

any other way, even if practicable, which they deny, would involve an expenditure of from fifteen to twenty thousand dollars; that, the plaintiffs being unwilling to contract for the sale of their land to the defendants, they caused a warrant to be issued for the purpose of having it condemned to their use, according to the provisions of the Acts of Assembly by which they were incorporated; but have been prevented by this injunction from completing their acquisition of a title to it in that way. The defendants further deny, that the construction of their road, as located, will prevent the plaintiffs from carrying on their manufactory; or that it will be attended with any additional hazard to the workmen employed therein; and, that instead of their branch road passing nearly a mile over the land of the plaintiffs, it crosses their land only for a distance of a hundred yards at most. The defendants deny all knowledge of the other matters set forth in the bill.

Upon the suggestion of the defendants and an affidavit of their president, the proceedings were, according to the Act of 1824, ch. 196, removed from the County Court of Baltimore, and filed in this Court on the 16th of September, 1831. After which notice having been given under an order, according to the course of this Court, of a motion to dissolve the injunction, it was accordingly brought on for a hearing.

BLAND, C., 17th October, 1831.—The motion to dissolve the injunction standing ready for hearing, and the solicitors of the parties having been fully heard, the proceedings were read and considered.

It was objected that the depositions which had been taken could
445 *not be read on this motion. Among the great multitude of the records of past injunction cases in this Court, which I have availed myself of every opportunity to look into, I have met with but one instance in which *ex parte* affidavits had ever been offered or heard; with this single exception, the long and copious stream of practice, in relation to such matters, shews, that no such affidavits should ever be admitted on a motion of this kind; and therefore, as well from reason as upon authority, I have uniformly declared, that no such affidavits should be heard on a motion to dissolve. (c) But this case having been brought here from

(c) It has been since declared, that the Court, on application of any of the parties, may order testimony, in reference to the allegations of the bill, to be taken on behalf of all the parties; in such form as it may direct, and on such terms, and under such regulations, as to notice and otherwise, as may be deemed equitable; and so, however, that such testimony be returned by the day when the motion for dissolving such injunction shall be heard; and the order providing also, that notice of the granting such order be given as shall be prescribed by the Court, on part of the party applying for the order, to the other parties named in the bill or their solicitor; and such testimony,