

shewn by their bill, either as necessary to an injunction or to relief, called for no such disclosures as the defendants have set forth, respecting this claim of a right of choice, and, consequently, every thing relating to it, is entirely new matter, advanced in avoidance of the plaintiff's case, and concerning which they have yet had no opportunity to show any thing on their part. Justice and equity, therefore, do most manifestly require, that the injunction heretofore granted, upon an equity which the defendants have been unable, otherwise, to controvert, should be continued until the validity and extent of the claim of the defendants, can be examined and ascertained, upon surveys and evidence, which each party may be allowed to make and produce, and from which the court may be furnished with the means of determining, whether or not these two apparently harmonious acts of incorporation, have, in reality, by the improper execution of one of them, been brought into ruinous conflict with each other."

"If upon an order of survey, requiring these parties to lay down their respective pretensions, in the usual manner, and upon the return of such topographical maps and profiles as may be specially directed, if required, the fact appears, that the location of the rail road does deprive the canal of its most suitable and advantageous route, then the question will fairly arise, and be fairly presented to the court, whether the defendants have a priority of right to the choice and selection of a route for their canal or not. The extent of her interference, and the nature of the collision between these two bodies politic, will then, and in that way, be clearly and properly presented, according to the shewing and proofs of both parties."

It will be seen by the above order that, in the opinion of the Chancellor, "he has not as yet been furnished (by the canal company) with the means of forming any fair or correct judgment upon the right of choice set up by it."

It was this question "of right to prior choice," that it was the object of the canal company to bring before the Chancellor; and, in order to do so, that company was required to shew "that the location of the rail road *did* deprive the canal of its most suitable and advantageous route;" not by mere assertion, but by proof. It was a fact which this company did not believe *then*, and do not *now* believe, and consequently could not admit, honestly or consistently with the interests in its keeping.