

If it is to be raised then, on reverting to the diagram, it will be seen, that supposing the canal A B, to be the head race, it can only be effected by a dam A 2, or an elongation of the canal to 1, and in either case, the absolute right in the land itself, or the right to flood the land A 2 1, must be acquired by the corporation. Again, if it is to be deepened, then the excavation at A, must be such as to draw off the water from the land A 2 1, to its prejudice; and consequently, a right to do so, or a clear title to the land must be acquired by the company. Every possible way then, of enlarging the canal, after it has been once formed, necessarily implies a new acquisition of property by the company. But the act of their incorporation, has given them no power whatever to purchase and hold, much less any authority to take from others, and have condemned to their use any property, or franchise whatever to be applied to any such purpose. (w)

That this is the correct construction of this law is strongly sustained by the express provisions of an act passed at the then next preceding session of the General Assembly, upon a subject, in all respects, precisely similar; which act after constituting certain persons a body politic, by the name of *The Proprietors of the Susquehanna Canal*, for the purpose of constructing a canal as described, declares, that 'it is necessary for the making the said canal, and erecting grist-mills and other water-works thereon, that provision should be made for condemning a quantity of land not exceeding two hundred acres.' And it then proceeds to enact accordingly. (x) But in this act incorporating *The Potomac Company*, no such provision has been made in any form. And it is also worthy of remark, that the eleventh section of the act incorporating, *The Pocomoke Company*, (y) appears to have been copied verbatim from the thirteenth section of the act incorporating *The Potomac Company*, neither of which contains any provision for erecting water-works similar to that of the act incorporating *The Proprietors of the Susquehanna Canal*.

Much has been said about the surplus water and the waste water of the canals of *The Potomac Company*, as evidence of its being the intention of this law, that the adjacent and riparian owners of land should be allowed to draw such a quantity of water from it as might be necessary for any mill they might wish to erect; and of

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(w) *Blakemore v. The Glamorganshire Canal Navigation*, 6 Cond. Chan. Rep. 550.—(x) 1783, ch. 23, s. 6.—(y) 1796, ch. 17.