dissolve the injunction, upon the bill, answer and proof.

The defendant excepted to the sufficiency of the allegations of the bill because it does not state that the damage done or threatened to be done, was irreparable, and that he had no adequate remedy at law. In the case of Davis vs Reed 14 Md 152 the Court say that it is no objection to the frame of the bill for Injunction to restrain trespass, that it charges the injury to be almost instead of absolutely irreparable, but the Court must be satisfied from a statement of the grievances, that the injury would be irreparable, and it is sufficient that the Court can discover this from the whole bill. Following this decision I shall overrule this exception, as I think the allegations in the bill are sufficient to give this Court jurisdiction.

The Defendants second exception I shall rule good, as the affidavits filed as exhibits with the bill, cannot be treated as evidence, they not having been taken under the order and authority of this Court, and will not be considered as evidence in the cause.

The only questions to be considered here are, is the road in question a public highway over which the public have a right to travel at pleasure. If so, whether it was so made by grant, by dedication of the original proprietor, by condemnation under existing laws or has become so by the uninterrupted use by the public for upwards of Twenty years in either of which modes it could have become a public highway. It is not contended that this was made a public road by either of the three first modes, but the right is claimed alone by the uninterrupted use by the public for upwards of twenty years.

The proof shows that for some time prior to the year 1854 the land over which the road passes belonged to the Snowden family, was unenclosed, and various roads and paths were made through it, at pleasure or with the consent of the then owners which roads were mostly used by persons working the mine bank lying East of the land.

That Col. Capron became the purchaser of the land in 1834 and had it enclosed and cultivated and from his testimony as well as that of a number of other witnesses there was no public road running through the land at the time he owned it. In 1836 he sold it to the Ellicotts who owned and worked most of the mine bank lying East of the land. They permitted the enclosures to go down, and hauled the most of their

ore over various parts of said land, making new roads as the old would become unfit for use, during this time the public passed over all of these roads but they were mostly used by those engaged in mining. The Ellicotts afterwards sold it to Glenn and Lemmon who also used said roads, in hauling ore and coal to the furnace. In the year 1857 Glenn and Lemmon sold the land to the Defendant who immediately enclosed and cultivated said land, excluding the land in question and has held it ever since as his private property, and no effort was made till this bill was filed to have this road opened to the public, embracing a period of ten years. It is true that from 1836 when the land was purchased by the Ellicotts up to 1837 when the Defendant purchased it, it remained unenclosed and the public but mostly those engaged in mining East of the land used the various roads and paths running through the land, but it is in proof that during that time the owners claimed it as private property, and on one or more instances, objected to persons going in certain directions over the land. In order to support a right by prescription or to possess the right to pass over a road as a public highway, it is necessary that the public should have had the uninterrupted use of a road running over the same bed for upwards of Twenty years. The law never contemplated that the public could claim the right of way by prescription, passing over one portion of private property when in fact another and entirely different portion of such private property had been the location of the original road. In this case nearly all the witnesses prove that this road had been changed from time to time and it is not proved by even a single witness on the part of the Complainant, that the road as it now runs, had been used by the public for Twenty years uninterruptedly. Another convincing fact that the road never was considered or held to be a public highway, is that all the witnesses testify, that the road in question was never kept in order at the expense of the County, or worked by any of the Supervisors under or by authority of the County Commissioners.

I think therefore after a careful consideration of the vast amount of testimony taken and the law applicable to the case that the Complainant has entirely failed to show that said road is a public highway under any of modes by which it could have become so, under the laws of this State. I shall therefore pass an order dissolving