

inconvenience of changing the employment of their property in consequence of the operation of the causes complained of.

The jury returned a verdict of \$4,700 damages. The cause was argued by Messrs. Hoffman, Evans, Heath, and Mayer, for the plaintiffs; and by Messrs. Taney and Scott for the defendants.

ARCHER, Ch. J.—Some very important questions are presented for consideration in this case; questions of very deep interest to the citizen individually, and to him as a member of this corporation. I have given to them that attention which their interest demands, and the short time I have had for examination will permit. I will proceed to state the result of my views in regard to them.

I think it may be stated as an undeniable principle that *ex jure naturæ*, every man has a right to exemption from injury by the diversion of natural water-courses from their accustomed channels, and the principle may be extended farther: every man may claim an exemption from injury arising from changes in the configuration of the surrounding lands, which prevent the waters falling from the heavens from passing off through their accustomed avenues. And that to this right of exemption is added the corresponding right of indemnification from injuries resulting from such change. Where such injury is inflicted by one individual upon the property of another, whether such injury is done wittingly, or not, responsibility to the party injured attaches, and that whether the injury be direct or consequential. The right to enjoy our property as nature has given it to us, lies at the foundation of this principle. The injury when inflicted produces the same loss to the owner of the property, whether it have been foreseen or not, whether it proceed from negligence, carelessness, or design. Every man must be careful to use his property so as not to affect others. And of these water-courses, it may be said, *sic currunt et debent currere*.

There are, however, certain losses occasioned to our neighbors, by the lawful and accustomed exercise of our rights of property, which, falling under the head of *damnum absque injuria*, can have no redress. As if in ploughing my hills, which overhang the fields of my neighbor, in the ordinary course of tillage, the soil, by heavy rains and floods taking their natural course, is washed off and covers the grain or grass fields of my neighbor, there would exist no remedy.