

orator, or to stagnate in said race or ditch, or in any other way drown or injure the meadows of your orator."

The injunction was granted as prayed in the words above quoted from the bill. The answer objects—1st, to the jurisdiction of the Court to grant the relief prayed upon the case made by the bill; 2d, that the bill does not present a case for an injunction, either as a final or interlocutory remedy; and 3d, that the wives of the complainant and defendant should have been made parties to the suit. It then avers that he has kept the race clean and the banks in repair, and that the filling up which takes place in the bed of it, except so far as freshets may occasion it, is to be ascribed to the manner in which it is used by the complainant himself, who has made pens for his cattle in the bed of it, and by other means caused the channel to be choked up. And that the race and its banks are in as good or better order than they were during the lifetime of the said Samuel Owings, and he denies that any losses have been sustained by the complainant, through any negligence or omission of duty on his part in regard to the bed and banks of said race.

The nature of the proof taken in the cause sufficiently appears from the opinion of the Chancellor.]

---

THE CHANCELLOR:

It cannot be denied, I think, that the injunction which issued upon the bill in this case, was framed upon the principle of *Lane vs. Newdigate*, 10 Ves., 193; and however attenuated may be the distinction between the rule then, if not before established, and the former doctrine of the Court with regard to the appropriate office of an injunction when not issued as a judicial writ to enforce a decree, the principle of that case seems never to have been repudiated. It may, therefore, in my opinion, be assumed that this Court has jurisdiction to compel a defendant, by means of an injunction specially worded, to do a substantive act; and I am not able to see why if this may be done in the first instance, and upon an *ex parte* application, it may not also be done in a proper case by the final