not only entitled to damages for the injury done, but to the abatement of the nuisance also. (a) And although the writ of assize of nuisance has given place to the action on the case, still a nuisance of this sort may even now be abated by the plaintiff himself. (b) Again, a reversioner, who cannot sustain any present damage, is permitted to maintain an action for the protection of his right; and, where the nuisance is continued after a first verdict, substantial damages may be recovered. In *Shadwell* v. *Hutchinson*, (c) Sir *Launcelot Shadwell*, after having brought a previous action, as reversioner, against the defendant, for darkening an ancient window, in which he recovered one shilling damages, brought this second action for the continuance of the same nuisance, and recovered £100 damages. This verdict the court refused to set aside. Now if courts of common law properly permit action after action to be maintained for injuries of this sort, and if verdicts for substantial damages are properly upheld, although no actual damage has been sustained, for the purpose of indirectly securing to the plaintiff the specific enjoyment of his right, I am quite unable to understand why this court, which can attain the same object directly, and by a single suit, should refuse relief.

But it is not necessary to determine the abstract point now. This is not a case of the kind supposed. The present complainant is the proprietor of a mill privilege, which is materially injured, as he has alleged and proved, by the nuisance of which he complains. Now, were that all, it would not be a defence, in my opinion, to an application for equitable relief, under such circumstances, that the water had not been applied to any useful purpose. A water privilege is a valuable property in itself—more valuable frequently than the soil to which it is annexed. But, obviously, its value may be for the time lessened, or even wholly destroyed by such a nuisance as is here complained of, which, while it lasts, is something more a than a mere prospective injury to the right when called into exercise. The very subject is for the time destroyed; the water privilege, for the moment, ceases to exist—and the present value of the property, as a necessary consequence, is proportionally diminished; for, as there is a substantial difference between an actually existent water power and one which is to be called into being by a course of litigation, it follows that there will be a substantial difference in the price also. Now, if the defendant's mill-dam be such a nuisance,—if it be productive of material injury to the plaintiff's water privilege,—if it deprives him of the enjoyment of his legal rights, and depreciates the present value of his property, (and I am of opinion that all this has been satisfactorily established)—then, it will not be denied, I think, that for such a wrong there ought to be, somewhere, an adequate remedy; and, it is equally clear, I apprehend, that the common law remedy is altogether inadequate. The power of bringing action after action, is not an adequate remedy. The necessity for such repeated litigation is, in itself, an intolerable evil, and affords sufficient ground for equitable relief. But the common law remedy is plainly inadequate, in other respects, to the ends of justice. It cannot wrest from the defendant that of which he illegally retains possession; it cannot secure the plaintiff in the specific enjoyment of his rights, nor can it restore his property to its real value. In all these respects, this court and this court alone, has the means of doing complete justice, because that cannot be accomplished otherwise than by the protection of the right in specie; and I am of opinion, therefore, that the plaintiff would have been entitled to a decree although no attempt had been made to apply the water power to any useful purpose. (d) But where, as in the present case, such an attempt has been made and prevented by the illegal act of the defendant, the right to equitable relief appears to me to be free from doubt.

The last ground of defence fails altogether upon the evidence. The defendant has not proved his title to Lot 33; indeed, neither is that fact, nor the defence which rests upon it, in issue in the cause, for the allegation is that the defendant's title accrued after answer filed, and no amendment has been made. (a) The evidence is materially defective in other respects. Mr. *Dennis* disproves the existence of any mill-site on Lot 33; and there is not enough to show that the injury, if any exist, would sustain an action. The facts go far, moreover, to establish the plaintiff's right to raise the water on Lot 33 to the extent of one foot. Upon the whole, apart from the fundamental difficulty to which I have adverted, and assuming that this defence would have been available, upon proper proof, (to which as at present advised, I am not prepared to assent) it ought not, in my opinion, to prevail in the present case. If there be such an equity as is suggested, the circumstances of the present case are not such as to warrant us in giving effect to it by way of defence. The defendant, if he be entitled to equitable relief, must file a bill for the purpose.

ESTEN, V. C.—The plaintiff and defendant are two riparian proprietors on the River Humber, the owners of mills; and the bill is to restrain the defendant from backing the water of the river upon the plaintiff's mill, whereby, as is alleged, its operation is impeded. The defendant erected his mills some time before the plaintiff erected his mill, and while the land, now owned by the plaintiff, belonged to one *Burgess*, who did not complain of this defendant's proceedings. *Graham* however having purchased about eighteen acres of *Burgess* bordering upon the stream, erected a saw-mill upon it, and has instituted this suit. The only mill that the plaintiff has is a saw-mill, and the sole object of the suit is to obviate injury to a mill of this description. The facts of this case, so far as the evidence extends, are free from doubt. It is quite clear that the defendant *Burr* backs the water upon *Graham* to the extent of about ten inches, and that *Graham* backs the water upon the lot above him—namely, Lot 33, to three times that extent and upwards, or about two feet six inches or more. This lot, when *Graham* erected his mill, belonged to one *Cunningham*, and it continued his property at the filing of the bill and the putting in of the answer; but it is stated that five days after this latter period the defendant purchased this lot of *Cunningham*, and that he is now the owner of it. The answer contains an allegation that the plaintiff backed the water of the river upon the defendant's property, and that if the water there were reduced to its proper level, the plaintiff's saw-mill would be wholly useless. This allegation cannot apply to the purchase by *Burr* from *Cunningham*, which I have mentioned, because it was not completed until afterwards. It is said, indeed, that *Burr* had then a lease of two acres of this lot, but this is not proved. The defendant, however, entered into evidence on this point, and the plaintiff endeavoured to prove an arrangement with *Cunningham* entitling him to back water on Lot 33 to the extent of one foot, which was only material with respect to this matter. The case also was argued at considerable length on this ground. I think therefore that the defendant should be let in to prove his contract and deed as to Lot 33, and it becomes necessary therefore to view the case with reference to those possible facts. With regard to the privilege of raising the water a foot on Lot 33, I think it proved that the elder *Cunningham*, when the owner of the lot, granted that privilege to *Graham*, and *Graham* had proceeded to build his mill on the strength of it without any interference on the part of *Cunningham*, he might be bound, and *Burr* claiming under him, if with notice, might also be bound. But it appears clearly that this license was revoked before the mill or

(a) Vin. Ab. tit. "Nuisance," H. & J.

(b) Raikes v. Townsend, 2 Smith Rep. 9; The Earl of Lonsdale v. Nelson, 2 B. & C. 302.

(c) 2 B. & Adol. 97.

(d) The North Union Railway Company v. The Bolton and Preston Railway Company, 3 Rail. Ca. 3[illegible].

(a) Stamps v. The Birmingham, Wolverhampton and Stone Valley Railway Company, 6 Railway Cases 128.