

BOSLEY v. THE SUSQUEHANNA CANAL.

An injunction may be granted on an *ex parte* application on the bill alone, notwithstanding an apparent misnomer of the defendant corporation. An injunction granted before answer does not order the defendant to do, or to undo any thing. Where a canal and its towing paths are directed to be kept in repair for the use of the public, they must be considered as highways; and the acts of Assembly in relation thereto as public laws of which the court must take notice. A fee simple as encumbered with a right of way. Nothing can be deemed a breach of an injunction forbidding the disturbance of a peculiar right of way which does not interfere with its free exercise.

THIS bill was filed on the 21st of April, 1829, by *James Bosley* against *The proprietors of the Susquehanna Canal*. It states, that the defendants by a deed bearing date on the 18th of October, 1813, conveyed to *Edward Wilson*, three mill-site lots on the east side of the river Susquehanna, and on the west side of the *Susquehanna Canal*, at the tide-water locks, and delineated on a plan made for the defendants as lots No. 5, 6 and 7, with three other lots of land on the east side of the Canal, directly opposite to those above mentioned, and distinguished on the said plan as No. 20, 21 and 22; and also the right of taking water from the Canal sufficient for the working of six pair of mill-stones of six feet in diameter each. In which deed from the defendants to *Wilson*, is a covenant in the following words: 'And it is mutually agreed and understood by and between the parties to these presents, in manner following, that is to say, that the towing path of twenty feet on the west side of the Canal, and that of forty feet on the east side thereof are, and shall at all times be considered public highways, and shall not at any time be shut up or unnecessarily obstructed.' That *Wilson*, by an indenture bearing date on the 6th of July, 1826, conveyed the said six lots of land to *John Paul*; who conveyed them to this plaintiff. That the plaintiff had, at a heavy expense, improved the said lots; there being erected upon some of them a very extensive merchant mill, and other buildings; the peculiar location of which property was such, that the towing paths of the Canal, which it had been stipulated as aforesaid, in the deed from the defendants to *Wilson*, should be used as highways, constituted the plaintiff's most direct, convenient, and in fact only mode of access to his mill and other property. The bill further states, that the defendants by their petition to the General Assembly, caused a law to be passed, in which, among other things, it was declared, that if any person should break down or