

could be conveniently made in that way to answer both purposes, this section allowed it to be done; if not, no condemnation was to be suffered at any time for any such purpose.

But supposing the right to condemn granted to this corporation, it must have been intended to provide for the erection of mills in connexion with the canal. Then it is evident, that both purposes must be comprehended in the original formation of those canals; and the acquisitions of the company for that purpose. The law no where, by any express words, or by any fair construction, authorizes the company to make any new and additional acquisitions along the line of navigation formed by them, even for the purpose of that navigation; much less for mills, or any other, or additional purpose. But the erection of mills, to which the canal is made tributary, as a head race, necessarily requires the "making large canals, capable of carrying such quantities of water as may be sufficient for both purposes;" and, consequently, if they have not originally that capacity, they must be enlarged before mills can be supplied from them.

This canal, it is admitted on all hands, has no more than the specified dimensions of the required navigable canal; and therefore, if the plaintiff's claim is to be gratified to any extent whatever, the canal must be enlarged, and its capacity for carrying an adequate additional quantity of water provided for in some way. This, I apprehend, can only be effected by additions, in one of three modes: by adding to its width, to its depth, or to its height. We have only to cast an eye over the plots filed in this case, to see, that if it is to be widened, the corporation must, for that purpose, acquire an additional breadth of land on one or on each side. * If it is to be raised, then on reverting to the diagram, it will be seen that, supposing the canal A B to be the head **137** race, it can only be effected by a dam A 2, or an elongation of the canal to 1, and in either case, the absolute right in the land itself, or the right to flood the land A 2 1, must be acquired by the corporation. Again, if it is to be deepened, then the excavation at A must be such as to draw off the water from the land A 2 1, to its prejudice; and consequently, a right to do so, or a clear title to the land must be acquired by the company. Every possible way then of enlarging the canal, after it has been once formed, necessarily implies a new acquisition of property by the company. But the Act of their incorporation has given them no power whatever to purchase and hold, much less any authority to take from others, and have condemned to their use any property or franchise whatever, to be applied to any such purpose. *Blakemore v. The Glamorgan-shire Canal Navigation*, 6 *Cond. Chan. Rep.* 550.

That this is the correct construction of this law is strongly sustained by the express provisions of an Act passed at the then next preceding session of the General Assembly, upon a subject, in all