

in granting the injunction, specifies the time and terms upon which a motion for a dissolution may be heard. It is declared, that

---

And the case was afterwards brought regularly before the Court on a motion to dissolve the injunction.

KILTY, C., 22d December, 1806.—The motion to dissolve the injunction in this case having been continued from the September Term last, was submitted at this term on notes in writing, which, together with the proceedings, have been attentively considered.

The question arising in this case is an important one as it respects the interests of the parties, and the power and jurisdiction of this Court. The position laid down by the late Chancellor, and which appears to be conformable to the principles of a Court of equity, was, that this Court ought not to control the judgment of commissioners, in cases similar to the present; who, when they exercise their judgment on a subject, over which the law has invested them with a power; and determine on an Act to which that power is competent, cannot with propriety be restrained.

The question occurs then, whether, in this case, the law has invested the commissioners with a power on the subject over which they have exercised their judgment? The Act empowers them to survey, lay out, and open a road in the best and straightest direction; and leaves the manner of executing it to their discretion, without requiring a confirmation of their proceedings by the Levy Court, or any other tribunal. It was for the Legislature to determine, whether such power should be given, and they have made no exception; but that of the buildings, yards, orchards, or meadows, through which they are prohibited from running, without the owner's consent. But it is alleged, that the commissioners, acting under a special authority, have exceeded the powers vested in them, by locating the road over the mill race, which is as much a building, or part of a building, as the mill house. If the Chancellor could entertain this opinion, the injunction would certainly be made perpetual: but a mill race is, in no sense, a building, or a part of a building. (*Co. Litt.* 161, a.)

One of the grounds for the injunction, stated in the bill, is, that a road equally good with that contemplated by the commissioners, and as little expensive, may be had by running it through the complainant's land above the race and dam. But, this opinion is expressly contradicted by the commissioners. Surely this is a point on which the law has invested them with a power to decide according to their judgment; and the propriety of that judgment ought not to be questioned by this Court. So that this averment, by the complainant, cannot have any weight; nor is it necessary to consider the depositions respecting it, even if, from the contrariety of that sort of testimony, furnished by the respective parties, any satisfactory opinion could be formed.

The observations of the complainant, respecting the valuation made by the commissioners, are answered by referring to the provision made by the Act for an inquisition by a jury to which he might have resorted.

Before a great public work should be impeded, by the continuance of an injunction, it ought to appear clearly and satisfactorily, that the defendants were about to act contrary to the law which gave them the power, or to do acts not sanctioned by it; or in some other way to injure the complainant, so as to come within the established principles, as a ground for their being restrained by this Court.

Such a case has not been made out by this complainant, and it is therefore ordered that the injunction be dissolved.