

Sullivan, }
June 27, 1913. }

OLA M. LAMBERTON & *a.* *v.* KATE DINSMORE & *a.*

In an action to restrain interference with a way, the right to which was determined in a prior suit between the same parties, the defendant is not entitled to a trial by jury upon the question whether the way described in the petition is the same as that set out in the pleadings in the original action; and such issue can only be raised in a proceeding for violation of the injunction.

BILL IN EQUITY, to restrain the defendants from interfering with the plaintiffs' right of way, extending from the Punkshire road to the plaintiffs' land over land of the defendants. The court enjoined the defendants and they excepted. Transferred from the November term, 1912, of the superior court by *Plummer, J.*

Hosea W. Parker and *Ira G. Colby* (by brief and orally), for the plaintiffs.

Edward R. Buck (of Vermont) and *Scott Sloane* (*Mr. Sloane* orally), for the defendants.

YOUNG, J. It was held when this case was here before that the judgment in *Dinsmore v. Lambertson* (Sullivan, May term, 1907) decided that the plaintiffs in this action had a right of way over the defendants' land as described in their brief statement in the former suit. *Lamberton v. Dinsmore*, 75 N. H. 574, 575. The defendants' contention that it has never been decided that the plaintiffs have a right of way over their land is therefore not open to them.

The defendants contend that the court erred in enjoining them, because they were entitled to a jury trial of the issue as to whether the way described in the plaintiffs' petition is the same way that was described in their brief statement in the former action. But that contention is not open to them in this proceeding. It can only be raised in a proceeding to punish them for a violation of the injunction.

Exception overruled.

All concurred.