

ume as to give a rapid motion to the waters, the navigation, in one way at least, * must be greatly hindered and retarded; and so far the two uses of the water are also incompatible. It **134** is to that incompatibility of those two uses, when exercised without limit, to which this law here alludes; and it is that matter which it was the intention of the Legislature to submit to the sound discretion of the corporation. (n)

Hence, I feel satisfied, that by this expression, "if it can be conveniently done to answer both purposes," this body politic has been clothed with as perfect a freedom of will and discretion, as that reserved to the proprietors; because, even if the corporation should refuse to "enter into a reasonable agreement," the proprietor would not be without redress; since the law has provided for him an adequate mode of obtaining compensation for his property; and because, if the corporation were held to be under any sort of obligation, such obligation would place it in the power of the proprietors to subject the body politic to such a judicial control as might defeat the principal and great object itself. It being then a matter entirely at the pleasure of the corporation to enter into such reasonable agreements as they might think proper; and no contract appearing to have been made with this plaintiff, or any one under whom he claims, the Court finds this company under no kind of legal obligation which it can command them to fulfil.

In the preamble to this section, it is declared, that "some of the places, through which it may be necessary to conduct the said canals, may be convenient for erecting mills." And here, it is said, that reasonable agreements may be made, "with the proprietors of such situation concerning the just proportion of the expenses of making large canals or cuts." The whole law, from beginning to end, speaks of but one line of navigation; it affords all the powers necessary to make that one line, but no more. Canals and cuts are parts of the line; and they are directed to be twenty-five feet wide, and four feet deep; 1784, *ch.* 33, *s.* 17; which were deemed sufficient for all the purposes of the contemplated navigation. It was not deemed necessary to give to the corporation authority to make larger canals for that purpose; or to alter the route of the canal; or to enlarge it after it had been made.

* The "making large canals," therefore, can only mean such as were to be made originally, and in the first instance. **135** If the proprietors and the company could agree "concerning the just proportion of the expenses," those canals, when about to be

(n) The Bridgewater Canal, and the Dearne and Dove Canal, in England, have tumbling bays, and gauge wiers for mills, and for watering meadows.—*Rees' Cyclo. Art. Canal.*