

name; yet, it is evident, that strictly speaking he has not done so; because no process has been prayed against it, by that name alone by which it is made capable of being sued; and because it also appears, that instead of asking to have the writ of injunction directed to *The Proprietors of the Susquehanna Canal*, it is only prayed for against some of their agents, that is, their governor and directors, without having the corporation itself sued or called upon to answer, or restrained in any way whatever. This, however, is an objection of which this body politic may have no wish to take advantage; but considering it as an unimportant misnomer they may come in, waive it, answer by their true name, and take defence upon the merits. I shall therefore pass over this objection for the present, and leave it to be relied upon or waived by the defendants as they may think proper. (b)

From what has been set forth in the bill and its exhibits it appears, that this body politic, under their act of incorporation had acquired a fee simple estate in a certain parcel of land in Cecil county, lying along the left margin of the river Susquehanna; over which, by virtue of the same authority, they have formed a navigable canal. (c) As to which it is expressly declared, 'that the said Canal, when completed, shall be kept in good repair by the said corporation for the use of the public.' (d) These defendants, it appears then, are the owners in fee simple of a parcel of land; which land, so far as it is dedicated to the use of the public, has been subjected to the servitude of a highway; the tolls, for the privilege of passing along which, alone belong to the corporation; and consequently, this Canal, with its appurtenances and necessary towing paths, must be considered and treated in like manner as all other highways. Because all navigable rivers and great roads or canals, common to all passengers, and which are to be kept in repair for the use of the public, are in law deemed highways. And the acts of Assembly, by authority of which they are laid out, formed, and kept in repair, are public laws of which the court is bound to take notice. (e)

I have met with no instance, in the English books, and but one case among the records of this court, in which a defendant has been apparently ordered, by an injunction of this kind, to do, or

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(b) *Binney's Case*, 2 Bland, 106.—(c) November, 1783, ch. 23, s. 6.—(d) November, 1783, ch. 23, s. 4.—(e) Com. Dig. tit. Chimin, (A. 1.) 1 Stark. Evid. 163, 400; *Agnew v. The Bank of Gettysburg*, 2 H. & G. 479.