

must be grounded on the notion of the omnipotence ascribed to parliament, which it is said can do any thing which is not naturally impossible, and whose acts and doings usage forbids should be called in question in any judicial tribunal. Our declaration of rights, as to the sections in controversy, appear to have been borrowed from Magna Charta and its commentary. But in England, in several instances, the parliament has violated its provisions, and would seem rather to have considered it as a restraint on the tyranny of the executive power, than on that of the legislature. Our declaration of rights, however, constitutes a boundary limiting the legislature and all other authorities; and when it is said that a man may be deprived of his property by the law of the land, it does not certainly mean that the legislature may deprive him of it at their pleasure and without compensation, but he is to be deprived of it by the due process of law, that is, by indictment, presentment, or by due process or original writ, and is merely declaratory of the common law of England. For any deprivation of his property, then, proceeding from any source, unless it be by due *process of law*, the citizen is entitled to his remedy expressly. The fifth article of the amendments to the constitution of the United States, while it concedes the right to devote private property to public use, demands a just compensation. It seems to be a matter of doubt whether these amendments are not solely restrictive of the power of the general government. The great object, as has been contended, was a limitation of the powers of that government, and some of them are undoubtedly in terms confined to it; but there was, I apprehend, another object in the framers of the constitution: it was to secure to the people of the Union, as one nation, certain rights essential to their existence as a free government, and the infringement of which, in any one state, would hazard its durability as a free state. This I am inclined to think was the case with the 2d, 3d, 4th, 5th, and 8th amendments. They are general, and in my apprehension bind all. They may be considered as of the same character as our bill of rights, declaring principles, and prohibiting their violation. The same idea is maintained by Rawle on the Constitution.

Thus in any view of this subject no power exists to devote property to public use, or to deprive an individual of his property without indemnity.

Has there been such a deprivation here? There has certainly