

Hence, in making out a claim to a natural, unimproved mill-site, the party must shew, not only, that it exists, but that he is the owner of it. The whole of the land described by the lines A B C * is necessary to constitute a natural mill-site; and therefore, unless an individual owns the whole of that land, he **116** cannot be considered as the owner of the mill-site. Thus, suppose, that portion of this land included within the lines A 4 9, belonged to X; and, that another portion, included within the lines 8 10 C, belonged to Y; and the residue to Z; it would be perfectly evident, that neither of the three persons could be said to be the owner of the mill-site; because neither could encroach or trespass upon the other; and a portion of the land necessary for the head and tail race being cut off, from the only suitable position for the mill, neither of them could be considered as the owner of a mill-site.

This distinction between the natural existence of a mill-site, and its being the separate property of an individual has been long expressly recognized, even in our statute book; as is shewn by the Act of Assembly which declares, that any person who may be desirous of building a forging mill upon land, next adjoining to any run of water, of which he is not the owner, may obtain from Chancery a writ of *ad quod damnum*; and have it, to the extent of one hundred acres, condemned to him for that purpose. 1719, ch. 15; Repealed by 1832, ch. 56.

The plaintiff alleges, "that he is seized in his own right, and as trustee for others, of certain lands, situate adjoining to the little falls of the Potomac River, partly in Maryland, and partly in the District of Columbia, beginning on the river at the head of the little falls, and extending downwards; which property is naturally possessed of great and peculiar advantages in the application of water to mills."

This is the whole, and the best description of the mill-site claimed by the plaintiff, that I have been able to collect from the proceedings. It may be admitted, that he is seized in his own right, and as trustee for others; but how, and where the lands are situated which he claims as his own, or which he holds as trustee for others does not appear. A mill-site is a separate and entire thing, incapable of division; the land, of which it is naturally constituted, may be held in joint tenancy, or in common; but the moment it is divided and taken in severalty, the ownership of the mill-site is gone, although its natural existence remains. It may be true, as alleged, that the several parcels of land of which Amos Binney and others are the separate owners, when taken together, may have great advantages in the application of water-power to mills; and * yet, that no one of the several owners of the lands, **117** when taken in the separate parcels in which it is held, be entitled to any one mill-site. And this, there seems to be good reason to believe, is the real truth of the case.