

to the defendants, being either denied as untrue to the extent set forth; or being in themselves legal, are not of such a nature as to form the foundation of any complaint against them by this plaintiff, as the owner of such natural mill-site.

The next stand taken by this plaintiff is upon the privileges, which, he alleges, have been secured to him by the Act of Assembly incorporating The Potomac Company, upon whose estate these alleged privileges were charged; 1784, ch. 33, s. 13; which company were, for certain considerations, authorized to convey to The Chesapeake and Ohio Canal Company, all the property, rights and privileges by them owned, possessed, and enjoyed; and the new company were enabled to accept such transfer, and to hold, possess, use and occupy all the property, rights and privileges in the same manner, and to the same effect as The Potomac Company had held, and occupied the same by law. 1824, ch. 79, s. 13. And, upon this conveyance being made, The Potomac Company was to be vacated, annulled, and dissolved. This last solemn testamentary act of the Potomac Company, it is admitted, has been properly made, and that body politic has expired \*and is now no more. *Curson v. African Company*, 1 Vern. 121; 121 1785, ch. 39; 1801, ch. 104. It is also admitted, that The Chesapeake and Ohio Canal Company, as the devisee or purchaser of all the estate of The Potomac Company, can only take and hold subject to all the incumbrances of which the title deeds of that company, that is, the Acts of Assembly by which they were incorporated gave them notice, by their being specified therein. 1784, ch. 33, &c. And, consequently, if this plaintiff can establish his claim against the estate of the defunct, it must be allowed and sustained as equally available against these defendants, who have taken subject thereto.

Supposing that Act of incorporation, 1784, ch. 33, without having guaranteed any thing like a monopoly in favor of the plaintiff as against any one, to have secured to him the water rights to the full extent of his pretensions; then they amount to no more than a right to so many mill-sites as can be laid out upon his land, so far as it lies along the river, and is conterminous with the canal, constructed under the authority of that Act, and nothing more—conceding, for the present, the correctness of this claim, the next inquiry is, whether the acts imputed to the defendants can do any such injury as is complained of.

The plaintiff claims to have the canal considered as the head race to his mill-sites. The projected dam, which the defendants are constructing, it is perfectly manifest, even if it should divert every drop of water from the original bed of the river into it, cannot, in that way, do his property any harm; because all the water which he claimed the right to use, would be thus poured into the head race of his mill-site. Nor can the raising of this dam four