

1849. opinion that the authorities would not warrant us in coming to such conclusion. If the ends of justice are better attained by preserving matters in *statu quo* pending litigation, in the class of cases to which we have referred, we know not why the same principle should not be applied, with even more propriety, in matters of trespass, and that whether the complainant be in or out of possession. Nevertheless, the law unquestionably is so, and it is for us to administer the law as we find it, and not to legislate. It is true, indeed, that Mr. Vice Chancellor *Knight Bruce*, in *Haigh v. Jaggar*, (a) is reported to have said: "I am not convinced that where a man is in possession, however full and complete, of an estate, simply and merely adverse to that of another by whom the estate is, whether at law or in equity, claimed against him, without any privity between them, such a state of things, if the party in possession by his answer, whether truly or untruly, swears his title to be just and valid, or that of his adversary to be unjust or invalid, does

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of necessity prevent a court of equity from interfering (before any judgment at law or decree in equity) to restrain the party in possession from stripping the estate of its timber, pulling down the mansion house upon it, or other such acts." Reason seconds the doubt of his Honour. But we see no mode of giving suitors the benefit of that reasonable doubt in the face of direct decisions. In a recent case before Sir *James Wigram*, (b) the plaintiff laid claim to lands in Cheshire, stated that the party in possession had marked the trees on the estate and advertised them for sale by auction, that they were ornamental, and their destruction would be attended with irreparable mischief, and applied for a special injunction. After a careful review of the cases, and amongst the number that one before Vice Chancellor *Knight Bruce*, his Honour said: "There did not appear to be any case in which a party coming to this court against another in possession, who claimed to be entitled to cut timber, had ever obtained an injunction to restrain him from so doing, till his title had been established at law." And again: "The principle is well settled, that a party out of

(a) 2 Coll. 231.

(b) *Davenport v. Davenport*, 18 Jurist, 227.

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