

many of them, under the direction of the complainant. The twelfth cause of the agreement declares, that it was the object of the company in entering into the agreement, among other things, to promote leases to other parties, and the entire frame of the instrument shows that such purpose was kept steadily in view.

The defendant was to have the privilege to cut timber on the lands of the company, (not within the limits of the demised premises,) necessary in the construction and maintenance of the works, mines and buildings; but this was a mere privilege, and did not constitute the defendant, in any sense, the tenant of the lands from which the timber was to be cut.

In the case of *Moats vs. Witmer, 3 Gill & Johns.*, 118, it was decided, that a party who had a right to enter upon premises, for a particular purpose, became a trespasser, and an action of trespass could be maintained against him, if he entered for a different purpose. That it was the *intention* of the defendant which gave character to the act of entry. If made for a purpose provided for in the agreement, it was of course innocent, if not, he subjected himself to be sued in trespass, and to the payment of damages commensurate with the injury. So here—the defendant, under the agreement, might cut down wood and timber for a particular purpose; but, if he undertook to do so for another purpose, he is a trespasser, and must answer in damages for the wrongful act. It is the *purpose* for which the timber is cut, which gives complexion to the act. If the purpose be authorized, the act is rightful; if not, he is a trespasser, and a jury would not fail to make him pay in damages, in proportion to the injury. A court of equity, it seems to me, would be passing beyond the boundaries which have been assigned to it, if it were, in such a case, to interpose its extraordinary power of arresting acts by injunction, and, if necessary, enforcing its prohibition, by attachment, fine and imprisonment.

Thinking, therefore, that the plaintiff has not made out a case of irremediable injury, so far as the cutting wood and timber is concerned, for making the road, and that the courts of law, if