

The writ of injunction in cases of this kind, to stay waste pending a suit to try the right, has, in Maryland, taken the place and performs the office, in all respects, of the ancient writ of estrepement. It is an injunction not founded on any privity of title or contract whatever; it is an attendant upon and an auxiliary of the action at common law, or the suit in this Court in which the title has been or may be drawn in question; it follows and shares the \* fate of that suit, and cannot be dissolved upon an answer, in any way, denying the plaintiff's title, until that suit has been **585** fully determined in favor of the defendant. Like an estrepement, its restrictions do not extend to an inhibition of any ordinary use of the land by the occupying tenant; for he is allowed to cultivate it as usual, and to take wood for fuel, repairing of houses, for fencing and the like, so he does no waste or destruction to the inheritance.

It must, however, be recollected, that there is no instance of this Court's ever having interposed by an injunction to prevent a mere trespass, not instant and irreparable where no suit had been instituted here or in a Court of common law, involving the title; for, against the granting of such an injunction, which does not operate as an auxiliary to a suit to try the right, the same reasons apply here as in England. It does not fall within the jurisdiction of a Court of equity to try the validity of mere legal titles; for all such purposes recourse must be had to the ordinary tribunals of the common law. A person can only come here to obtain the interposition of the conservative powers of this Court in cases where the common law remedies are inadequate or to which they do not at all apply. If the plaintiff's title is denied, and he acquiesces in the denial by refusing to bring an action at law to have it authenticated and sustained, he can have no ground to ask any relief of this Court, founded on a claim which he himself thus shrinks from having judicially investigated, or put into a course of being legally established.

In conclusion I deem it proper to remark, that this mode of applying for this injunction by a separate bill, was irregular and improper; it should have been asked for by a petition, filed in this case, without praying for a subpoena to bring in defendants who were already before the Court. The urgency of the case may be some excuse for the irregularity; but I shall in all cases as far as practicable require parties to pursue the regular and proper course.

ample damages; it is certainly better, that an unlawful proceeding be prevented, than that recourse be had to a Court of law, after the injury is done.

The Chancellor's opinion has not been changed by a perusal of the answers. He regrets, that the point was not argued by the counsel.

It is ordered, that the aforesaid injunction be continued until the final hearing of the cause, or the further order of this Court.