courts shall not have cognizance of any action where *title* to land is *brought in question*" (Consol. Stats. U. C., cap. 15, sec. 16). It has been held that the title must be *bonâ fide* in question, and it may be so either on the pleadings or evidence. Here the learned judge thought it was upon the evidence, but unless title to the land was an *ingredient* in the trial and material to the decision of the case, it did not come in question (*Morton* v. *The Grand Junction Canal Company*, 6 Weekly Reporter, 543). *Title* is not necessarily *in question* because the subject of dispute is a house claimed to be a freehold or part of a freehold. Here defendant did not *question* plaintiff's *title* to the freehold. The only dispute was whether the house *formed a part of the freehold*. This was a question as to which the county court had jurisdiction. Defendant did not dispute plaintiff's title to the land. His contention was, that admitting the freehold to be plaintiff's, the house sued for was no part of the freehold (*Eversfield* v. *Newman*, 4 C. B. N. S. 418).

Secondly. The house here was clearly part of the freehold as between vendor and vendee (*Bunnell* v. *Tupper*, 10 U. C. Q. B. 414; *Bald* v. *Hagar*, 9 U. C. C. P. 382); and if so, plaintiff had a right to follow it (*Harris* v. *Malloch*, 21 U. C. Q. B. 82). But if not part of the freehold, it still belonged to the plaintiff, for the mortgage under which he claims was not only of the land, but of all buildings, &c., thereon.

Thirdly.—Even if the title to land did come in question, the judgment in the court below cannot be supported, for the court was then ousted of jurisdiction, and had no power to make the rule appealed from (*Lowford* v. *Partridge*, 1 H & N. 622; *Powley* v. *Whitehead*, 16 U. C. Q. B. 589; *Campbell* v. *Davidson*, 19 U. C. Q. B. 222).

Burns, contra.—If the rule was a nullity, as seems to be contended on the other side, then there can be no appeal, and if there can be an appeal the judge had power to interfere, and set the proceedings right. He is the person to judge whether title to land came in question, and his decision on such a point is not the subject of an appeal (*Trainor* v. *Holcombe*, 7 U. C. Q. B. 548). If the article in the *Law Journal* referred to by the learned judge states the law correctly, his decision is certainly right. The only ground here on which the plaintiff claims this house is that it is part of the land, and if it be, then as the title to the house is in question the title to the land must be in question as well. The plaintiff can only succeed by proving his title to the land, which he does through a mortgage of the realty.

[ROBINSON, C J.—Your argument amounts to this: that evidence could not be received to prove his title to the land, and that through such evidence he must derive his title to the house.] Yes! The moment the plaintiff began to prove his title to the house he had to prove title to the land, and then he was out of Court. [ROBINSON, C J.—Suppose the plaintiff had chosen to set out his title to the house, that he was the owner of the land to which it was attached, and that defendant removed it, and defendant had pleaded that though the plaintiff owned the land, yet the house was not part of it. How would it have stood then?] There would then have been an admission on the record, which might have dispensed with plaintiff's proof of title, but there is nothing which could have that effect here (*Gooderham* v. *Denholm*, 18 U. C. Q. B. 203; *Carscallen* v. *Moodie*, 16 U. C. Q. B. 304; *Cleaver* v. *Culloden*, Ib. 582; *Gasco* v. *Marshall*, 7 U. C. Q. B. 193; *Walton* v. *Jarvis*, 14 U. C. Q. B. 640).

ROBINSON, C. J., delivered the judgment of the court.

The county courts have not jurisdiction where the title to land is brought in question. In this case the title to land was not, for all that appears on the record, brought in question by the pleadings. Then was it by the evidence upon the trial?

The plaintiff had never been in possession of the house, and his claim to it was as assignee of a mortgage (we assume in fee) on which the house had stood, being built on posts set in the ground, and not itself set in the ground.

We do not see the mortgage. The plaintiff as assignee of the mortgage had never entered; a great part of the mortgage had been paid, and the whole debt was not yet due. We infer, however, from the evidence that the mortgagor was in default, and if so, the plaintiff had a right to enter. Being in that position, he sees that the house in question had been taken off the premises and was being removed by a person to whom the mortgagor had sold it, as he swore, because he never meant to pay any more money on the mortgage.

The plaintiff naturally was inclined to oppose this as diminishing the value of his security, and so brought this action in the county court, the value of the building being small. Could he have his right tried in that court? Defendant pleaded that the house was not his.

So far as that might depend on the question whether it had been a fixture or not while it stood on the mortgaged land, that would be a question in one sense regarding title to land, for if a fixture it was part of the soil, and it could only be in that view that it could be the plaintiff's property. Then the plaintiff would have to show his title to the land in order to make out his title to the house, and the court would have to try and determine upon that right.

We think the learned judge rightly held that he had no jurisdiction, and so could take no proceeding in the cause after he saw that title to land was brought in question.

Appeal dismissed.

STANDING v. THE LONDON GAS COMPANY.

Contract—Corporation—Sub-contract—Liability.

One T. contracted with the defendants, a corporation, to construct certain work for them, and on the same day the plaintiff agreed with T. to do a portion of it for $900, subject to the same conditions which bound T. in his contract with the defendants, one of which was that 20 per cent. of the price should be retained until three months after completion of the work, and then paid upon the certificate of the manager that it had been performed to his satisfaction. T. on the same day by letter authorized defendants to pay the plaintiff for his work up to the amount of T.'s contract with him, and defendants in answer agreed to this, provided the plaintiff should carry out his contract with T., and perform his work to the satisfaction of the manager, on whose certificate alone any money should be paid. Defendants paid the plaintiff all but the 20 per cent. as the work progressed, but the manager refused to certify, complaining that it was improperly performed. It was proved, however, that he had verbally agreed to pay the men who had worked under the plaintiff $100, if they would discharge the Company. *Held* (reversing the judgment of the court below), that the plaintiff had no right of action against defendants, for there was no contract between them, and at all events they would not be liable without the manager's certificate.

(T. T., 25 Vic.)

Appeal from the County Court of Middlesex.

Action for work and materials, money had and received, account stated, &c.

Plea, never indebted.

The facts out of which this suit arose appeared to be as follows: one George Taylor, by contract entered into with the London Gas Company, dated the 20th of June, 1859, agreed to construct certain works for the defendants. By the contract the defendants covenanted to pay Taylor from time to time as the work progressed by semi-monthly payments eighty per cent. of the work performed, retaining twenty per cent. until three months after the completion of the contract, when the same was to be paid upon the certificate of the manager that the contract was fully executed and performed.

On the same day, 20th June, 1859, Taylor sub-let a portion of the work—namely, the construction of the tank and dry well for the gas works, to the plaintiff for the sum of $900. The plaintiff covenanted with Taylor to do the work precisely in the manner indicated in Taylor's contract with the company, the provisions of which contract were to be as binding on the plaintiff as if he was the original contractor with the company. Taylor covenanted with the plaintiff for payment as follows: "To pay him from time to time as the work progresses, by semi-monthly payments, say on the fifteenth and thirtieth days of July and August next, eighty per cent. of the work so performed, retaining twenty per cent. until three months after the completion of this contract, when the same is to be paid upon the certificate of the manager of the London Gas Company that this contract is fully executed, the puddle perfectly water-tight, and the whole work properly and satisfactorily performed."

On the same day, 20th of June, 1859, Taylor addressed a letter to the plaintiff in these words:

"With reference to our understanding relating to the payments mentioned in the contract entered into this day, for the excavation and puddling of the tank and dry well for the London Gas Company, I beg to say that I am willing, and I do hereby authorize