City within fifty feet of a private wharf in any part of the City of Baltimore the individual owners have them dug out at their own expense).

Whereupon the said Defendants prayed the opinion and direction of the Court to the Jury, that in passing the several ordinances and resolutions offered in evidence by the Plaintiff, the Mayor & City Council of Baltimore, acted within the scope of the authority conferred on the said corporation by the laws of this State, and that the Plaintiff, therefore, is not entitled to recover damages against the said Corporation in this action for the loss he may have sustained by the filling up of the Water at his wharf, as stated in the testimony - first, Because the corporation and its agents and servants, in making the said alteration, acted as public agents in discharge of a public duty imposed on them by law. Second. Because the Corporation consists of the inhabitants of Baltimore City, and they are not liable to any injury done to by the acts of their servants and agents, which were not commanded by the said Corporation. Third. Because the river and the soil of the river, being the property of the State, and the Defendants being the agents of the State, clother with discretionary powers with regard to the preservation of the navigation of the harbour, the defendants are not liable in this action for the consequences resulting from their acts as complained of, in the declaration, and stated in the evidence. Fourth. Because if any wrong has been done in filling up the Cove, it is a public nuisance, and the Plaintiff upon the evidence above stated has not sustained such an injury, as will so entitle him to maintain an action.

2d Prayer - The Defendants also prayed the opinion and direction of the Court to the Jury. That in grading and paving the several streets, and damming and turning the water at the several places marked on the plat and stated in the evidence the officers, servants and agents of the Mayor and City Council of Baltimore, acted within the scope of their lawful authority, and if the Jury find from the evidence that they acted bonâ fide, and to the best of their Judgment, then the present action cannot be maintained against the said corporation for any thing done by their said officers, servants or agents; in manner aforesaid - Which opinion and direction the Court refused to give to the Jury, but were of opinion, and so directed the Jury, "that the Plaintiff will be entitled to a Verdict, if the Jury believe from the testimony that the Plaintiff's Property was injured by the Washings occasioned by the diversion of the Waters from flowing into the Western Cove, & turning them into the eastern Cove, & only to damages proceeding from such a source as the Counsel for the Plaintiff have admitted that they are not entitled, & do not claim damages on account of that portion of the injury which may have been sustained by the Washings from such of the Waters into the eastern Cove as would naturally have flowed there, notwithstanding by the grading & cutting down of Washington and other streets, the Waters which naturally flowed into the eastern Cove, carried down more earth & sediment than before said gradings & cuttings they had been accustomed to do. That when the Jury ascertain the lessener Value of the Plaintiff's property by the injury done to the property as a wharf, or, in other words, the amount of its depreciation in Value, proceeding from that cause; & when they also ascertain the loses sustained by the Plaintiff by the diminished income or profits of his property, proceeding from such cause, these amounts when ascertained, together with any damages the Jury may reasonably think the Plaintiff may be entitled to, from any inconvenience he may have sustained by being compelled to change the employment of his property, will constitute

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