

plying the proper rules of construction to the words of the charter, itself, they shall remain obscure or ambiguous in relation to the point in dispute.

The first question, then, is, what is the proper rule of construction applicable to charters, and to such Legislative acts as are in the nature of charters? Is it that the words shall have the strongest possible construction against the grantee? or, is it that they shall have a reasonable construction, drawn from the whole context of the instrument, or act, to carry into effect the intention of the parties.

Here it is said that the strictest construction ought to be adopted against the powers granted to the Company, because those powers are in derogation of common right. But is that true? Is the right to take private property for public use, upon making just compensation, in derogation of common right? The right of the public has been recognised by the Constitution of the United States, and has, from time immemorial, been exercised by the several states ever since the revolution—and was, before that period, exercised by the colonies and by the mother country. It is one of the conditions upon which all property is holden by individuals, and, as a member of the public, the individual is as much interested in maintaining it as he is in maintaining his individual rights. The public right is as much common right, as the individual right. This public right is not a power exercised merely because the sovereign power cannot be controlled, and therefore in derogation of common right—but it is a constitutional power, primarily assented to by the people themselves, in their original primitive sovereignty, not applicable to any particular individual; but extending to all, and creating a lieu upon all property, into whose hands soever it may come.

The contemplated canal is intended to be a great highway; and no man can be ignorant that he holds his lands always subject to the right of the public to make a highway through it, whenever the great interests of the nation or State may require it.

It does not seem to me, therefore, that the power given by this charter to condemn land for the highway is such a power, in derogation of common right, as will justify the court in confining the words 'at' and 'from' to their strictest and strongest sense, against the Company.

Nor will I, on the other hand, entirely adopt the rule applicable to grants; that the words shall be taken most strongly against the grantor; but the rule most properly