In opposition to the answer and this witness, the complainant has examined several gentlemen of the highest respectability, and although their testimony, if standing alone, might be sufficient to make out his case, it seems to me impossible to give it that effect when it is encountered by evidence with which it is perfectly compatible, but which must conduct the mind to an entirely different conclusion.

The counsel for the complainant has insisted that the evidence of Mr. Charles H. Pue, which merely speaks of conversations between the father of the complainant and the defendant, is not sufficient to extinguish the right of way, because such right cannot be extinguished by parol, and refers to the case in 5 *H. & J.*, 467, and other authorities, to sustain the position.

It is very true, that a right of way once established by prescription, (which presupposes a grant,) or by a grant, cannot be extinguished by a parol agreement, but this, by no means, proves that when an attempt is made to make out a title by prescription, founded upon an adverse and uninterrupted user for a series of years, that it is not competent to the defendant to prove by parol that the user was the result of his leave and favor, and not of a claim of right in the other party. I am, therefore, of opinion, that the injunction must be dissolved.

With regard to the fact which is said to have arisen since the filing of the original answer, and which the defendant seeks to bring forward by a supplemental answer, the authorities seem to show that it cannot be brought forward in that way. The proper mode in such cases is to file a bill in the nature of a supplemental bill, which seems to be a bill in the nature of a plea, *puis darrien continuance*, at the common law. *Story's Eq. Pl. sec.* 903; *Taylor* vs. *Titus*, 2 *Edw. Ch. Rep.*, 135; 2 *Daniell's Ch. Pr.*, 914, *and note.*

E. HAMMOND, for Complainant.

J. T. B. DORSEY, for the Defendant.