

that the compensation should proceed from the quarter to which the benefit flows.

I cannot permit myself to doubt but that the character of the plaintiff's rights were such that he might well complain of an injury to them. He had the right which every man has to the benefits flowing from a navigable stream contiguous to his land. He had a right to pass and repass with his vessels. No man had a right to moor a vessel to his lands without his consent; and if he were in the habit of demanding and receiving a compensation from owners of vessels for such consent, and has been deprived of this benefit and profit by the filling up of the navigable stream opposite to his lands, he has been deprived of an important privilege, and been compelled to surrender it for the public benefit. He has been disseized, or, more properly speaking, deprived of an easement appurtenant to his land, which constituted a great portion of its value. And it would be in vain to guard with such vigilance the freehold itself, if the liberties and privileges appurtenant to it were not also the subject of constitutional guardianship. Over the soil covered by the water, over the water itself, which belong to the state, I need not say he had no right; but he had a perfect right, as he had to the soil of the wharf itself, to the profits growing out of the depth of the navigable water attached to it, which was incident to the grant of the soil itself. Our bill of rights, in its 21st section, is a literal copy of the 29th chapter of Magna Charta, which declares that no man shall be disseized of his freehold, liberties, or privileges, or deprived of his liberty or property, but by the judgment of his peers or the law of the land. In this easement he had certainly a property, against the disturbance of which the law would protect him, and of which he could not be deprived but by the judgment of his peers or the law of the land.

But although the injury may have been inflicted, it is said that the filling up of this navigable water is a common public nuisance for which an indictment would lie, and that no action on the case could be maintained by the plaintiff, because there is no special damage. Now conceding the fact that it is a public nuisance and punishable criminally, is there not clearly here a special and particular damage? Here exists a *particular right*, of which he was in the actual enjoyment, a right to take wharfage, which is destroyed or injured. As if he had a private way, and it was blocked up, this, in the opinion of