

navigation." The kinds of "private property," here referred to, were the unimproved mill-sites, which had been previously designated. This Act, by means of the work, which it gave authority to construct, could interfere with a mill-site in only one of two ways; either by preventing the water from reaching it, or by occupying the whole, or a material portion of the very mill-site itself. These two modes of interference could be effected by only one kind of work; that is, by a canal; because, this sentence must be taken in connection with its context; and then it must be read thus, at places through which it may be necessary to conduct * canals, they, the canals, may interfere with mill-sites, with which it is the intention of this Act not to interfere, but for the purpose of navigation, unless with the consent of the proprietors. Consequently, if the new navigable canal interfered with a mill-site, either by diverting the water from it, or by occupying its place, there were but two modes of redress left to its owner. Either to accept an equivalent in money to be agreed upon by the parties, or to be settled by a jury; or to have the canal itself appropriated as a head-race to it; and thus save it to himself, and for the benefit of the public. To give the possessors of mill-sites this latter choice, subject to certain restrictions, was the sole object of this section, and none other. And accordingly, with this intention the Legislature proceeds to enact:

"That the water, or any part thereof, conveyed through any canal or cut made by the said company, shall not be used for any purpose but navigation, unless the consent of the proprietors of the land through which the same shall be led be first had." The general tenor of the Act had confined all the operations of the company to the formation of a new line of navigation; and here, that restriction in accordance with the whole spirit of the Act, is distinctly expressed and repeated, as is evident, with no other view than to ingraft upon it an exception. The water of the river, it is declared, "shall not be used for any purpose but navigation;" this is the general rule, then comes the exception, "unless the consent of the proprietors of the land through which the same shall be led be first had." This is the exception and condition upon which the water of the river may be used for mill as well as for navigation. "The consent of the proprietors must be first had." If it can be had, then it appears that the corporation, as well as the proprietors, may use the water for mills; or they may jointly participate in making that use of it. But, if the proprietors maliciously or capriciously withhold their consent, the corporation must submit; for no power is given to it, in such case, to have the property valued and condemned to any such use. The will or consent of the proprietors is not, in this respect, subject to the slightest control, they are left perfectly free to consent or not at pleasure.