There is no reason apparent to me, why the amendment should not be allowed as well in the one case as in the other. Indeed I find the law to be, that "Courts of Equity are not debarred by any inflexible rule, from awarding or continuing an Injunction, even in the face of a positive denial, in the answer, of the equity of the bill; and may take any course necessary for the remedy or prevention of irreparable injury to the interest of a suitor, should the right finally prove to be with him, although denied, in limine, on the other side. The main distinctions which seem supported by authorities, or, at least, by the weight of authorities, appear to be, that in cases of special Injunction, if the whole merits are satisfactorily denied by the answer, the Injunction is undeniably dissolved. But there are exceptions to the doctrine, and these are fairly resolvable into the principle of irreparable mischief; such as cases of asserted waste &c.

In cases of this sort, the Court will look to the whole circumstances, and will continue or dissolve the Injunction in the exercise of a sound discretion; "and a doubt in point of law will furnish a sufficient ground against dissolving an Injunction". Leading cases in Equity, vol. 2d pages 111, 112 and 113.

The value of the property in controversy consists mainly in the coal, and I could not, in the exercise of a sound discretion, give the defendant a right to excavate & sell it. The interest to be paid on the bonds is so small a sum, compared to the value of the coal, which may be taken from the mines and land, and the property, in my opinion, might be so much injured in value, by the license, as to inflict ultimate injury upon the complainant.

From the views above expressed, it can readily be seen, that there is nothing remaining for me to do but to pass a decree, overruling the motion made by the Hoffman Steam Coal Company, to dissolve the Injunction in this case.

Thomas Perry

The Cumberland Coal and Iron Company against Allen W. Sherman William B. Dean, and the Hoffman Steam Coal Company of Allegany County.

This cause standing ready for hearing on the motions to dissolve the Injunction the solicitors for the parties were heard, and the proceedings read and considered.

It is thereupon, this third day of October, 1859, ordered that the Injunction, heretofore granted in this case, be and the same is hereby continued until the final hearing or further order.

Thomas Perry

Afterwards, to wit, on the nineteenth day of October, in the year last aforesaid, the Hoffman Steam Coal Company of Allegany County, by its solicitors, prays an appeal, and files with the Clerk of the Circuit Court here the following order, to wit:

The Cumberland Coal and Iron Company vs. The Hoffman Steam Coal Company of Allegany County, and others

No 1286 Equity
In the Circuit Court for Allegany County
As a Court of Equity

In this case, the defendant, the Hoffman Steam Coal Company of Allegany County, prays an appeal from the order of the Court passed in said case on the 5th day of December, 1858, granting an Injunction in said case; also an appeal from the order passed in said case on the 25th day of May, 1859, refusing to dissolve said Injunction; and also an appeal from the order passed on the third day of October 1859, overruling the motion made by this defendant to dissolve said Injunction, and continuing the same in full force, until final hearing. The Clerk will enter said appeals and send up the record as soon as possible.

George A. Pearre, Thomas Devecmon
Solicitors for the Hoffman Steam Coal Company of Allegany Co.

And afterwards, to wit, on the twentieth day of August in the year eighteen hundred and sixty, the Clerk of the Court of Appeals of the State of Maryland transmitted to the Clerk of the Circuit Court for Allegany County here, the Record of Proceedings of said Court of Appeals, in the aforesaid cause, remanding the same to the Court here for further proceedings therein; Which said Records in the words and of the tenor following, to wit:

"The Hoffman Steam Coal Company of Allegany County, vs. The Cumberland Coal and Iron Company

Court of Appeals of Maryland
June Term 1860

This cause standing ready for hearing, the proceedings were read and duly considered:

This thereupon, this 13th day of July A.D. 1860, by the Court of Appeals of Maryland and by the authority thereof, ordered, adjudged, and decreed, that the orders of the Circuit Court of the 25th day of May 1859, refusing to dissolve the injunction, and the order of the third day of October, 1859, overruling the motion of the appellant to dissolve the injunction, be and the same are hereby affirmed with costs, and the cause remanded for further proceedings.

Jno. C. Le Grand
B. Eccleston
Jas. L. Bartol

Maryland, Set.

I, William A. Spencer, Clerk of the Court of Appeals of Maryland, do hereby certify that the aforegoing decree is truly taken from the record of proceedings of the Court of Appeals aforesaid.

In testimony whereof I hereunto set my hand as Clerk and affix the Seal of said Court of Appeals this eighteenth day of August A.D. 1860

(Seal)

Wm. A. Spencer, Clerk of the Court of Appeals of Maryland

The Hoffman Steam Coal Company of Allegany County vs. The Cumberland Coal and Iron Company

Court of Appeals of Maryland
June Term 1860

Chief Justice Le Grand delivered the opinion of the Court.

This an appeal from an order granting an Injunction, and from a subsequent order continuing the same, upon the hearing of a motion