

It is further stated, that the plaintiff is debarred from the use of his property, and threatened with still greater injury by *The Chesapeake and Ohio Canal Company*, who are erecting an immense dam, abutted on his land, in Montgomery county, and extending entirely across the river, and of sufficient dimensions to obstruct the whole of its waters from their accustomed channel, and to divert them entirely away from his lands; and thus totally destroy the advantages, for mill-sites, which they naturally possess; and also to deprive him of his rights under the act of 1784, ch. 33, s. 13. All which has been done, or is about to be done by the defendants, without the consent of the plaintiff; without his having been compensated for his property; and without its having been valued and condemned in any manner according to law.

In the answers and their exhibits, it is alleged, that the body politic, created by the act of 1784, ch. 33, had, by virtue of their powers, acquired a right to land in Montgomery county, at the place in question; and had erected thereon a dam across the river, which is to give place to the one now complained of; that the proposed dam is neither to be abutted, nor erected on any part of the plaintiff's land; that the old canal, from the old dam downwards, was twenty-five feet wide, and two feet deep; and, these defendants, having resolved to use it, without any enlargement, as a feeder to the new canal, deemed it necessary, in order to furnish a sufficient supply of water to the new canal, to raise the new dam four feet higher than the old one; so as to pass into that portion of the old canal, designed as a feeder, a depth of six feet of water. And it is further alleged, that the proposed elongation of the new canal, and the mode of supplying it with water, have been determined upon with a view to the uses for which the canal was specially designed; and to those reservations, in the acts incorporating these defendants, in favour of Maryland, Virginia, and Congress; and, likewise, with a view to such other uses as were not then, but which might thereafter be allowed to be made of the water thus introduced into that end of the new canal; and these defendants did, accordingly, petition the several legislatures for the privileges, denied to them in their charter, of applying the surplus water in the canal to manufactories; and they now claim the right to sell and dispose of the waste water; wherever wastes shall be essential to the security of their canal; and it is positively denied, that the whole of the waters of the river, or even one tenth part of them, at their most reduced summer volume, can be diverted by the dam,