

possession must establish his right at law before he comes into equity." In the *Attorney General v. Hallett*, (a) an information had been filed by the Attorney-General, on behalf of the Crown, stating an encroachment on the royal forest of Waltham in Essex. The Attorney-General had demurred to the pleas of the defendant; and pending the judgment of the court, the defendant having commenced to cut down the trees and underwood, the Attorney-General moved for a special injunction, which was unanimously refused. Baron Alderson says (page 573): "This is an application in equity; now in equity, if a wood is claimed in ejectment against a party in possession, no injunction lies against him in general for cutting it." And again (page 574): "This act on land within a forest would, without doubt, be waste. The question is, whether pending a trial of fact as to title we should grant an injunction."

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

In the cases just cited, the court refused to interfere by special injunction against the party in possession claiming adversely to the plaintiff. The converse is equally true. This court will not, as a general rule, interfere *in favour* of a party *in possession* to restrain a casual trespass. (b)

Judgment.

But here the defendant, judging even from the information, is not a mere trespasser. Looking to his answer, he asserts that he is entitled to have the water of this stream flow to his mill in its accustomed manner. *Prima facie*, as a riparian proprietor, he would undoubtedly be entitled to such an easement. The information has asserted no title in the Crown adverse to him. Under such circumstances, so far from being a trespasser, he would unquestionably have a right to enter upon the lands of the Crown, to abate that which, for aught that has yet appeared, is a nuisance. No precedent has been cited which could warrant a special injunction in such a case.

But we are clearly of opinion that, under the particular circumstances of this case, we could not have granted this application, although it had been brought within the rules which govern this court, in the exercise of its jurisdiction, as clearly as it seems to us to have been excluded. If

(a) 16 M. & W. 569. (b) *Drewry*, 188; 19 Ves. 155; 3 Mer. 173.