

feet higher be of any injury to it; on the contrary, it must be beneficial; because, instead of giving him the command, as he now has, of a head of only two feet of water, he will have six feet in his head race—and so far as the defendants may have a right to conduct the water, by means of their canal, to mill-sites outside of, and below that owned by the plaintiff, it will be seen, that every principle of law, shewn to be applicable to a natural mill-site, bears with equal force upon those of the description claimed by the plaintiff—and, therefore, unless he can shew, that the defendants, as owners of outer mill-sites, have so diverted the water as to leave not the usual quantity for his use, he has no cause of complaint. But, that is not alleged or pretended. Therefore, **122** upon these *grounds, this subject of the plaintiff's complaint might be, at once, dismissed as utterly without foundation.

But, the plaintiff contends, that these rights have not only been reserved to him by this law, but have been secured to him, as against The Potomac Company, and those claiming under them, as a monopoly; which, it is alleged, is about to be irreparably depreciated or destroyed, by means of the dam proposed to be erected by the defendants, by enabling them to create mill-sites, which they may hereafter sell; and cause to be improved, with the leave, hereafter to be obtained, from the Legislature; or, that by increasing the volume of water in the canal, they will be enabled to multiply the number of its wastes, and thereby add to the number of mill-sites created, in depreciation, and to the ruin of the plaintiff's monopoly.

It would seem to be a sufficient answer to this cause of complaint to say, that it is founded upon an assumption, that certain remote and contingent events are now approaching, and must happen, in consequence of the erection of this dam by the defendants; but which, it is obvious, may in fact never come to pass, or certainly not in the injurious manner complained of. The first of these events, thus referred to, is, that although the defendants have now no manner of right to create mill-sites, or to use the water of the canal for any other purposes than navigation; yet, that, if they are allowed to erect this dam, and prepare for such an use of its waters, some future Legislature may be induced to suffer them to do so to the ruin of the plaintiff's rights. This may happen. But this Court is bound, in due respect to the Legislature, to presume, that they will, by no act of theirs, authorize, or sanction injustice, or deprive any one of his property, unless it be for the public good; nor even then without due compensation. (*h*)

(*h*) The power has been since granted to sell surplus water for mills, &c. so that such sales do not diminish the water in the bed of the river to the