

the bill, "against the unjust and unequitable attempts of the Chesapeake and Ohio Canal, and Potomac Companies, to take advantage of their own wrong, by procuring titles by purchase, location or condemnation, so as to give a priority which they could not have obtained but for the injunction, with which they had commenced the controversy."

On the 28th of November 1828, the Chesapeake and Ohio Canal Company procured another injunction from Washington county court, restraining this company from proceeding to construct its road within the limits of Frederick, Washington and Allegany counties; although the Rail Road, for the greatest part of its course in Frederick county, could not, by any probability, approach near enough to come into collision with the Canal. The unjust operation, however, of the injunction, then granted, was so apparent, that the Canal Company, by a resolution of 20th February, 1829, relieved this company from its operation eastward of the point of rocks, and the two companies remained equally enjoined from proceeding to acquire possession of the sites, or commencing the construction of their respective works, along the margin of the Potomac, from the point of rocks to Cumberland, until the claim of prior right to a choice of routes over the disputed ground, set up by the Canal Company, could be finally determined.

In November, 1828, the President of the Canal Company visited Baltimore, for the purpose of having a case stated by the counsel for the two companies, upon which the question of prior right should be made and determined.

Stating a case as it is technically termed, is an agreement upon facts, out of which a point of law may arise and be argued. The first fact to be agreed upon in the case proposed to be stated by the President of the Chesapeake and Ohio Canal Company, was the moral, if not physical impossibility of the Canal and Rail Road proceeding side by side, along the Maryland shore of the Potomac. Not believing this to be the fact, and subsequent surveys have shewn that it is not, the Rail Road Company could not admit it to be true, and the proposition to state a case was necessarily given up, and the controversy left to the usual course of the courts. The time to which the controversy should be prolonged, depended upon the Canal Company itself.

The order of the Chancellor, granting the injunction, contained a provision, "that at any time after the filing of the answers of the defendants, the court would hear the motion