

593

* HILL v. BOWIE.

INJUNCTION TO STAY WASTE.

An injunction to stay waste pending an action at law is in nature of a writ of estrepement.

The restriction of such an injunction should in its commencement be co-extensive with the plaintiff's pretensions as set forth here or in his suit at law. But after the suit, which had been instituted here or at law to try the right, has been determined, then, according to the nature of that determination, the injunction may be altogether dissolved, or be made perpetual only to the extent to which the plaintiff has recovered.

This bill was filed on the 14th of December, 1826, by Morgan Hill against Daniel Bowie. It states that the plaintiff was in possession of a part of a tract of land called Grammar's Chance, to which he had a good title in fee simple; that the defendant had committed waste upon it by cutting down timber trees; and that he, this plaintiff, had brought an action of *quare clausum fregit* against the defendant to try the title to the land; which action was then depending. Whereupon the plaintiff prayed for an injunction to stay waste, &c. An injunction was granted as prayed.

The defendant put in his answer, in which he admitted, that the plaintiff was entitled to a certain part of the tract of land as stated; but he averred, that a part of the same tract of land belonged to his, the defendant's wife, the boundaries of which part had been well ascertained; and the defendant denied, that he had committed any waste as charged by the bill.

On the 11th of September, 1828, the plaintiff filed a supplemental bill in which he alleged, that he had obtained a verdict and judgment in his action of trespass; and thereupon prayed, that the injunction might be made perpetual.

The defendant, by his answer to this supplemental bill, admitted, that the plaintiff had recovered a judgment as stated; but averred, that although by the verdict it had been ascertained, that a part of the land, on which it appeared the defendant had trespassed, was the property of the plaintiff; yet it had not ascertained the claim and pretensions of the plaintiff to be as extensive as in his bill he had supposed.

BLAND, C., 25th February, 1829.—This case having been submitted on bill and answer, the proceedings were read and considered.

An injunction of this description is in the nature, and in all respects performs the office of the ancient writ of *estrepement*. It