of the question of right; but the injunction was refused on the ground that the party asking for it was a municipal body from whom no toll could be asked.

The first point is whether an injunction (which by the express terms of our statute can only suspend the exercise of an asserted right until the legal existence of that right is determined) can properly issue to remove and undo what is already completely done and accomplished. The power given by our statute is in express terms, and is only that of "ordering the *suspension* of any act, proceeding, operation, work of construction, or demolition," &c., &c. (Sec. 1.) This is the only power given as regards this class of cases where physical acts are complained of, and this is, as a general rule, in complete accord with the English law. "It is merely provisional in its nature, and does not conclude a right. The effect and object of the interlocutory injunction is merely to preserve the property in dispute *in statu quo* until the hearing or further order. In interfering by interlocutory order the court does not profess to anticipate the determination of the right; but merely gives it as its opinion that there is a substantial question to be tried, and that till the question is ripe for trial, a case has been made out for the preservation of the property in the meantime *in statu quo*." This is the general rule expressed in the words of a well-known *ex professo* treatise—on injunctions—by Mr. Kerr, p. 12, and based upon a large number of leading cases which are cited, and are of binding authority.

But although this is the general rule of our statute, and seemingly of the English law also, I am not prepared to say that there can be no case in which a defendant can be compelled to restore a thing which has been already done to its former condition, and so effectuate the same results as would be obtained by ordering a positive act to be done. Whether our statute permits it—or, indeed, whether our statute is the limit of the law of injunctions in this country, are very important questions which we do not now decide. As regards the highly artificial rules of the law of injunctions in England, it is certain that the courts of equity there have had to adapt their proceedings to the varying necessities of justice in a great variety of cases, and on referring to the treatise already quoted, we find at p. 230 that the thing asked for here may be sometimes allowed. "Though a court of equity has no jurisdiction to compel the performance of a positive act tending to alter the existing state of things, such as the removal of a work already executed, it may, by framing the order in an indirect form, compel a defendant to restore things to their former condition, and so effectuate the same results that would be obtained by ordering a positive act to be done. The order when so framed is called a mandatory injunction. The jurisdiction has been questioned; but its existence must be admitted beyond all doubt. It must, however, be exercised with caution, and is strictly confined to cases where the remedy at law is inadequate, &c. * * * * * If there is a full and complete remedy at law, there is no case for a mandatory injunction."

If, then, our law permits this particular form of injunction in any case, we should have to see, before granting it, that there was no adequate remedy at law,—which can never be admitted in the present case, where besides the direct action, there is the summary indictment for nuisance in obstructing a highway, if the plaintiff's pretensions are well founded. Therefore, on the first point, I am against the petition for injunction, but not for the reason assigned in the judgment. I do not venture to say, however, that it is a bad reason, under our statute, if that is the limit of our jurisdiction; but I have doubt upon the point, founded on the authority of the cases cited in note at p. 232 of Kerr, to the effect "that there is no rule which prevents the Court from granting a mandatory injunction where the injury sought to be restrained has been completed before the finding of the bill."

The second point, as to the exaction of the tolls, rests on different ground. If this were asked by an individual from whom toll had been exacted or demanded, there might be no difficulty; but it is asked by a municipality in its corporate capacity, and which as such could certainly never be called upon to pay toll at a turnpike gate, and is therefore without interest. That ground of the judgment, therefore, should be maintained. Of course we express no opinion as to the right; we only say the exercise of the right is not, under the circumstances, by injunction; that the remedy by action, or by indictment, is open; and we will not interfere with the discretion exercised by the Judge below in