

As to the multiplication of wastes from the canal of these defendants, for the sinister purpose of selling them as mill-sites, it would appear to be enough to say, that the Act incorporating the defendants, declares, that the water of only such wastes shall be sold as * mill-sites, as "shall be essential to the security of the said canal, and in no other situation whatever." 1824, ch. 79, s. **123**
16. When this clear and positive restriction shall have been, or may be attempted to be violated by any thing, done with that view alone, which is not now alleged, or pretended, it will then be time enough to apply to a Court of justice for redress, either by way of remuneration or prevention. *Fishmonger Company v. East India Company*, 1 Dick. 164; *Ripon v. Hobart*, 8 Cond. Chan. Rep. 331. Therefore at present, and in the form in which this cause of complaint is set forth, it forms no just ground for granting or continuing an injunction.

It appears, however, from the proceedings, that the claim of the plaintiff's under the Act incorporating The Potomac Company, 1784, ch. 33, s. 13, is one which he has brooded over, and cherished for years past; and, although, as it would seem, he had never before, in any way, submitted it for the judgment of a Court of justice; yet, that he had repeatedly urged it in other forms, and in the most solemn manner. If well founded, it is a claim, that may soon become a grievous perennial draft upon a large navigable highway, common to this State and its southern neighbor; it is one which has been deduced from the upper portion of a great and valuable river, belonging altogether to this State, and forming its southern boundary; and it is one which has been interwoven with the longest and most important line of artificial navigation ever sanctioned or participated in by this Republic. The plaintiff asserts his right, under this law, as to a privilege of a high and almost inestimable value, and the defendants oppose the claim, as a pretension utterly groundless; but which, if sustained, would become an incumbrance so vast, as to be destructive of the great work upon whose vitals it proposes to fasten and to feed. All these circumstances give to this claim an importance far more than ordinary; and exhibit it as one which, on every account, requires a most careful examination and deliberate consideration in all its connections and bearings.

The Potomac River, it has been urged, must be regarded as a public navigable river far above tide; and as the common property

injury of the water rights of any individual, and so that no part of any such surplus shall be applied anywhere within the State of Maryland, to the manufacture of any description of grain. Therefore the water power of the canal, within the District of Columbia, may now be disposed of for all manufacturing purposes, 1832, ch. 291; Acts of Congress, 3 March, 1837, ch. 51.