

This power to condemn private property, is a portion of the *eminent domain* of the government, granted to this body politic, which should never be exercised by the government itself, but with great caution, and in cases most obviously for the public good. When, as has been justly observed in our country, the legislature undertakes to give away what is not their own, when they attempt to take the property of one man, which he has fairly acquired, and the general law of the land protects, in order to transfer it to another, even upon a complete indemnification, it will naturally be considered as an extraordinary act of legislation, which ought to be viewed with jealous eyes, examined with critical exactness, and scrutinized with all the severity of legal exposition. An act of this sort deserves no favour; to construe it liberally would be sinning against the rights of property. (*n*) In England, it has been said that all courts have, for obvious reasons, at all times, construed such legislative enactments most strictly. Whatever such enactments require to be done, as a condition precedent to the extraordinary right of making roads or canals over private property, has always been exacted to the letter, and the party omitting has been held a trespasser. (*o*)

From which it follows, that, although the works of the company may be repaired, or any thing may be done to render them more safe, substantial and perfect, yet no additional extent of land can be taken, nor can any canal, or other work be, in any way, altered, remodded, shifted in its location, or enlarged, so as to be spread out beyond the extent of the first selected purchase or condemnation.

Now, recollecting what it is, that constitutes a natural mill-site on the margin of a descending stream; the peculiar character of this river; and, the general tenor and scope of the act incorporating *The Potomac Company*, we shall find ourselves properly prepared to undertake the consideration of that section of it, which is in these words:

‘And whereas, some of the places through which it may be necessary to conduct the said canals may be convenient for erecting mills, forges, or other water works, and the persons, possessors of such situation may design to improve the same; and it is the intention of this act not to interfere with private property, but for the purpose of improving and perfecting the said navigation, *Be it*

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(*n*) *Vanhorne's lessee v. Dorrance*, 2 Dall. 318.—(*o*) *Keppell v. Bailey*, 8 Cond. Chan. Rep. 118.