

whole information has been based. He has no where informed us whether he claims, on behalf of the Crown, a right to obstruct the natural flow of the water of the Ottawa, in any way or to any extent; and the court is of course uninformed of the grounds upon which such claim is supposed to rest. The soil is said to be in the Crown, but that fact does not necessarily import any right to obstruct or divert the water; nay, it is quite consistent with the right of every riparian proprietor, to insist upon the water being allowed to flow in its accustomed course. The soil underneath streams is frequently vested in the subject, but that by no means imports a right to interfere with the easement of the riparian proprietors, to have the water flow on over the soil at its natural level. Nay, it is quite consistent with such easement.

1849.

Attor'y-Gen.
v.
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But we were referred to the 9th Vic., ch. 37, as establishing a legislative title in the Crown. Assuming that we are to take notice of this act, though it would undoubtedly have been more in accordance with the rules of pleading to have referred to the statute, and deduced from it such rights as it was supposed to confer, yet, without deciding any thing upon the form, and assuming that we can strengthen the case by reference to that enactment, still the case made by the information remains imperfect as ever. True, the act has vested in her Majesty the slides on the Chaudière rapids. But there is no allegation that the slides, as they *then* existed, did in any degree interfere with the rights of the proprietors upon this stream. For aught that appears, the legislature may have intended to improve the stream, so far as that could be accomplished without any injurious obstruction of the water, and without any intention of affecting the rights of occupiers. But whatever may have been the purpose of the legislature, there is no allegation that, at the time of the trespass, the works remained in the same condition they were in at the time the act in question received the royal assent. Suppose that, at the period alluded to, there had been no entrance gate, or that the one then existing wanted the stop-log, which the defendant is said to have removed. Suppose the sluice B., instead of remaining

Judgment.