

power men have impliedly yielded, though it has not been expressly reserved."—(Chap. 20, s. 34.) Bynkershoek (*lib.* 2. chap. 15.) says:—"This eminent domain may be lawfully exercised whenever public necessity or public utility requires it, and this law seems to be universally recognized."

In Blackstone we read, (Vol. 1., p. 139,) "So great is the regard of the law for private property that it will not authorize the least violation of it, no, not even for the general good of the whole community. . . If a new road were to be made through the grounds of a private person it might perhaps be extensively beneficial to the public, but the law permits no man or set of men to do this without the consent of the owner of the land. In vain it may be urged that the good of the individual ought to yield to that of the community, for it would be dangerous to allow any private man, or even public tribunals, to be the judge of this common good, and to decide whether it be expedient or not. Besides, the public good is in nothing more essentially interested than in the protection of every individual's private rights as modelled by the municipal law. In this and in similar cases the legislature alone can, and, indeed, frequently does, interpose and compel the individual to acquiesce . . . by obliging the owner to alienate his possessions for a reasonable price, and even this is an extension of power which the legislature indulges with caution."

In Angell on Water Courses, sect. 457, the following language is used: "It is obvious that the government of no state can administer its public affairs in the most beneficial manner to the community at large, if it cannot, on particular emergencies and for public utility, exercise at least a qualified power of disposing of or impairing in value the property of an individual citizen." And in sect. 459 we read:—"It is now considered in England that the true principle applicable to all such cases is that the private interest of the individual is never to be sacrificed to a greater extent than is necessary to secure a *public object* of adequate importance, and that the interference is one of an extraordinary character."

"The extraordinary power with which railway companies and other similar companies are invested by parliament are given to them 'in consideration of a benefit which, notwithstanding all other sacrifices, is, on the whole, hoped to be

obtained by the public.' And that since the public interest is to protect the private rights of all individuals, and to save them from liabilities beyond those which the powers given by such Acts necessarily occasions, they must always be carefully looked to, and must not be extended for other than the legislature has provided, or than is necessary and properly required for the purposes which it has sanctioned."—Per Lord Langdale, in *Coleman v. E. Co.'s, R. W. Co.* 16 L. J. (Chan.) 78.

It has been held in *Manser v. N. & E. Co., R. W. Co.*, 2 Rail. cases; and in *Agar v. Regents Canal Co.*, Coop. C. C. 77, "That if railway companies in England, in carrying on their works, do more damage than the necessity of the case requires, the Court of Chancery will restrain them by injunction."

While then formerly the maxim "*salus populi suprema lex*," was the ground for interference with the "sacred private rights" of the subject, where such interference is, to use the words of Mr. Broom, "obviously dictated and justified *summa necessitate*," yet, to quote from the same writer "The general maxim applies likewise to cases of more ordinary occurrence in which the legislature of *publicam utilitatem* disturbs the possession or restricts the enjoyment of the property of individuals."

As a legislator then I would find ample warrant under the general law for considering the advisability of granting the powers here asked for if they are of *publicam utilitatem*. In this case, however, the legislature has thought fit to qualify the absoluteness of this language, for the seventh section says:—"If the allowance of such application will conduce to the public good, and is proper and just under all the circumstances of the case." Here another element is introduced, one which is to govern in arriving at a correct decision. I can well understand the legislature adding this clause in view of the extremely large and ample powers which seem to be contemplated in the first section of the Act. I must consider then first, whether the granting the powers asked for will conduce *ad utilitatem publicam*, or "to the public good," and on the threshold of this enquiry, or rather prior to entering upon it, is the consideration of the objection raised at the hearing that the statute does not contemplate the making of the dam in question at such a long distance, some 20 miles, above the mills of the applicant.