; *Lloyd* v. *Jones*, 6 C. B. 81; Cox & Lloyd's County Courts, 253.) The court must be satisfied that the title is in dispute *in the action*, so that the action cannot be tried *without trying the title*. (*Ib.*)

If title be not a material ingredient in the action; if the real merits of the case can be tried without any reference whatever to title, the Court is not ousted of jurisdiction. Thus, where an action was brought to recover damages for an injury caused to the plaintiff's premises by the negligent conduct of the defendants' servants, whereby canal water was suffered to overflow, and at the trial the defendants disputed the title to certain embankments, and went into evidence to show that under their private act they were not bound to repair them when wharves were erected contiguous to the canal, and that such wharves had been erected and were out of repair, and caused the damage complained of the plaintiff gave evidence that the damage was caused by the *negligence* of the defendants' servants, in not opening certain sluices; the Court of Queen's Bench held, that the County Court was not ousted of jurisdiction. (*Morton* v. *Grand Junction Canal Company*, 6 W. R. 543.) But where, in trover for the conversion of grain, &c., the pleas were "not guilty," and not "possessed," and under these pleas it appeared in evidence that the real dispute was whether the grain, &c., which defendant had caused to be seized in execution, as being the property of one Barman, his debtor, was the goods of Barman or of the plaintiff—and that depended upon whether a deed which Barman had made in May 1848, of the land on which the grain, &c., was raised in 1849, was a *bona fide* conveyance, or fraudulent, with intent to defeat creditors—it was held, that although the title to land was only brought into question *incidentally*, still the Court was ousted of jurisdiction. (*Trainor* v. *Holcombe*, 7 U. C. Q. B. 548.)

If a party be sued for a nuisance on land, and set up as a defence that he is not the owner of the land, title to land clearly comes in question. (*The Queen* v. *Harden*, 2 El. & B. 188.) So where, in an action for a trespass, committed by breaking the doors of certain rooms in a cottage belonging to the plaintiff: the plaintiff's case was, that he had let the defendant a portion only of the cottage, and had reserved to himself the rooms in which the trespass was committed, which defendant denied. (*In re Chew* v. *Holroyd et al*, 8 Ex. 249.)

Title, however, does not necessarily come in question because the subject of dispute is a freehold, or something that forms part of a freehold. Every case must rest on its own peculiar circumstances, the test being, not the nature of the subject matter, but the nature of the *claim*. (Cox & Lloyd's County Courts, 256). Thus, where an action was brought for seizing a horse, and the defence was that the defendant was lord of the manor, and had seized it for a heriot; to which it was replied, that the horse was the joint property of the plaintiffs, and that one of them only was tenant of the manor, it being admitted that the defendant was the lord of the manor; the only question for trial was whether the horse was the joint property of the plaintiffs, and that one of them only was tenant of the manor. (*Penfold et al.* v. *Newland*, 1 C. C. Chron. 123; see also *Jenkins* v. *Evans*, *Ib.* 196.) So an action for taking sand and gravel from Hounslow-heath, was held not to involve a question of title. (*White* v. *Smith*, Cox & Lloyd, 256.)

Besides, defendant may be in such a position that he cannot set up title to land. Where the relation of landlord and tenant exists, the tenant cannot dispute his landlord's title. Nor, if the tenant voluntarily allow another in possession, can the latter dispute the landlord's title. But if