

good cause in order to have any such decree rescinded, and the case reheard. In this case no such good cause has been shewn, and therefore,

It is ordered, that the said petition be dismissed with costs; and that the order suspending the execution of the decree, be rescinded.

The defendants appealed, and for the manner in which the case was disposed of by the Court of Appeals, see *Wyse v. Smith*, 4 G. & J. 295.

* BOSLEY v. THE SUSQUEHANNA CANAL.

63

INJUNCTIONS.

An injunction may be granted on an *ex parte* application on the bill alone, notwithstanding an apparent misnomer of the defendant corporation.

(a)

An injunction granted before answer does not order the defendant to do, or to undo any thing.

Where a canal and its towing paths are directed to be kept in repair for the use of the public, they must be considered as highways; and the Acts of Assembly in relation thereto as public laws of which the Court must take notice.

A fee simple as encumbered with a right of way.

Nothing can be deemed a breach of an injunction forbidding the disturbance of a peculiar right of way which does not interfere with its free exercise.

THIS bill was filed on the 21st of April, 1829, by James Bosley, against The Proprietors of the Susquehanna Canal. It states, that the defendants by a deed bearing date on the 18th of October, 1813, conveyed to Edward Wilson, three mill-site lots on the east side of the River Susquehanna, and on the west side of the Susquehanna Canal, at the tide-water locks, and delineated on a plan made for the defendants as lots No. 5, 6 and 7, with three other lots of land on the east side of the canal, directly opposite to those above mentioned, and distinguished on the said plan as No. 20, 21 and 22; and also the right of taking water from the canal sufficient for the working of six pair of mill-stones of six feet in diameter each. In which deed from the defendants to Wilson, is a covenant in the following words: "And it is mutually agreed and understood by and between the parties to these presents, in manner following, that is to say, that the towing path of twenty

(a) See *Salmon v. Clagett*, post, 125.