he becomes the owner of the lot above, he is the party aggrieved, and can complain of the wrong, and can object to *Graham's* supposed right as based upon wrong and having therefore no existence. It may be conceded that the wrong done to the owner of Lot 33 is not such as this court would interfere to prevent. The court might refuse at the instance of *Burr* to compel *Graham* to demolish his works for the protection of Lot 33 from injury, not considering the injury of that nature which would warrant its interference by the exercise of its preventive jurisdiction. But it is one thing to interfere against a party and another to interfere in his favor. The court often refuses to interfere either in favor of or against a party. To call the court into action in favor of a party, he must have right without any admixture of wrong: to induce the court to interfere against a party, the wrong complained of must be substantial and real, and perhaps, in the sense in which this court uses the term, irreparable or destructive of comfort and convenience.

The court might refuse to aid *Burr* against any riparian proprietor below him, who at the same time owned the lot above him, on account of the injury done by his water power to that lot, but it does not therefore follow that it is to interfere against him at the instance of a party having no better right than himself. Now I cannot concur in granting an injunction to Mr. *Graham* in this suit and upon this bill, without being convinced that he has a valuable mill privilege on his land, proper for the purposes of a saw-mill. If we are to decide this question without reference to a court of law, the evidence does not enable us to do so, even including that of Mr. *Dennis*. It may be tolerably clear that *Graham* has no right to back the stream upon Lot 33 to the extent he has done; and if the right to do this is essential to the constitution of his mill privilege, it may be clear that he has none whatever. As to whether he has any privilege, supposing the water reduced to its proper or natural level at Lot 33, it is, to say the least of it, extremely doubtful. Mr. *Dennis*, I think, decidedly negatives the existence of any such privilege to any—the smallest extent. It is true that his earlier evidence seemed to leave this matter in some degree of obscurity; but in his last examination when the question was put once and again to him pointedly, and his attention must have been drawn to the precise point, he uses this language: "If the water in the plaintiff's pond were so drawn down as not to back water on Lot 33, he could not work his saw-mill—he would not have sufficient water power even with any alterations he might make in the construction of his mill, or by lowering his head race to work a saw-mill, but only some light machinery such as a carding machine or something of that kind;" and after saying that if the mill could work in dead water it might be lowered ten inches, he said, in answer to a question from the court, "even then I do not think there would be sufficient power to drive a saw-mill if the water was so lowered as not to back on Lot 33." I should, I think, have little difficulty in deciding upon Mr *Dennis's* testimony, that with the water reduced to its natural level at Lot 33, the plaintiff would not have any privilege at all. It would not be a question of *majus* or *minus*, into which perhaps the court would not enter, provided the right appeared to be substantial, but it would appear that the mill must be wholly inoperative. The witness *Barons*, however, who is the tenant of the plaintiff, expresses the opinion that, with the water at its natural level on Lot 33, there would still be sufficient water power at the plaintiff's mill. Without examining the weight to be attributed to this speculative opinion in opposition to the professional testimony of Mr. *Dennis*, it is sufficient to observe that the right under such circumstances, is, to say the least of it, too doubtful to warrant an injunction issuing in support of it. As to whether the plaintiff has the right to back the water upon Lot 33 to any extent less than he has been in the habit of doing, or if he has, whether by so doing he would obtain any water privilege at his mill, which it would become this court to protect by the exercise of its preventive authority, are points left wholly in the dark by the evidence. *Barons* indeed seems to say that with the water raised ten or twelve inches on Lot 33 he had six or seven feet head of water at the plaintiff's mill. Mr. *Dennis*, on the other hand, says that on lowering the plaintiff's pond twenty inches (which must have left about ten inches upon Lot 33) the plaintiff's head-race was perfectly dry. It seems to me impossible to reconcile these two statements. Whether, therefore, the plaintiff has any right to back the water upon Lot 33 to any extent less than he has hitherto done, or if he has, whether it would afford him a water power, which it would be proper for this court to exert its extraordinary jurisdiction to protect, is wholly uncertain, and can be only ascertained by a trial at law, or a further investigation before this court.

The result is—1st. That I would not grant Mr. *Graham* an injunction on the ground of his possession of a site for a factory until he shew that he has erected one or has been prevented from so doing by the defendant's proceedings: in other words, I would not act on the contingency or possibility of his making that use of the water some day, and thus enable him to obtain protection for a saw-mill not entitled to it, under pretence of protecting a factory not in existence. 2nd. That I would not grant Mr. *Graham* an injunction to protect his land, irrespective of any mill, from the injury arising from the back-flowage of the water, because I am wholly uninformed whether that injury is more than nominal, and because in such a case I think an injunction would be improper: and 3rd. That I cannot concur in granting an injunction to Mr. *Graham* to protect his saw-mill, because I would not grant such an injunction to the serious detriment of the defendant without being sure that the plaintiff has a valuable privilege to protect, and because in the present state of the evidence it is wholly uncertain whether he has any such privilege. I would not, however, debar him from further inquiry, should he think it advisable, either by action at law or further investigation before this court.

These are the views I have formed upon this case, and although I can have little confidence in their correctness, since they differ from those of the Chancellor and my brother *Spragge*, still, as they are the best that I have been able to form after a very careful consideration of the case, I consider it my duty to express them.

SPRAGGE, V. C.—The point for the consideration of this court I consider to be, whether the dam erected by the defendant on Lot 31 in the 9th concession does so raise the water on Lot 31 in the 10th concession—the plaintiff's lot—above its natural level, and thereby injuriously affect the plaintiff's rights to the use of the water as it flows through his lot, as to entitle him to relief in this court. The defendant has, I conceive, by his answer, as well as at the hearing of the cause, so put himself upon the judgment of this court, desiring the decision of the court without proceedings at law, that if in the opinion of this court the plaintiff's rights are so injuriously affected by the defendant's dam, it is proper to decree a perpetual injunction.

There is no difference of opinion in the court as to the fact that the waters of the River Humber are raised on the plaintiff's lot above their natural level to the extent of about ten inches, and that this is produced by the backing of water caused by the defendant's dam; the consequence is, that the fall of water on the plaintiff's lot is less by about ten inches than it would be but for the plaintiff's dam.

It is not shewn that any part of the plaintiff's land is overflowed by the penning back of the water, or that any right of the plaintiff is infringed thereby; unless he have available water power on his lot, which he cannot enjoy so beneficially to himself, by reason of the penning back of the water. If he have such available water power, then one mode in which as a riparian proprietor he is entitled to the use of the water as it flows past him may be injuriously affected.