

to be within the province of the city councils. Under each of these heads of authority and discretionary provision, the measure complained of was vindicated by the defendants' counsel, and sought to be legally sustained: it being in evidence that the cutting down of streets, for grading and paving them, required the diversion of the waters, and that the navigation of an important quarter of the harbor was benefited by the diversion; and also that the health of the city was promoted by it. Evidence to the reverse of these points was also offered by the plaintiffs. The defendants insisted that the plaintiffs ought not to recover: 1. Because the corporation, in diverting the waters, acted as public agents in discharge of a public duty imposed on them by law. 2. Because the corporation consists of the inhabitants of Baltimore city, and therefore is not liable for any injury done by the acts of their servants and agents. 3. Because the river and the soil of the river being the property of the state, and the defendants being the agents of the state [as a chartered company with legislative powers for municipal objects] clothed with discretionary powers with regard to the navigation of the harbor, the defendants are not liable for the acts complained of by the plaintiff. 4. Because if any wrong was done in filling up [the wharf] it was a public nuisance.

The defendants also prayed the opinion of the court that the corporation, in grading and paving the several streets, and in damming and turning the water, in those operations, at the several places, acted within the scope of their lawful authority, and that if the jury should find that they acted *bona fide*, and to the best of their judgment, the action could not be maintained.

The court refused these prayers; but, in substance, directed the jury, that the plaintiffs were entitled to damages if they should find that by the diversion of the waters, (though made with due circumspection and the best advice, and in consequence of cutting down and paving streets, for securing the health of the city and to preserve the navigation) greater quantities of earth and sediment were carried down by the diverted streams to the property of the plaintiffs, than were carried thither before the cutting down and paving. The measure of damages the court decided to be, the amount of the depreciation in value of the property; the loss sustained by the diminished income from it; and the injury sustained from the