

The defendant answered the bill, and denied the right of the plaintiff to the land on which the fence, or any part of it, had been

to stay, surcease, and forbear from molesting or disturbing the plaintiff, in the peaceable possession and quiet enjoyment of one moiety and half-part of the said ferry and ferry-house situate on the said land, called *United Friendship*, lying in Baltimore county, and the appendages to the same belonging; and also injoining and prohibiting him from preventing the plaintiff from receiving his half-part of the profits of the said ferry, called Patapsco Upper Ferry, weekly and every week, according to the agreement between the parties aforesaid, till the court should take further order in the premises.'

11th May, 1796.—HANSON, *Chancellor*.—The Chancellor has examined this bill. It appears to him, that an injunction granted on filing a bill, and before hearing of the defendant, never does and never ought to go further than to prohibit the defendant from *doing something* which appears, from the statement of the bill, to be against equity and good conscience, and prejudicial to the rights of the complainant, for instance, to stay waste or proceedings at law, &c. &c. that is, to suspend the defendant, &c. An injunction directing the defendant to put the complainant into possession of a benefit, or what is stated to be his right, is never to be granted, as the Chancellor conceives, until a final hearing of the whole merits of the cause, unless in the case of a right established by record. The statement of the bill is imperfect; but the Chancellor supposes, from the nature of the application, that the conduct of the ferry, and the possession thereof, is in the defendant. If so, the injunction prayed is, in effect, to direct the defendant to settle weekly with the complainant, and pay him one-half of the profits, which indeed are, and must be, uncertain; that is to say, the injunction is to put the complainant into possession of a benefit. The complainant does not pray that the defendant be prohibited from carrying on the ferry, &c. &c. If the conduct of the ferry be in the hands of the complainant, he needs the aid of this court as prayed. In short, it appears to the Chancellor that he cannot, with propriety, grant the injunction on the bare statement of the complainant and his vouchers, considered *ex parte*. Whether or not an injunction may be granted or decreed, on the final hearing, is a question which may hereafter be determined.

The next day the bill was, with some suggestions and references, again submitted to the Chancellor for re-consideration.

12th May, 1796.—HANSON, *Chancellor*.—The Chancellor has again considered this case. He finds that an injunction has been granted by Chancellor Rogers, in the case of *Dallam v. Onion*. The principle on which it was there granted, must apply to the present case; and although the Chancellor is satisfied that, in a case like the present, an injunction was never granted in England, and he retains the opinion delivered yesterday, it is *Ordered*, that injunction issue as prayed by the bill. At the same time he declares, that he shall most severely punish a violation of the injunction, in case the defendant shall fail to make it appear that he has no right to the benefit he claims.

The defendant, by his answer filed on the 19th of September, 1796, admitted the devise, the possession of the land, and the establishment of a ferry, the profits of which were, for some time, divided weekly as stated; but denied that a public road had been opened to it by them; and alleged, that the road to the ferry, then used, ran through his land and was used by his permission, and not from any establishment of it by law; that there never was any ancient road to the ferry, but that the ancient