

2d. That the act of Virginia granting the charter, is not in force in this District, because the act is only confirmed, not re-enacted by Congress.

3d. That the company has no right to condemn land in Georgetown.

4th. That the warrant is insufficient in form and substance.

5th. That some of the jurors were interested.

6th. That the marshal has only certified that the fourteen jurors who were sworn, were not interested, and not that the whole eighteen who were summoned, were not interested.

7th. That the oath was not properly administered, and was not administered upon the land.

8th. That the inquisition does not cure the defect of the marshal's return, nor the faults of the warrant.

1st. That the company has no right to condemn land, because that clause of the charter, so far as it attempts to authorise such condemnation, is unconstitutional, inasmuch as it does not provide a just compensation to the party whose land is sought to be condemned.

The words of the fifth amendment to the Constitution of the United States, upon which this objection is founded, are these: "Nor shall private property be taken for public use without just compensation."

This amendment admits the principle that private property may be taken for public use, if just compensation be made. It is not denied that to take land for the use of the canal, is to take it for public use. The question then is, whether the charter provides for making a just compensation. It is said that it does not, because it directs that "in every such valuation and assessment of damages the jury shall be, and they are hereby, instructed to consider, in determining and fixing the amount thereof, the actual benefit which will accrue to the owner from conducting the said canal through, or erecting any of the said works upon, his land, and to regulate their verdict thereby, except that no assessment shall require any such owner to pay or contribute any thing to the said company, where such benefit shall exceed, in the estimate of the jury, the value and damages ascertained as aforesaid."

It is contended that the Constitution provides for a positive, not a conjectural compensation. That, under the provisions of this charter, it may happen that no compensation at all may be made; that the expected benefits which the jury shall have estimated, may never arrive;