

after their finding had been affirmed by the court, the canal company had no right to enter upon, and commence cutting their canal through these lands, without paying the money, and that having so entered upon, and commenced cutting, the obligation to pay was perfect.

The language of the 15th section of the act is, that the "valuation of the jury shall be conclusive on all persons, and shall be paid by the president and directors, to the owner of the land, or his legal representative."

It seems impossible to say, in the face of such language, that there is not, and was not, when the canal company took possession of the lands of these parties, and commenced excavating their canal, an absolute, unqualified, and immediate obligation to pay the money, and that they could upon any pretext whatever delay it.

The defendants, however, contend, as already observed, that conceding all this to be true, the complainants have precluded themselves from asking the relief sought by this bill, by taking the acceptances of the company, and giving the receipt before spoken of. If the Chancellor is right in the view presented of the obligation of the company to pay before, or concurrently with the actual seizure and entry upon these lands; then it follows, that, on the 1st April, 1840, the date of the acceptances, the valuation of the jury was, and had been for some time, payable; for the evidence clearly shows, that prior to that date the defendants had entered upon the lands and commenced cutting their canal.

Assuming, then, that prior to the date of these acceptances there was due from the canal company, the sum ascertained by the jury, which sum, in the language of the charter, was to be paid by the company to the owner of the land, or his legal representatives, it was simply giving acceptances for a pre-existing debt, and it is too clear for argument, that the taking of them by the creditor could not have the effect of extinguishing the former debt. *Insurance Co. vs. Smith*, 6 H. & J., 169; *Glenn vs. Smith*, 2 G. & J., 508; *Wayman vs. Rae*, 11 G. & J., 425.