

guards the health, it promotes internal commerce, by opening convenient highways, and facilitates and preserves external commerce by guarding the navigation of the city. It is a portion of the sovereign power imparted for the benefit of the city, and for its good and orderly government. But although these powers are imparted, they are by no means arbitrary powers, but are subject to the salutary restraints of our constitutions and of such laws as lie at the foundation of all social order, of such as guard individual rights and furnish them inviolable security. It could only be competent for the legislative body to impart such powers to this corporation as were confided to it by the people. It could never rise beyond the source from which the powers flowed. Looking at it in this public light, I should not be disposed to deny to it the power to take or appropriate private property to public use, though as it is the exercise of high sovereign authority, confided from necessity to government itself, to comply with the requisitions of public necessity or utility, it might admit of some question whether every subordinate corporation, established for purposes of police, should have this despotic authority confided to it. Be that however as it may, there exists no right in the legislature, and *a multo fortiori* in this corporation, to take private property for the public service without providing a just indemnity. The power of the state to compel the alienation of private property, is the law of force springing from necessity. The right in the citizen to indemnity for such force, is the law of natural equity and justice; the one is consequent upon the other, and like the shadow follows the substance. This restriction upon all legislation has a deeper foundation in all free governments than constitution or laws; it rests upon the universal sense which all mankind feel of its equity and justice. It is some centuries since an English judge had the temerity to say that a statute of the kingdom against equity and justice was void. I consider this declaration as the common law of the English nation, which modern judicial practice has abrogated, and the law of this land. It is peculiarly applicable to free governments, instituted to protect the life, liberty, and property of the citizen. The declaration of Lord Kenyon,<sup>(a)</sup> that if an act of parliament inflicts an injury on private property, and provides no means of redress, the subject is without remedy,

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(a) Governor, &c. of Cast Plate Manufacturers v. Meredith, 4 T. R. 794.