

a certain William Murdock and Zachariah Johnson, of the City of Annapolis, well knowing that the said injunction had been issued,

do otherwise than say, that the agreement shall be enforced; and that the complainant is entitled to an account of the ferry, as prayed by the bill.

As to the third object of the bill, viz: to have a suppression of the ferry which is alleged to have been set up by the defendant contrary to the spirit of the agreement, and the rights of the complaint, there are not perhaps, sufficient circumstances thereto relative brought before the Court, to enable the Chancellor to decide. But supposing the case to be as he conjectures, there is no decision that he knows of, in the books, or in the records of this Court which can be thought exactly in point. He conceives, however, that the question may be decided by common sense, without the aid of learning and authority. If two persons agree to set up, at their joint expense, a ferry for the accommodation of travellers on a certain road, and the ferry is accordingly set up; and then one of them sets up another ferry, for his own emolument, at a distance of twenty, thirty, fifty, or one hundred yards from the old ferry to accommodate the same set of travellers: who is there that will not conceive the act to be a direct violation of the rights and interests of his partner? But if the new ferry be only at a small distance, and yet is only for the accommodation of travellers on another road, who would not otherwise cross at the old ferry, it cannot be supposed, that the partner is entitled to have it suppressed. Now, whether the new ferry, in the present case, be of the latter or former kind, does not, as has been intimated, clearly appear. It is impossible for the Chancellor to proceed immediately to a final decree: and therefore the last question may remain for further consideration, and perhaps further preparation relative thereto, may yet be made.

Decreed, that the defendant account with the complainant for one-half of the profits of the ferry in the bill mentioned, from the time when the defendant took, and so long as he has retained the whole profits thereof: that the parties shall further account with each other relative to all debts whatever, arising on the agreement aforesaid or otherwise. That the auditor state the account or accounts between the parties on notice to them given, and from the proofs in this cause, or other competent legal proofs which shall to him be produced: and that having stated the account or accounts he shall report and return the same, subject to the exceptions of either party, and to be done with as shall seem just.

N. B.—The complainant's bill alleges, that the new ferry is set up at a distance of about twenty yards. The defendant's answer, says, that the new ferry is lower down, on his own land. But whether there are different roads, &c. as before mentioned, is not yet established.

On the 28th of March, 1799, the defendant, by his petition, on oath, stated, that for many years from the time of the death of his father, the accounts of the profits and expenditures of the land called United Friendship, to which the ferry was alleged to belong, were kept in certain books of accounts, or entries, which contain also the general accounts between them, as well relative to the said farm and ferry, as other transactions concerning their father's estate, and their common concerns, which he cannot otherwise identify than by reference to their subject-matter, were left in the possession of the plaintiff, and were then in his possession or under his control; that this defendant expects to prove by them various charges, for which he