

then and there with the leaden bullet aforesaid, so as aforesaid shot, discharged and sent forth out of the pistol aforesaid, by the said —, otherwise called —, in and upon the belly of him the said H. H., upon the right side, near the hip, one mortal wound of the depth of three inches, and of the breadth of one inch, of which said mortal wound he the said H. H. then and there instantly died: and so the Jurors aforesaid, upon their oath aforesaid, do say that the said —, otherwise called —, him the said H. H. in manner and form aforesaid, feloniously, wilfully, and of his malice aforethought, did kill and murder, against the peace of our said Lady the Queen, her Crown and dignity. [Conclusion as in form No. 1.]

5. Inquisition for Manslaughter.

[The same as murder, omitting the words "of his malice aforethought" throughout, and the word "murder" in the conclusion.]

6. Casual Death—Found Drowned—Name unknown.

CAPTION as before do upon their oaths say, That the said man, to the Jurors aforesaid unknown, on the — day of —, in the year aforesaid, at the Township aforesaid, in the County aforesaid, was found drowned and suffocated in a certain river there called —; and that the said man, to the Jurors aforesaid unknown, had no marks of violence appearing on his body, but how or by what means he became drowned and suffocated, no evidence thereof doth appear to the Jurors.

In witness, &c. [Usual attestation.]

7. Casual Death—Found Dead.

CAPTION as above do upon their oaths say, That the said H. H., on the — day of —, in the year aforesaid, at the Township aforesaid, in the County aforesaid, in a certain field there, was found dead; and that the said H. H. had no marks of violence appearing on his body, but by the visitation of God, in a natural way, and not by any violent means whatsoever, to the knowledge of the said Jurors, did die.

In witness, &c. [Usual attestation.]

8. Casual Death—Drowned by Bathing.

CAPTION as before do upon their oaths say, That the said H. H., on the — day of —, in the year aforesaid, at the Township aforesaid, in the County aforesaid, going into a certain pond there called —, to bathe, it so happened that accidentally, casually, and by misfortune, the said H. H. was, in the waters of the said pond then and there suffocated and drowned, of which said suffocation and drowning the said H. H. then and there instantly died: and so the Jurors aforesaid, upon their oath aforesaid, do say that the said H. H., in manner and by the means aforesaid, accidentally, casually, and by misfortune, came to his death, and not otherwise.

In witness, &c. [Usual attestation.]

9. Casual Death—Death in Prison.

CAPTION as before do upon their oaths say, That the said H. H., being a prisoner in the Gaol of the County of —, at the Town of —, in said County, on the — day of —, in the year aforesaid, at the Prison aforesaid, by the visitation of God, in a natural way, to wit, of a fever, and not otherwise, did die.

In witness, &c. [Usual attestation.]

(TO BE CONTINUED.)

U. C. REPORTS.

CHANCERY.

GRAHAM v. BURR.

Riparian proprietors—Injunction.

The plaintiff and defendant were owners of mills on the same stream, the defendant's being lower down than, and erected before, that of the plaintiff. By the erection of the dam of the defendant, it was alleged that the plaintiff's mill privilege was affected injuriously. Although it was shewn that the plaintiff, in order to work his mill, was compelled to dam back the water so as to overflow lands higher up the property of the defendant, the title to which he had obtained after the commencement of this suit, the court (*Ex parte V. C. dissentiens*) held the plaintiff was entitled to an injunction against the defendant, restraining him from damming the water back upon the plaintiff's property.

[1 U. C. Chan. Rep. 1.]

The bill in this case was filed by William Graham against Rowland Burr, and stated to the effect that plaintiff being the owner of eighteen acres of Lot No. 31, in the 10th concession of Vaughan, across which the river Humber flowed, began in April 1850, to erect a saw mill, and dig a mill race thereon: that defendant being the owner of Lot 31, in the 9th concession, had in July 1849 thrown a dam across the river on his premises, the effect of which was to pen back the water upon the mill of plaintiff: that Burr had leased his lot to one McIntosh, who, after the lease, had raised the dam to a greater height, whereupon plaintiff brought an action at law and obtained judgment therein, upon which execution had been sued out against McIntosh for £111 7s. 5d., and which was returned *nulla bona*: that Burr had obtained a surrender of McIntosh's interest in the premises, upon which the dam was still allowed to remain, whereby the plaintiff was hindered in the use of his mill by reason of the backwater of such dam.

The bill prayed a perpetual injunction against the defendant and all others the occupiers of the said lot, restraining them from permitting the said dam to remain at its then height or at any such height as might pen or dam back the waters of the said river over and above the usual and natural water marks of the said stream, or prevent the water escaping from the race of the plaintiff's mill. To this bill the defendant put in an answer. The cause, having been put at issue and evidence taken, now came on to be heard on the pleadings and evidence, the effect of which sufficiently appears in the judgment of the court.

Mr. McDonald and Mr. Charles Jones for plaintiff, cited, amongst other cases, the Duke of Devonshire v. Elgin (a) *Soltan v. De Held*, (b) and *Eden* on injunction 352.

The defendant in person.

The CHANCELLOR.—The plaintiff and defendant are mill owners on the river Humber. The plaintiff's mill is situated higher up the stream than the defendant's, and his complaint is that the defendant's dam pens back the water to an extent which impedes the working of his machinery, and materially injures his mill site. He prays that the continuance of this nuisance may be prevented by perpetual injunction.

The jurisdiction is not denied; it is of very ancient date, (c) although its exercise has become much more frequent in modern times; (d) but several objections are made to its application in this particular case. It is said—first, that the plaintiff's title must be tried at law;—secondly, that the evidence before us fails to establish a case for equitable relief;—lastly, that the plaintiff is himself a wrong-doer, and on that ground disentitled to relief in this court.

The plaintiff answers the first objection by the assertion that he has established his title at law; and, as proof of that

(a) 2 L. J. N. S. 496, S. C. 7 Eng. R. 39. (b) 16 Jur. 326.

(c) *Bush v. Field*, Cary 129; *Finch v. Resbridge*, 2 Ver. 390; *Bush v. Western*, Pre. cha. 530.

(d) *Dewhurst v. Wrigley*, C. P. Coop. 319; *Elmhirst v. Spencer*, 2 Mc. & G. 68; *Rochdale Canal Co. v. King*, 2 Sim. N. S. 78; *Dawson v. Paver*, 5 Har. 516; *Gardiner v. The Village of Newburgh*, 2 J. C. R. 162, lb. 272 & 2.