

1849.
 Attorney-Gen.
 v.
 M'Laughlin.

The defendant's answer was filed on the 8th of December, 1848. But the conclusion to which we have come, precludes the necessity of any detailed statement of its contents. It will suffice to say, that the defendant claims a right to enjoy the water of the Ottawa in its course; affirms that the agents of the Crown, in defiance of his rights, have on repeated occasions wrongfully shut off the water from his mill by means of the entrance gate, which interruption on one occasion continued for a period of six months; and that the bottom of sluice B. was, *after the completion of the work*, lowered so as to diminish materially his head of water. He swears that neither the entrance-gate nor sluice B. is in any respect necessary to the successful operation of the slides, and that no rubbish has ever been accumulated in the channel, sufficient to obstruct the passage of timber in any degree; and he claims a right to the use of the water for the purpose of carrying away the refuse of his saw mill.

Judgment. The learned counsel for the Crown now move for a special injunction, in the terms of the prayer of the information, upon the admissions in the answer, which they contend they are entitled to on a two-fold ground. 1st, because the conduct of this defendant is a direct breach of the covenants entered into by *Frith*. And 2ndly, because the jurisdiction of this court to enjoin trespass is now firmly established, where the injury would be otherwise irreparable. They argue that the injury stated in the information comes within the definition of *irreparable* injury, and that this court will not only enjoin the defendant upon the final determination of the rights of the parties, but will in the interim keep matters in *statu quo*, until such determination.

We think that the learned counsel for the Crown have failed to establish the propriety of granting this injunction, upon either of the grounds insisted on by them on the argument of this motion. But beyond the points then discussed, we are very clear that no case has been made on behalf of the Crown which could warrant the interference of the court. The Attorney-Generel has told us, in the information, that "*the soil of the river Ottawa is vested in her Majesty in right of her Crown.*" That is the single allegation upon which this

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