

The committee have to request particular attention to the terms of this contract, which is indispensable to a perfect and satisfactory understanding of the sequel. On the part of the state are granted an increase of the shares; the loan of thirty thousand dollars, and the right to half toll on the river; on the part of the company is undertaken, the expenditure of five thousand dollars on the bed of the river, from the Maryland line to tide. This statement of the case borne in mind, will preserve without confusion, a sound view of the modification of the contract which afterwards was effected.

In consequence of the most liberal overtures of the state to the company above stated, they did proceed to the fulfilment of their undertaking, and on the bed of the river did expend perhaps, a larger sum than was required by the terms of the contract; in doing which, was opened and rendered practicable, the channel without the canal, obstructed now by the sections of the wing dam erected, as before stated, since the first day of January eighteen hundred and eighteen. So soon as the prerogative of demanding the half toll on this passage had become in the opinion of the company perfect by the expenditure admitted, a great clamour arose among the good people of Pennsylvania and New York accustomed to navigate the river, against this demand, and the then governor of Pennsylvania pressed upon the governor of Maryland, a most solemn discussion, in which the right of the legislature of this state to grant such a privilege to the company was irresistibly combated; and the proprietors of the Susquehanna canal, yielding to the conviction of the sovereignty of the state, of the justice of the complaints made, consented that their authority to demand half toll on the river should be recalled. Consequently, by the act 1803, chapter 102, the legislature repealed the section of the act contemplating that privilege, and in lieu of it, granted the authority to ask and receive a rate of toll quadruple that before authorised by law on the canal — This arrangement was voluntarily accepted by the company; and in accepting it, they did not suppose that they were thereby authorised, or at liberty to obstruct or destroy the channel made in consequence of the previous understanding, or made by them at any period since their incorporation; for there still remained to them, in the increased stock, and loan of thirty thousand dollars, a full compensation for the expenditure of their money on the bed of the river, the privation of half toll thereon being also more than recompensed by the enormous toll they were authorised thenceforth to receive, and at this day do receive on the canal. That this was the then understanding of the original company, is abundantly evident from the fact, that they did not then nor ever thereafter, obstruct the navigation of the bed of the river, nor any part thereof. That section of the wing-dam which then existed, without complaint from any quarter, continued as it stood until the company expired by insolvency; and it is due to the memory of the old Susquehanna company, to state most clearly the fact, that they did not set up the plea, that having made the channel, they had a right to destroy it. This logic was left to their successors. The old association was composed of maganamous citizens, co-operating with the legislature in its incipient measures of internal improvement, never for a moment striving to create an aristocratic monopoly, at war with the rights and interests of their fellow citizens. Had the canal and wing-dam been permitted to remain as they were left by them, the time of this legislature would not now be occupied by the complaints of an injured community, nor the wisdom and sane discretion of the government implicated by construction, in measures tending to the unlawful abridgement of public and individual rights.

The present proprietors of the canal, who were incorporated with the immunities of their predecessors, by act of assembly, February 11th, 1818, had scarcely been vested with their corporate character, before they commenced a structure which completely obstructs the best channel in the bed of the river, and thereby giving rise to all the complaints from Harford and Cecil counties of this state, and from the people of Pennsylvania and New York, which now lie on the tables of both houses of the general assembly. Nor have they the grace, in obstructing that channel, to abandon the right to quadruple toll upon the navigation of the canal, which is the least they could do to give the color of justice to their conduct. The erection and maintenance of the additional sections of the wing-dam, by the present proprietors, which is likely again to draw the neighboring states into collision, are pretended to be justified under the general admission to the old company, in the charter and several subsequent acts, "of power over the waters of the said river, for the purpose of supplying their canal, and the water-works thereon erected."

5th. Let it here be remarked, that every privilege granted to the proprietors of the Susquehanna canal, must be construed, subject to the paramount claim of every citizen to use the bed of the river, repeatedly affirmed by the several acts of assembly before recited; and therefore it is undeniable, that if the privileges granted cannot be exercised without impinging upon that claim, they cannot be exercised at all. But in using the waters of the Susquehanna, it is not shewn, nor can it be shewn in behalf of the proprietors of the canal, that it is necessary to occupy any part of the bed of the river, much less to obstruct a navigable channel thereof. On the contrary, in resorting to the use of a wing-dam to elevate the waters of the river to the level of the canal, there is only proved a cardinal error in the construction of the canal, which ought to have been so graduated as to draw into it the waters of the Susquehanna, without intruding upon the bed of the river any auxiliary structure. Then shall this error of the engineer of the company be raised above the superior claim of all others, that such an expedient shall not annoy them? If such a necessity be defensible to gain any end, no matter how unlawful or violent, it is enough to commit a palpable wrong. On such a plea, one is at liberty to depredate on a whole community; it being enough that he is too lazy to support himself, or too covetous to leave unmolested others' goods. No maxim in law or ethics is better established, than that no man shall profit by his own wrong. The proprietors of the Susquehanna canal, having found it so graduated as in their judgment to require the intrusion of a dam on the bed of the river to acquire a power over the waters thereof, repeat on an error of their own committing, never dreaming of the legal obligation to deepen the first section of their