

be laid, or corporate liability leading to taxation incurred, in aid of it. We differ entirely upon this point, and deem the arguments used to establish it fallacious.

In order to present our views intelligibly, we propose in the first place to set out certain general propositions which we apprehend will not, at least after due reflection, be denied.

I. This matter of opening roads, canals, and other like improvements, is one which pertains not so much to law as to politics. It is a branch of political economy. The state, or the legislature acting on its behalf, is bound in all proper ways to increase the public annual money income. Wealth is power, in peace and in war.

The legislator, casting his eye, as it were, over the land, perceives a certain tract which, though fertile and productive, is yet of little value, for the simple reason that it has no easy access to a market. The cost of transporting its crops is greater than the price to be obtained. It consequently yields little or no net money income, and can pay little or nothing in annual taxes, for the support of the state. A road or a canal, or, better still, a railroad would set that land up close alongside the market. The effect would be that the expense of transporting crops would be reduced to a mere trifle. Every penny thus saved is so much added to the annual income of the land. In view of this saving the land becomes more desirable and rises at once in market value. Value depends upon, and is graduated by, income. The land thus enhanced in value takes rank with lands lying near to the market, and begins to contribute equally to the public burdens; and thus either adds to the public income, or diminishes the burden upon others.

This matter of opening roads, and other means of facilitating intercourse between distant localities, is one of immense interest and importance. The results are wonderful. England, it is said, owes her wealth and power mainly to the fact of her having always had good roads. Massachusetts is to-day wealthy because of her numerous roads. There is a vast field for study and thought in this connection. A road adds to the value (by adding to the net income) not only of the farming lands to which it leads, but of the lots in the market town; to every foot of land along its whole length, and to lands beyond and at its side; in a word, to every business locality which by means of it is brought nearer (so to speak) to other business localities.

II. The state possesses the eminent domain, to wit, the ultimate or superior ownership of all lands lying within its boundaries. Individuals are permitted to acquire lands and thus to own them, exclusive of all other individuals. But the state has an ownership beyond this, and may at its pleasure assume the actual possession. This cannot be done, however, under our republican government, unless the land is to be taken for a *public use*.

This phrase, the public use, is one which, we submit, is often misapprehended. It does

not signify the public *user*,—that the land when taken is to be used, occupied, dwelt upon, travelled over, or the like. The word *use* is, as in old English law, synonymous (or nearly so) with benefit, behoof, and the like. The word *public* does not signify the individuals composing the body politic, but the state as a unit. In England the public highway is more often called the king's highway, implying that the king as representing the state is the owner. So here the phrase, public highway, means, we submit, simply that the land embraced within its boundary lines is *public property*, to wit, the property of the state as a unit; the state has asserted its eminent ownership and thrust aside the private proprietor.

Lands are often taken under this right of eminent domain which yet are never "used" or physically occupied by the individuals composing the "public;" as, for example, for forts, penitentiaries, and the like, and yet such lands are confessedly taken for a public use. Personal property, as provisions, has been destroyed by the state authorities to prevent its falling into the hands of the enemy, and yet the taking for that purpose has been held to be a taking for a public use: *Grant v. U. S.*, 2 Nott & H. (Court of Claims Reports), 551.

III. The public, meaning the individuals composing it, has a right to travel upon the road, and does; but the public, meaning the state, does not travel or "use" the road in that sense. The phrase the *public use* signifies then, we submit, the profit, the pecuniary gain of the state as a whole—the economical, material advantage, or benefit to the body politic, as such. This profit, or benefit to the state, comes from the increase of the net annual income (and thereby of the market value) of adjoining lands; in a word, an increase of the taxable contributing capital within the bounds of the state, an increase of the fund in the hands of individuals, out of which annual taxes are to be paid.

IV. While the state as a unit, and the citizens and tax-payers generally, are thus benefited, the lands themselves, which are directly affected by the road, are benefited in a much higher degree. They are, as it is often called, specially benefited. The lands so benefited, are those which are, by means of the road, set up nearer, and are by that means enhanced in value. There is a kind, or mode of "benefit," styled "local and peculiar," which is different from this, but need not be defined here. Lands distant from the road, and not made more accessible by it, are not *specially* benefited or affected in value, except, perhaps, by means of a diminution of taxes.

V. Upon taking lands for a public use, the state must make compensation to the private owner. This it may do out of its public treasury, and out of funds raised by general taxation. Lands taken for a street within the bounds of the city, or for a county road, may thus be paid for. On the continent of Europe nearly all the railroads are built by the government, and paid for of course out of the