

for the use of the public, to interfere, in any way, with the chartered rights of the plaintiffs, much less to authorize any subsequent private corporation to take, for their private benefit, any portion of the rights to which the plaintiffs were entitled, under their prior incorporation; but that no such authority was, in fact, conferred, or designed to be conferred upon the defendants by their Act of incorporation; their whole power to take lands for their use, against the will of the proprietors, being limited to the case of individual proprietors, and not embracing the case of lands held by any previously incorporated companies, such as those belonging to the plaintiffs. Whereupon the plaintiffs prayed, that the defendants might be enjoined from making their road as located over the lands of the plaintiffs.

KELL, Associate Judge, 25th August, 1831.—Let injunction issue as prayed; to be dissolved on the 5th of September on motion therefor; unless the complainants satisfy the Court, by affidavits, which they are hereby authorized to take before a justice of the peace, that the railroad can be located as suggested by complainants, or the same be admitted by the answers of the defendants. The affidavits to be taken upon two days notice to the opposite party or their solicitor.

Under this order the depositions of several witnesses were taken, returned, and filed. And on the 14th of September, 1831, the defendants put in their answer, in which they admit, that the Acts for incorporating such a company, as the plaintiffs claim to be, were passed by the Legislature, as set forth in the bill; but they do not admit, that the actual incorporation of the plaintiffs ever did follow from those Acts; or if it did, that they now have any existence as a body politic; on the contrary, they aver and believe, that James Beatty, of the City of Baltimore, is the sole, and only proprietor of the property known as the Bellona Gunpowder Company's * Works; and that, in consequence of there being no other corporator of the alleged company, the charter, if **444** any ever existed, has become null and void, and the company without any right or capacity whatever to sue or be sued. That the buildings of every description erected on the land claimed by the plaintiffs, were of the meanest kind; being principally constructed of unfinished plank, and deserving more properly the appellation of sheds than houses; that the defendants were incorporated by the Acts of 1827, ch. 72, and 1830, ch. 49, under the authority of which laws they had proceeded to lay out the site and route of their railroad over the land of the plaintiffs, towards the Town of Westminster; the location of which branch railroad does not, in any manner, interfere with any of the charter rights or privileges of the plaintiffs; and that a location of it in