

be injured as the holder of an upper mill-site, by casting back the water, and flooding his works, or diminishing his fall of water. This, I conceive to be perfectly manifest from the description given of an upper and a lower mill-site. But, to recur to the diagram for illustration, the plaintiff alleges, in effect, that the dam complained of is as at A, and being raised to 2, will divert the whole of the water of the river from 1 to 5, and let it into the tide at 7; by which his mill-site A. B. C. will be totally destroyed.

Taking this view of the subject, the plaintiff, according to his own shewing, must be considered as the owner of the inner mill-site; and the defendants of the outer one. And, supposing them to be alike entitled to the use of the water, it is undeniably true, that the defendants can have no right, so to divert it as to diminish the value of the plaintiff's mill-site; much less to destroy it. On adverting to the prodigious extent of the country drained by the Potomac, above the point where this dam is to be placed, it must strike every one, as very extraordinary, if true, that a dam, four feet high across the river, at that point, should be sufficient to divert the whole of its waters through a canal of only six feet in depth, and twenty-five feet in width. But the fact is positively denied. It is said, that not more than one-fifteenth part of the waters of the river, at its most reduced summer volume, can be so diverted by this dam. And, therefore, the fact, on which this part of the plaintiff's complaint is grounded, being untrue, the complaint itself is deprived of its only just foundation. For if the plaintiff's mill-site, be, as he alleges, constituted of the situation A. B. C. and he finds water, at the commencement of his head race in sufficient abundance for all the purposes of his mill-site, he can have no possible cause of complaint; however high, or in whatever way the projected dam across the river may be formed. (a)

But the plaintiff alleges, that his mill-site is likely to be depreciated in value, almost to nothing, or totally destroyed by the unlimited rivalships of new mill-sites; which the defendants will create by their projected dam across the river. Again recurring to the diagram for illustration, this complaint is to this effect: The dam A. 2. will enable the defendants to conduct the water of the river from 1 to 5; and, consequently, all that space of land between that head race and the river, below the plaintiff's mill-site A. B. C.

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(a) *Bealey v. Shaw*, 6 East, 208; *Palmer v. Mulligan*, 3 Caine's Rep. 307; *Beisell v. Sholl*, 4 Dall. 211.