

ing a company for opening and extending the navigation of the river Potomac.' The avowed object of which, as appears by all its provisions, was to create a navigation where there was none before. (u) And the act incorporating *The Chesapeake and Ohio Canal Company*, in providing for the transfer of the right of property, from the one to the other of those companies, in this newly created navigation, declares, that the corporation shall 'keep the corresponding part of the river in a proper state for navigation, and in as good order as the same now is.' (w) These laws are the legislative enactments of Maryland and Virginia; and therefore, may be considered as the solemn recognitions of both, that this river, above tide, was not to be deemed, in all respects, a public navigable highway. And looking to the line of navigation to be created; and not to the river alone, the act incorporating *The Potomac Company*, declares, 'that the said river, and the works to be erected thereon, when completed, shall forever thereafter be esteemed and taken to be navigable as a public highway,' (x) not that the river itself and alone shall be so considered.

By the common law, a river not navigable in its natural state, if it shall be made so, by public authority, shall ever after be deemed a public highway; (y) but this river alone has not been made navigable and declared to be a highway. Taking this then, to be a private river not navigable, it follows, that the riparian holders of land would have an undoubted right to use the water in any manner, without injury to others. (z) And this right is expressly recognized by the act incorporating *The Potomac Company*. (a) But even supposing this to be a navigable river, and a highway, still the riparian holder of land would have a right to the use of its waters, with only one additional restriction; and that is, that he should not hinder, or injure the navigation. (b)

It was urged, that whatever may be the natural character of this river, above tide; and however it may have been regarded before the year 1785; that the compact made between this state and Virginia, on the 28th of March of that year, has finally established its

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(u) 1784, ch. 33.—(w) 1824, ch. 79, s. 13.—(x) 1784, ch. 33, s. 10.—(y) *Hale de Jure Maris*, 9.—(z) *Kame's Pri. Eq. b. 1, pt. 1, c. 1, s. 1.*—(a) 1784, ch. 33, s. 11 and 13.—(b) *Vattel*, b. 1, s. 249, 272; *Bealey v. Shaw*, 6 East. 203; *Weld v. Hornby*, 7 East. 195; *Williams v. Morland*, 9 Com. Law Rep. 269; *Wright v. Howard*, 1 Cond. Chan. Rep. 95; *Coulter v. Hunter*, 4 Rand. 58; *The river Delaware, between Pennsylvania and New Jersey*, 49 Niles' Reg. 110, 298.