

In short, the canal company had set up certain facts as a defence, without having offered to prove them; and the order of the Chancellor did nothing, more than to require the customary proof.

The first step, therefore, of the canal company after the order of the Chancellor of the 24th of September, was to apply for a commission to take testimony to prove its own case, as its defence to the allegations of the bill of this company. This might have been done immediately, but was delayed by the canal company nearly three months; that is, from the 24th of September to the 10th of December, on which last day, the application, signed by three of the counsel of the canal company, (a) was made to the chancellor; and the rail road company offering no obstacle to the wishes of the canal company, as expressed in the petition, the order for a commission to Jonathan Knight and Nathan S. Roberts was accordingly granted on the 18th January, 1830, and the commission issued, accompanied by full instructions from the chancellor, as to the course which the commissioners should pursue, to place the whole matter fairly before him.

Notwithstanding these facts, the directions to the commissioners from the canal company, of 24th February, 1830, signed by the President, (b) assert, that "the Chesapeake and Ohio canal company had never sought the surveys which the order of the 18th January calls for, but, on the contrary, always opposed them;" and in a letter of the 6th of November, signed by the same gentleman, (c) and addressed to this company, it is stated, "that this survey was not invited by, but required of, the Chesapeake and Ohio canal company," and it is understood that verbal declarations to the same effect have been constantly made by him.

It is difficult to account for these misstatements, if (as it ought hardly, however, to be supposed) they are intentional, unless they are designed to throw the odium of the delay in the existing controversy upon the Baltimore and Ohio rail road company; when the facts herein stated and proved, fully shew that the delay of nearly fifteen months in the filing of the answer, the setting down for argument, and the issuing of the commission, has resulted exclusively from the dilatoriness of the canal company.

(a) Appendix 4.

(b) Do. 5.

(c) Do. 6.