

too in cases of nuisance, although it is necessary in England, that the individuals complaining of the injury should have had their rights first established at law,^(o) yet here, where an action or the proper proceeding has been instituted to try the right, an injunction may be granted to prevent the repetition or further continuance of the nuisance until the right has been thus determined at law or in the regular mode.^(p)

The writ of injunction in cases of this kind, to stay waste pending a suit to try the right, has, in Maryland, taken the place and performs the office, in all respects, of the ancient writ of estrepement. It is an injunction not founded on any privity of title or contract whatever; it is an attendant upon and an auxiliary of the action at common law, or the suit in this court in which the title has been or may be drawn in question; it follows and shares the

(o) Mitf. Plea. 144.—(p) *Williamson v. Carnan*, 1 G. & J. 184.

PASCAULT v. THE COMMISSIONERS OF BALTIMORE.—1st March, 1797.—*HANSON, Chancellor.*—The motion to dissolve the injunction in this cause issued, being submitted, the bill and answers were by the Chancellor read and considered.

When the bill was presented to him for the purpose of obtaining the injunction, it was not his idea, that this court ought to control the *judgment* of the commissioners. It appeared to him, that whenever they exercise their judgment on a subject, over which the law hath invested them with power, and they determine on an act to which that power is competent, they cannot with propriety be restrained. It was not his province to decide, whether or not a street should be paved, or a sewer repaired, or whether or not the intended act of the commissioners would be beneficial to a majority of the persons to be affected by the act. But he considered the power of this court rightfully exercised, on the application of any person, who is apprehensive of injury, in restraining a proceeding not authorized by law. He conceived, that the power conferred on them by the act of Assembly referred to in the bill does not extend to the removing a pavement already made, which was not even alleged to want repairs, and lowering a street for the avowed purpose of changing the course of waters, against the consent and remonstrance of any individual citizen, whose property is to be thereby affected. The power conferred on them by the aforesaid act of Assembly, is to make, amend, repair, pave, and keep clean streets, alleys and lanes; to make, amend and repair bridges; and amend, and repair sewers; and so long as they bona fide exercise only that power, they will not be restrained by this tribunal.

Now supposing the extent of their power to be only doubtful, and that the complainants on bringing suit at law, and shewing, that they have been injured by the commissioners' completing their intended act, might recover ample damages; it is certainly better, that an unlawful proceeding be prevented, than that recourse be had to a court of law, after the injury is done.

The Chancellor's opinion has not been changed by a perusal of the answers. He regrets, that the point was not argued by the counsel.

It is ordered, that the aforesaid injunction be continued until the final hearing of the cause, or the further order of this court.