

may be formed into mill-sites, outside of his and in ruinous rivalship of it. This cause of complaint, it is believed, however, assumes a principle of law for its basis, which has hitherto never been gravely proposed to be acted upon by any one; much less sanctioned by any of our courts of justice. It is said, in some of the English books, that a new market, or ferry shall not be set up so near an ancient one, as to draw away its custom. But it is no nuisance or wrong for one man to erect a mill so near to that of another as to draw away its custom; or to enter into competition with it in any manner whatever. (b)

Supposing then it were true in point of law, as it is not, that the defendants could lawfully appropriate their canal, from 1 downwards, to the purpose of a head race to a closely set row of mills for several miles long, below, and outside of the mill-site of the plaintiff; still, as their doing so would be lawful, the plaintiff would have no legal cause of complaint, on the ground of the depreciating effect thereof upon his mill-site. If the state grants a patent and induces people to lay out a great fund, it would, as has been said, be wrong to grant a rival patent wantonly. (c) But it would be bad policy, unjust and unconstitutional, as having the effect of a monopoly, to prevent any one from making any use whatever of his own property, because of its operating as an injurious rivalship of another who was not thereby in any way hindered from making a similar or any other use of his property.

But, supposing all that has been said, in relation to the plaintiff's legal rights to certain natural mill-sites, to be entirely erroneous; and, that those claims are in all respects valid; then it follows, from what he himself has stated, that the land, or a portion of it, which is necessary to constitute those mill sites, lies in the route of the proposed canal, and is about to be occupied by it. If so, it is certain, that it may be condemned for that purpose in the manner prescribed by the act of Assembly. (d) And in the valuation, so directed to be made, all its worth, whether inherent, or incidental; its value arising from its fertility and mineralogical contents, as well as its value arising from its affording mill-sites or its peculiar suitability for any other purpose, should, and no doubt would be duly considered and estimated under the inquisition and condem-

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(b) 3 Blac. Com. 219; Hale *de Port. Maris*, 59, 60; *Blessett v. Hart*, Willes Rep. 508.—(c) *Ex parte O'Reilly*, 1 Ves. jun. 114. *The Vauxhall Bridge Company v. Spencer*, 2 Mad. Rep. 355. S. C. 4 Cond. Chan. Rep. 28.—(d,) 1824, ch. 79, s. 15.