of granting the Injunction, on the equity appearing in the original bill.

"Before the Act of 1852 ch. 133, "if the answer denied all the material allegations of the bill, yet if it disclosed an equity, of which the plaintiff may avail himself by amendment, the injunction will be continued." (Maryland Chanc. Prac., 87, vide 2 Gill and Johnson, 3)

For the reasons assigned in this opinion, I have decided that the complainant is entitled to relief, upon the bill and testimony now before me, having shown itself, prima facie, entitled to a decree. The property, the subject of the contract, should be protected against the wrongful acts of the defendants, pending the contest, and until that right is determined. (Seiger agt. Green, 4 Gill, 473. If the defendants, owing to the relation they sustain to the complainant, have been guilty of fraud, in fact or by construction of law, and for that reason the deed to them should be vacated, I cannot readily conceive what injury will be inflicted upon them by the allowance of the amendment and the continuance of the Injunction; for no one can doubt that, in the absence of process to prohibit the excavation of the coal, they would be responsible for all coal which might have been taken by them before the final decree of the Court.

And should the cause terminate in their favor, the law has provided all proper security, to indemnify them from all loss and damage. If when an answer discloses an equity of which the complainant may avail himself by amendment, I can see no reason why such an amendment should not be permitted, when it is seen by the bill and testimony they have equity. All this Court should desire is to know that prima facie, there exists such a state of facts as justifies the exercise of the equitable jurisdiction of this Court. If the complainant is entitled to the land, it should be protected. The excavation of coal ought to be prevented. That is the thing which constitutes its great value. And having shown at this period of the cause a right to the land, the defendants ought not to be permitted now to remove that which constitutes its real worth.

It is also urged that the injury complained of is but a trespass and waste, and could not be prevented by an Injunction. The General rule is well understood to be, "that for mere acts of trespass, or for that which amounts to waste, the parties will be left to their remedy at law." (Slaine agt. Mann. 4 Johnson's Ch. Reps. 21; Armstrong agt. Sukemp, 9 Gill & John., 468.) However, such is not the case when a trespasser digs into and works a mine to the injury of the owner, because it operates a permanent injury to the property as a mine; in short, it is now granted in all cases of mining coal, ores, and working quarries when the party is a mere trespasser. (2 Story's Equity, sec. 927, Livingstone agt. Livingstone, 6th Johnson Chy. Rep. 498.)

From these views, and having determined to allow the amendment; when such shall have been made, I will then overrule the motion to dissolve.

Thomas Perry.

Afterwards, to wit, on the twenty fifth day of the same month, in the year aforesaid the complainant, by its solicitors aforesaid, file in Court here the following petition, to wit:

To the Honorable Thomas Perry,

Judge of the Circuit Court for Allegany County, as a Court of Equity:

The petition of the complainant in this cause respectfully shows, that since the filing of the original bill, it has discovered and now positively charges it to be true, that the defendants have mined and carried away the amount of coal set out in the said original bill; and that the said defendants, or some of them, from time to time up to the time of filing of the bill, were mining and removing coal from the land mentioned in said original bill, and that the said Hoffman Steam Coal Company, and

the defendants, Sherman and Dean, through the said Hoffman Steam Coal Company, claim that they have the right still to remove and carry away coal from said land.

And your petitioner prays your Honor to grant it leave to so amend the said original bill filed in this cause, as to charge directly the matters and things herein above stated to be true, without prejudice to the Injunction heretofore granted in this cause. And as in duty, &c.

G. A. & C. B. Thruston

Sol's for Complt.

Which being read and heard, the Court here passed the following order, to wit:

This cause standing ready for hearing, on the motion to dissolve the Injunction, and on the motions by the complainant for leave to amend its bill, the solicitors were heard and the proceedings read and considered. It is thereupon ordered, on this 25th day of May, 1859, that the complainant have leave to amend its original bill as prayed by its several petitions heretofore filed, without prejudice to the Injunction heretofore granted in this cause.

Thomas Perry.

And thereupon the said complainant, by its solicitors aforesaid, file in Court here the following amended bill, to wit:

To the Honorable Thomas Perry,

Judge of the Circuit Court for Allegany County, Maryland:

The amended Bill of Complaint of the Cumberland Coal and Iron Company, respectfully shews, that the said complainant heretofore filed its Bill of Complaint in this Court against Allen M. Sherman, and William B. Dean, and the Hoffman Steam Coal Company of Allegany County, Maryland, setting forth that the said Allen M. Sherman, being a Director in the said Cumberland Coal and Iron Company, and being the agent for said Company for the sale of a portion of its lands, did, in fraud of the rights of said Company, sell the said lands to himself, individually, and the said William B. Dean; and that the said Allen M. Sherman and William B. Dean, in further fraud of the rights of the said complainant, did afterwards erroneously convey the said lands to the said Hoffman Steam Coal Company of Allegany County, of the State of Maryland, in which Company the said Sherman and Dean were almost the entire owners; and the said plaintiffs averred in said bill that in execution of the said fraudulent sale, the said Sherman and Dean had procured from the said plaintiff a conveyance to themselves, dated on the 22d day of April 1856, and the said plaintiff did further aver in said Bill of Complaint, on such information and belief as the said plaintiff then had, that the said Sherman and Dean, and the said Hoffman Steam Coal Company, had, since the making of the said fraudulent conveyance, mined and taken large quantities of coal from the said lands, and converting the same to their own benefit; and the said plaintiff prayed, among other things, that the said Deed might be annulled and declared void, and that the said defendants might be enjoined from mining and carrying away any coal from said land being the product thereof; to which bill the defendants answered, and other proceedings were had, as by the said proceedings, now in this Court, will appear.

And the said plaintiff has lately discovered and now charges that besides the Deed of the 22d of April, 1856, the said defendants, Sherman and Dean, procured to be made to them, by the said Cumberland Coal and Iron Company two other Deeds, intended to be in aid or confirmatory of the said Deed of 22d of April, 1856, which said two other Deeds are respectively dated on the 24th day of September, 1857