application and permission of the Wardens of the Port of Baltimore. And these Memorialists further say that they expressly deny that there has been any adjudication whatever in favor of the right of the said John Smith or of his representatives to that part of Gay street so extended or to receive and collect wharfage therefrom. And these Memorialists also deny that they have ever claimed, received or collected wharfage from the wharf so made and extended by the said John Smith, by virtue of the said permission, from lot No 76, but these memorialists admit that they have claimed, and do now claim, and that they conceive themselves entitled to receive and collect wharfage from that part of Gay street so extended by the said John Smith, under the said permission of the wardens of the Port of Baltimore; and for the better understanding of the subject, Your Memorialists herewith exhibit and file with as part of this their counter memorial, a copy of the application of the said John Smith to extend his said wharf and a part of Gay street, and of the said permission to extend the same. And Your Memorialists further show that they admit that some years ago, an action of replevin was instituted in Baltimore County Court by Isaac Creighton against Aquila Carroll for the purpose of trying the right of Your memorialists to collect or claim wharfage upon that part of Gay street which was extended by the said John Smith as aforesaid, and that there was a judgment rendered in the County Court pro forma, against the said Aquila Carroll, and that the said cause was removed to the Court of Appeals, and that the judgment of Baltimore County Court was affirmed in the Court of Appeals at June terms 1829; and Your Memorialists admit that by the said judgment it was decided by the Court of appeals that at the time of the institution of the said suit, Your Memorialists had no right to collect or claim wharfage upon that part of Gay street so extended by the said John Smith; but Your Memorialists expressly deny that the Court of appeals in the case of Carroll against Creighton, or in any other case decided in favor of the right of the said Samuel Hollins, or of any other person or persons, to claim or collect wharfage upon that part of Gay street before mentioned, or that an inference in favor of such right can be drawn from the said judgment, or from any other judgment of the said Court.

And Your Memorialists further show that pending the said controversy in the Court of appeals, at December session 1827 an act was passed by the General Assembly of Maryland entitled "An Act to appoint State wharfingers in the City of Baltimore and to authorise

the collection of wharfage in certain cases in the said City Ch 162 whereby amongst other things it was enacted, that the Mayor and City Council of Baltimore should be, and they were thereby empowered and authorised to ~~collect~~ regulate, establish, charge and collect, to the use of the said Mayor and City Council, such rate of wharfage as they might think reasonable, of and from all vessels resorting to, or lying at, landing, depositing or transporting goods or articles other than the productions of this State, on any wharf or wharves, belonging to the said Mayor and City Council or any public wharf, in the said city, other than the wharves belonging to or rented by the State, and that part of Pratt street wharf heretofore reserved for the use of the citizens of this State, any thing in any former act of Assembly to the contrary notwithstanding (Sec 1). And Your Memorialists further show, that on the 28th day of April 1830, an Ordinance entitled "a further additional supplement to An ordinance entitled An Ordinance to preserve the navigation of the Harbour of Baltimore, to appoint Port wardens and Harbour Masters and prescribe their duties" was approved imposing wharfage upon all vessels resorting to, or lying at, landing, depositing or transporting goods or articles other than the productions of this State, on any wharf or wharves belonging to the said Mayor and City Council, or any public wharf in the City of Baltimore, except as is provided for, and pursuant to the said Act of Assembly. And Your Memorialists further show that they admit that at December Sessions 1828, an act was passed by the General Assembly of Maryland at the instance of a few interested individuals entitled An Act to prevent obstructions in Smiths and other private docks in the City of Baltimore (Ch 162) but Your Memorialists say that they have been advised that the said Act of Assembly does not decide the question as is assumed by the memorial of the said Samuel Hollins, that Smiths Dock is a private Dock; and Your Memorialists further say that Gay street extended, otherwise called Smiths wharf, has been used and known as a public street and highway for upwards of forty years, and that it would be a great injury to the Citizens of the State of Maryland at large, as well as to the City of Baltimore, if it should be decided that the said Dock, so formed by the extension of Gay street, was a private and not a public Dock, and that this question is a proper subject for the decision of a judicial & not a legislative tribunal. And Your memorialists further show that the said Mr Smith in his lifetime, and his representatives since his death in the great improvement & enhancement in value of their own property by the extension of Gay street as before mentioned, have derived more than an equivalent for any sums of money by him or them expended in the extension of the said street, and that the said Samuel Hollins, and the other representatives of the said John Smith, and their assignees are as your memorialists have been advised without any right to claim or collect wharfage upon the said wharf, so formed by the extension of the said street, and that the granting of such right would be an injury to the Public.