

allegations of his petition, in which he stated that the defendant had discontinued the erection of the fence until the 8th instant,

vided a copy of this order be served on the defendant or his solicitor, at any time before the tenth instant.

Under this order a further survey was made, the lands laid down for illustration as required, and a plot returned; after which the case was set down for hearing, and brought before the court.

5th February, 1799.—HANSON, Chancellor.—The said cause being set down for hearing, and being debated by the counsel in writing, the bill, answer, exhibits, depositions, and all other proceedings, were by the Chancellor read and examined, and the written arguments of the counsel on each side were by him read and considered.

The complainant had three objects proposed by the bill as it stands amended—*first*, to have an agreement for the division of the land enforced; *secondly*, to have an account of the profits of a ferry supposed to be on the land in the bill mentioned, conformably to the said agreement, and to be secured in the receipt of one-half thereof in future; and, *thirdly*, to have the suppression of another ferry, set up near the common ferry by the defendant.

It seems that the defendant considered it of importance, to prove that the ferry-house, &c. are not, as was supposed at the time of the agreement, on the tract of land which was to be divided. He therefore obtained an order for laying down lands for illustration. But if the Chancellor conceived it of consequence to have the precise running of the land ascertained, he certainly could not, without violating the well known established principles of this court, undertake to decide on the location, but would refer it to a jury. He cannot, therefore, otherwise than regret, that the parties have incurred an unnecessary expense. It appears that they were in possession of the ferry, landing, &c. as part of the tract of land devised to them by their father; that they agreed upon a division of the land as possessed; and that they have since held, according to the agreement. This court cannot then do otherwise than say, that the agreement shall be enforced; and that the complainant is entitled to an account of the ferry, as prayed by the bill.

As to the *third* object of the bill, *viz*: to have a suppression of the ferry which is alleged to have been set up by the defendant contrary to the spirit of the agreement, and the rights of the complaint, there are not perhaps, sufficient circumstances thereto relative brought before the court, to enable the Chancellor to decide. But supposing the case to be as he conjectures, there is no decision that he knows of, in the books, or in the records of this court which can be thought exactly in point. He conceives, however, that the question may be decided by common sense, without the aid of learning and authority. If two persons agree to set up, at their joint expense, a ferry for the accommodation of travellers on a certain road, and the ferry is accordingly set up; and then one of them sets up another ferry, for his own emolument, at a distance of twenty, thirty, fifty, or one hundred yards from the old ferry to accommodate the same set of travellers; who is there that will not conceive the act to be a direct violation of the rights and interests of his partner? But if the new ferry be only at a small distance, and yet is only for the accommodation of travellers on another road, who would not otherwise cross at the old ferry, it cannot be supposed, that the partner is entitled to have it suppressed. Now, whether the new ferry, in the present case, be of the latter or former kind, does not, as has been intimated, clearly appear. It is impossible for the Chancellor to proceed immediately to a final decree; and therefore the last question may remain for further consideration, and perhaps further preparation relative thereto, may yet be made.