

mill-sites, as 'shall be essential to the security of the said canal, and in no other situation whatever.' (*m*) When this clear and positive restriction shall have been, or may be attempted to be violated by any thing, done with that view alone, which is not now alleged, or pretended, it will then be time enough to apply to a court of justice for redress, either by way of remuneration or prevention. (*n*) Therefore, at present, and in the form in which this cause of complaint is set forth, it forms no just ground for granting or continuing an injunction.

It appears, however, from the proceedings, that this claim of the plaintiff's under the act incorporating *The Potomac Company*, (*o*) is one which he has brooded over, and cherished for years past; and, although, as it would seem, he had never before, in any way, submitted it for the judgment of a court of justice; yet, that he had repeatedly urged it in other forms, and in the most solemn manner. If well founded, it is a claim, that may soon become a grievous perennial draft upon a large navigable high-way, common to this state and its *southern* neighbor; it is one which has been deduced from the upper portion of a great and valuable river, belonging altogether to this state, and forming its *southern* boundary; and it is one which has been interwoven with the longest and most important line of artificial navigation ever sanctioned or participated in by this republic. The plaintiff asserts his right, under this law, as to a privilege of a high and almost inestimable value, and the defendants oppose the claim, as a pretension utterly groundless; but which, if sustained, would become an incumbrance so vast, as to be destructive of the great work upon whose vitals it proposes to fasten and to feed. All these circumstances give to this claim an importance far more than ordinary; and exhibit it as one which, on every account, requires a most careful examination and deliberate consideration in all its connexions and bearings.

The *Potomac* river, it has been urged, must be regarded as a public navigable river far above tide; and as the common property and highway of the two states between which it is a boundary. In proof of its navigable character, it has been said, that so long ago as during the war of 1756, it was ascended, as high as *Cumberland*, by boats carrying a portion of the military stores of *Braddock's* army; and has frequently since been navigated in the same

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(*m*) 1824, ch. 79, s. 16.—(*n*) *Fishmonger Company v. East India Company*, 1 Dick. 164; *Ripon v. Hobart*, 8 Cond. Chan. Rep. 331.—(*o*) 1784, ch. 33, s. 13.