

that of a public road or wagon way along the western margin of the Canal to his mill; whereas, the right of way over that ground, as admitted and contended for by the defendants, is confined to that of a towing path for the more beneficial or proper use of the Canal, and nothing more.

How far these several rights may be deemed reconcilable or incompatible with each other, it will be time enough to determine at the final hearing. (i) But in this stage of the proceedings, and with reference to these attachments, I deem it sufficient to observe, that where there are, as in this instance, several distinct, but intimately associated rights, such as a right of soil, alleged to be subject to two several kinds of right of way, which, from the nature of things, must, in some modes of exercising them, be brought into apparent collision with each other; (j) and an injunction has been granted for the preservation of one of them, the court will not consider any act to be a violation of such injunction, that is a fair exercise of another of the associated rights, and which leaves the right, under the protection of the injunction, as large a scope, and as free a range as it might have had when the injunction was served and before the act complained of was done. The validity and extent of the right, which, by the injunction, has been temporarily taken under the special care of the court; and of the other rights with which it stands connected, are matters which can only be determined with propriety at the final hearing; until then, or so long as the injunction is continued, they must be kept, as far as practicable, within their respective modes and lines of use, so as not to be allowed, in any manner to thwart, overlay, or obstruct that claimed by the plaintiff.

In this case it could not be said, that the cuttings complained of were not legitimate exercises of the rights of this body politic as holders of the fee simple estate in the land, and as owners of the profits of this highway or canal which they are bound to repair and keep in a proper state for navigation; unless it were shewn, that the plaintiff's right of way, in that condition in which it was found by the injunction, had been thereby in some form or other diminished or substantially impaired. And that, I am of opinion, has neither been admitted by the answers to the petition, on which the attachments were awarded, nor shewn by the affidavits which have been introduced and read by consent.

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(i) *Chichester v. Lethbridge*, Willis' Rep. 72.—(j) *Ball v. Herbert*, 3 T. R. 253.