

From the plot, filed as the defendant's Exhibit B, it appears, that the lands lying between the head of the little falls and the tide, were granted by the State, in many distinct parcels; and most probably to different grantees. The several tracts, called Arell's Folly; Addition to Arell's Folly; Jacob; Resurvey on Jacob; and White Haven; besides other parcels, not named, are represented as lying along the river between the head of the little falls and the tide. From the plaintiff's printed Exhibit A, it would appear, that the mill-site, lying on the margin of the river, from the head of tide upward, belonged, in the year 1770, to one John Balendine; that he sold it to Way, Paxson and Cloud; all, or one of whom held it about the year 1784; that, prior to the year 1816, it had passed into many other hands; that it then became vested in two persons; then in a family; and then the plaintiff purchased one-fourth. And, in some loose marginal notes on another plot, marked as the defendant's Exhibit B, some of the land along the river, from the head of the little falls to tide, is said to be, at present owned, or claimed in separate parcels by the claimants of Arell's Folly, and the claimants of Jacob, in distinct pieces; by William Stewart, by William Murdock, and by Adam Cloud's heirs. The defendants do not admit that the plaintiff is entitled to a mill-site on any part of this land; and, therefore, as in such case, the plaintiff must set forth and sustain his title by proof, it would be impossible to pronounce, from the pleadings, if they were ever so clear in representing only these facts, that the plaintiff was entitled to any mill-site, lying on any part of the river shore within the jurisdiction of this Court.

But, let it be supposed, that the plaintiff had set forth and sustained his title to a mill-site. The next inquiry is, as to the kind of danger with which he alleges it to be threatened. It must be recollected, that the mill-site thus claimed, must lay below the head of the little falls; because he claims no land above those falls. The injury, against which he asks protection, he says, will be produced by the dam, which the defendants are erecting across the River Potomac, four feet above the present surface. But this dam is on the very upper point, as he alleges; or, as the defendants allege, entirely above his land; and, consequently, he cannot, in

118 any way, *be injured as the holder of an upper mill-site, by casting back the water, and flooding his works, or diminishing his fall of water. This, I conceive to be perfectly manifest from the description given of an upper and a lower mill-site. But, to recur to the diagram for illustration, the plaintiff alleges, in effect, that the dam complained of is as at A, and being raised to 2, will divert the whole of the water of the river from 1 to 5, and let it into the tide at 7; by which his mill-site A B C will be totally destroyed.