

same, or to have the injunction properly and regularly dissolved according to the course of this court.

---

After which the suit was regularly revived by bill; and the case was referred to arbitrators, who returned an award, upon which, on the 6th of August 1832, a final decree was passed, which closed the case.

---

DUVALL v. WATERS.

The distinction between waste and trespass as regards the proceeding by injunction.

The preventive and corrective common law remedy for waste. The writ of *estrepement* to prevent waste associated with an action to try the right.

An injunction to stay waste may be granted in a variety of cases in which an action of waste will not lie. And the court will, in many cases, exercise a conservative power over property, because of there being no mode of obtaining adequate relief at law.

In *England*, if the injunction bill states and admits, that the defendant asserts and relies upon what he alleges to be a valid adverse title in himself, the plaintiff thereby states himself out of court; or if the defendant in his answer positively denies the plaintiff's title, the injunction will be refused, or, having been granted, will, on the coming in of such an answer, be dissolved.

But in *Maryland*, if the plaintiff, by his bill for an injunction, can and does put the title in issue here; or, if he states, that he has *actually* brought an action at law to try the right, he may have an injunction to stay waste, pending the suit here, or the action at law; and, such injunction will not be dissolved on the coming in of an answer which denies the plaintiff's right. If however, after he has filed such a bill here to try the right, he wishes to obtain an injunction to stay waste, he should apply for it by petition in the same case, and not by a separate bill.

An injunction to stay waste, pending a suit, does not restrain the defendant from cultivating, or making any of the ordinary uses of the land.

A conveyance, shewn to be fraudulent, declared to be void as against creditors.

The title to land sold under a *feri facias* passes by the sale; but there must be some written, and recorded evidence of the sale; such as a return to the execution under which the sale was made.

Where lands have been sold under a *feri facias*, the sheriff should, in his return, sufficiently describe the land sold by him.

This bill was filed, on the 26th of February 1827, by *Charles Duvall*, against *Nathan Waters*, *Nathan I. Waters*, and *Samuel Ratcliff*. It alleged, that *Samuel Peach* had obtained a judgment at law against *Nathan Waters* upon which he had sued out a *feri*