

been or was about to be erected. And the case was thus permitted to stand over to await a decision in the action at law. *Duwall v. Waters*, 1 *Bland*, 569.

England, and he retains the opinion delivered yesterday, it is Ordered, that injunction issue as prayed by the bill. At the same time he declares, that he shall most severely punish a violation of the injunction, in case the defendant shall fail to make it appear that he has no right to the benefit he claims.

The defendant, by his answer filed on the 19th of September, 1796, admitted the devise, the possession of the land, and the establishment of a ferry, the profits of which were, for some time, divided weekly as stated; but denied that a public road had been opened to it by them; and alleged, that the road to the ferry, then used, ran through his land and was used by his permission, and not from any establishment of it by law; that there never was any ancient road to the ferry, but that the ancient road was considerably above, and crossed a ford of Patapsco Falls, and being more circuitous, was the reason for permitting the then road to be opened; that the boat, &c. procured at their joint expense, had long since been consumed, and the boat and appendages then used had been procured by the defendant, and the ferry carried on at his sole expense, since his refusal to permit the plaintiff to participate in the profits; that as the widow of the testator was entitled to a life estate in the land on which the buildings had been erected, it was agreed between these parties, that new buildings should be put up at their joint expense, which improvements were made accordingly as stated: that it was agreed that a partition should be, and it was made, with a valuation as stated; that there were a variety of dealings and transactions between them, of which there never was any final adjustment as stated, or in any other manner whatever; that he was justified in taking to his sole benefit the profits of the ferry as then used, inasmuch as it had been erected and supported at his sole expense, and as the plaintiff was largely indebted to him, he had a right to apply the proceeds of the ferry to the payment thereof: that the plaintiff had been permitted to receive a moiety of the profits of the ferry since the service of the injunction: that the defendant had since erected a ferry upon his own land, at his own expense, lower down the river, in no wise connected with or dependent upon the ancient ferry on the plaintiff's land; and that the agreement between them to divide the profits of the ferry was not intended to be perpetual, but only for such time as the boat, rope, and appendages of the ferry, erected at their joint expense, should last.

On the 15th of November, 1796, it was agreed that the bill and answer might be amended. Whereupon the plaintiff filed an amended bill, in which he stated, that since the issuing of the injunction the defendant had, in fraud of the agreement between them to have a joint ferry, set up a new ferry, on the tract of land called United Friendship, about twenty yards below, expressly with a view to injure and defraud the plaintiff; that the road to both ferries was the same; and the custom being to and from the same places, was the same to both; that in the year 1783 these parties, to secure to themselves the benefit of a ferry for their mutual benefit, obtained a lease of one acre of land as a landing place, on the opposite side of the river, from the Baltimore Company, for ninety-nine years, renewable forever, for which the rent had been regularly paid, which was strong evidence that the ferry was to be perpetually kept up by them for the joint benefit; not-