referred to in the 16th sec.; and the first of them is where the title to land comes in question.

In order to the proper decision of this case, we must enquire if the title to land is here brought in question.

It is laid down in the books that the mere assertion of a title without proof of it, is not to be taken by a court as ousting it of jurisdiction. In the present case no evidence of title in the defendant was given. It is true that evidence was given, that the foreman of the defendant purchased the standing timber on the lot in question from Hicks. There was nothing to shew that he, after his conveyance to the plaintiff, had any title in it. The mere fact of a person having sold the timber to the defendant, whether he once owned the land on which it stood, or not, is not evidence of title. The counsel for the defendant did state that the land had been conveyed to the plaintiff by Hicks, his stepfather, to enable him to vote at an election, but no evidence was given to substantiate it. It is doubtful if there had been evidence to that effect, if it would have been evidence of title.

The County Court Act seems to me to authorize this court to try trespasses to land, as well as other suits in which the title does not come in question. I think that no further than by the assertion of the want of title in the plaintiff by the defendan the title came in question, and I do not consider that sufficient to oust this court of jurisdiction.

The defendant is entitled, I think, to judgment, on the issue to the first count. The verdict should be amended to correspond, as it was a mistake for it to be taken as general. I discharge the rule on condition of this being made a part of the rule.

Snider v. Bank of Toronto.

Interpleader—Claimant—Execution creditor—Insolvency—Bill of sale—Fraud—Defeating or delaying creditors—Fraudulent preference—Change of possession—Jurat.

Bill of sale of merchandize executed by S. and G., the consideration of which was for a pre-existing debt and cash he then advanced by S. to them. It was admitted, that they were unable to pay their debts in full. S and G. made the transfer at the request of the plaintiffs; and with the cash they received, they paid one debt they owed by 10s. in the £, and other small debts they paid in full in cash. The rest of the cash they offered, though not accepted, to pay 10s. in the £ to C. & C., who were holders of the notes sued on by the defendants in the original action.

The jury were told that if the object of the sale was merely to prevent other creditors from enforcing their claims, or of giving plaintiffs a preference as against the defendants or other creditors, it would be void.

Held, on the authority of *Wood* v. *Dixie*, 8 Q. B., 892, and *Graham* v. *Furber*, 14 C. B., 414, that it should have been left to them to say whether the sale to plaintiff was *bona fide*, for the purpose of relieving the execution debtors from the necessity of a forced sale of their goods, or for the mere purpose of protecting them from the claims of other creditors, in which latter case it would be void. But as the jury found generally for the plaintiffs, a nonsuit was refused.

Held, that it was no objection to the jurat of an affidavit that it did not shew that the two barginees were severally sworn

Sherwood, Co. J.—Interpleader to try the ownership of property seized on an execution, against the goods of Henry Colborne Snider and Nehemiah Gilbert, who formerly were in the business of grocers: and contracted the debt for which judgment was obtained against, and for which the execution issued. These parties commenced business in October, 1867, and in the month of May following sold and transferred to plaintiff by bill of sale, duly registered, the goods they then had on hand, at the invoice price amounting to the sum of nine hundred dollars or thereabouts; the consideration was paid partly by notes, which plaintiff had endorsed, and retired previous to the sale and partly by notes paid by them afterwards in cash. The defendants in the original action were examined as witnesses, and stated that finding themselves unable to pay their debts, at the request of the defendants, they made the transfer, and with the cash they received they paid one debt, they owed ot the rate of ten shillings in the pound, and other small debts in cash, and the balance of cash they divided between them, having first offered to pay Messrs. Clark & Clayton, who were at that time holders of one of the notes, and at the rate of ten shillings in the pound. They further stated that the business had been carried on in the same place by the plaintiffs, and Henry Colborne Snider went into their employment as clerk. The bill of sale was put in and proved.

The counsel for the defendants objected to the bill of sale as insufficient. The case went to the jury. I directed them that if they thought the younger Snider & Gilbert were unable to pay their debts, at the time of the execution of the bill of sale and the sale was made with the intention of delaying the defendants, or of giving preference to the plaintiff or other creditors in the recovery of their debts, the sale was void; and their verdict should be for the defendant, as far as the articles in the schedule attached to the record were transferred by them. On the other hand, if they found they were not insolvent and did not transfer for the purpose above mentioned, they must find for the plaintiffs.

In January term, 1869, defendant moved for a new trial, on the grounds that the verdict was contrary to law and evidence, that it was perverse and against the weight of evidence and contrary to the judge's charge. And for misdirection or non-direction in my not having decided that the evidence shewed that young Gilbert & Snider were unable to pay their debts in full, when the assignment was made and for not telling the jury that the evidence and case of plaintiffs shewed that the transfer was made for the purpose of defeating or delaying the creditors, of the transferrer, or with the intent of giving one or more of their creditors a preference. And that I should have directed a verdict for the defendants, at any rate, for the goods and chattels found to have belonged to the transferrers, and transferred. And that the transfer relied on was void under the statute by reason of the affidavit of execution being defective. And that I was wrong in charging the jury to distribute the verdict, in case they found the several questions submitted to them in the plaintiffs favor.

With respect to the misdirection or non-direction, it appears to me the questions of insolvency and the transference of the property, to delay creditors or for giving preference to one or more creditors, was a question entirely for the jury and not for me to decide. I left it to them, and I think all the cases bear me out in it. The case