

the right to such waters, which the owners of the land, over which they have been suffered to flow, have acquired by a kind of prescription. It must be recollected, however, that the phrases 'surplus water,' and 'waste water,' are nowhere to be found in the act incorporating *The Potomac Company*; and that, in using those expressions, facts are referred to, which are not mentioned at all in that law.

It appears, among the circumstances of this case, that the canal which this plaintiff has claimed the right so seriously to incumber, if not to destroy as a navigable passage, by drawing off its waters to mills, has not been in any manner protected at its upper entrance from the wild ungovernable river, with which it is connected; the freshets of which rise from fifteen to thirty feet above its low summer level. In consequence of which, the canal, like its fountain, the river, has its seasons of bursting fulness and of comparatively low small volume. Left so exposed to the violences of the river, it is by no means extraordinary, that there should be in the canal a multitude of leaks, cracks, and rents from which great sluices of water are continually gushing out. These escapes from the canal may well enough be called 'waste water;' and they afford very satisfactory evidence of the improper exposure and imperfect structure of the canal; but it seems to be a mistake to summon them up as proofs of there being a regular amount of 'surplus water' in it, sufficient for mills. They are facts, which prove, that the canal has been very rudely and injuriously intruded upon by the river, for want of guard-locks at its upper entrance, and nothing more. Indeed so far from affording any evidence, that the canal has a capacity to carry water sufficient for mills, as well as navigation, they are proofs, that, for want of a guard-lock at its inlet, it is alike unsafe and dangerous to both, since the swollen torrent, which obstructs navigation, might sweep a mill to destruction, by the same kind of force which rends and prostrates the banks and mounds of the canal itself.

But it seems to be a still greater mistake as to the nature and causes of these issues and sluices, to cite their long continuance as furnishing a presumption, that the owners of the land, over which they flow, have a right to consider them as permanent streams on which they may erect mills. Presumptions of fact are conclusions drawn from particular circumstances. They are such inferences as are found by experience to be usually consequent upon or coincident with certain known facts. A presumption of right always