

Taking this view of the subject, the plaintiff, according to his own shewing, must be considered as the owner of the inner mill-site; and the defendants of the outer one. And, supposing them to be alike entitled to the use of the water, it is undeniably true, that the defendants can have no right, so to divert it as to diminish the value of the plaintiff's mill-site; much less to destroy it. On adverting to the prodigious extent of the country drained by the Potomac, above the point where this dam is to be placed, it must strike every one, as very extraordinary, if true, that a dam, four feet high across the river, at that point, should be sufficient to divert the whole of its waters through a canal of only six feet in depth, and twenty-five feet in width. But the fact is positively denied. It is said, that not more than one-fifteenth part of the waters of the river, at its most reduced summer volume, can be so diverted by this dam. And, therefore, the fact, on which this part of the plaintiff's complaint is grounded, being untrue, the complaint itself is deprived of its only just foundation. For if the plaintiff's mill-site, be, as he alleges, constituted of the situation A B C, and he finds water, at the commencement of his head race in sufficient abundance for all the purposes of his mill-site, he can have no possible cause of complaint; however high, or in whatever way the projected dam across the river may be formed. *Bealey v. Shaw*, 6 *East*, 208; *Palmer v. Mulligan*, 3 *Caine's Rep.* 307; *Beisell v. Sholl*, 4 *Dall.* 211.

But the plaintiff alleges, that his mill-site is likely to depreciated in value, almost to nothing, or totally destroyed by the unlimited rivalships of new mill-sites; which the defendants will create by their projected dam across the river. Again recurring to the diagram for illustration, this complaint is to this effect: The dam A 2, will enable the defendants to conduct the water of the river from 1 to 5; and, consequently, all that space of land between that head race and the river, below the plaintiff's mill-site A B C, \* may be formed into mill-sites, outside of his and in ruinous rivalship of it. This cause of complaint, it is believed, how- **119** ever, assumes a principle of law for its basis, which has hitherto never been gravely proposed to be acted upon by any one; much less sanctioned by any of our Courts of justice. It is said, in some of the English books, that a new market, or ferry shall not be set up so near an ancient one, as to draw away its custom. But it is no nuisance or wrong for one man to erect a mill so near to that of another as to draw away its custom; or to enter into competition with it in any manner whatever. 3 *Blac. Com.* 219; *Hale de Port Maris*, 59, 60; *Blessett v. Hart*, *Willes Rep.* 508.

Supposing then it were true in point of law, as it is not, that the defendants could lawfully appropriate their canal, from 1 downwards, to the purpose of a head race to a closely set row of mills for several miles long, below, and outside of the mill-site of the plaintiff; still, as their doing so would be lawful, the plaintiff