

street, as shown on the face of a plat in the city atlas, dated February 1, 1814, entitled a plat of the grounds east of Ann street to Harris's creek, with levels for a canal, prepared by Jehu Boulden, at the instance of the subscribers, wardens of the port of Baltimore; together with an estimate of the expense of constructing a canal from Dulany at Ann street to Harris's creek at Wilk's street, and signed by E. Ellicott, John Snyder, and W. McDonald, who, it was admitted, were then port wardens, appointed by and acting under the defendants. The plaintiffs also gave in evidence the whole of said plat, which it was agreed by both parties that the defendants should and would produce in the court of appeals at the argument of this cause, to be regarded as part of this bill of exceptions. The plaintiff also gave in evidence another plat in the city atlas, respecting which the same agreement was made; the last mentioned plat is described on the face thereof as having been made at the instance of Edward Johnson, Esquire, mayor of the city of Baltimore, for the information of the city council, is dated December, 1822, and signed Jehu Boulden; upon it is *delineated* that part of the city bounded north by Monument street, west by Market street, and east by Patapsco street and Harris's creek.

The plaintiff, further to support the issue on his part, offered proof to the jury, that a considerable time before the date of the aforesaid deed, the plaintiff and John Craig, now deceased, purchased the property in the deed mentioned and described, received a bond of conveyance therefor, and that the possession thereof was, at the time of said purchase, delivered to the plaintiff and the said Craig, in the lifetime of the latter. He also offered evidence by Ephraim Smith, a competent witness, that the water from a small spring called Giles's Old Spring, and the waters collecting between Hampstead hill and Loudenslager's hill, and ran across the street then called Dulany street, (now Baltimore street extended,) and then across the grounds, discharged itself into the cove, on the west side of the point, at a place marked E on the plat; that he has been well acquainted with the said stream, its course, and the grounds over which the same passed, since the year 1784; and that the blue line, ending at E on the cove, shows the natural channel of said stream, and of the waters accumulating between the two hills aforesaid. In 1809, the said waters passed over Patterson's vacant lot, and then in front of witness's door, through deep gully or ravine; in consequence of the memorial of the witness and others to the city council, it was diverted from such its original channel to "Brick Pond," an unimproved piece of ground within the limits of the city of Baltimore, where it continued to flow until said pond was nearly filled up: that after the war, Pratt street extended was made, and then the aforesaid water was turned, and run down Market street, Fell's Point, and discharged itself into the river at the point marked F on the plat. The defendants shortly afterwards, by their agents, the city commissioners, carried into execution the ordinances and resolutions above mentioned; and, in pursuance thereof, the said commissioners made a dam at the intersection of Dulany street and Ann street, (marked N on the plat,) and thereby turned the water down Ann street; this was done about five or six years after the water was first diverted from its original channel, and conducted to the brick pond: the dam at the intersection of Pratt and Market streets, (at the point marked I on the plat,) by which the waters were so diverted from the channel, and directed to the brick pond, was the first dam raised, and was made in 1809; the dam at the intersection of Dulany street and Ann street

aforesaid was the second dam raised, and was made about the year 1815; the dam at the intersection of Ann and Smith, now George street, was the third, and was erected about the same period; the dam at the intersection of Ann and Gough streets, at O, was subsequently raised about the year 1822, and turned the water flowing from Giles's spring, and accumulating between the hills aforesaid, into Washington street; to accomplish which, the defendants caused a bank, at least twenty feet high, to be cut through; from which bank immense quantities of earth and gravel fell, and were carried down by the water into Washington street, and thence on to a point marked 22, near the plaintiff's wharf, when the water was discharged into the eastern cove, and where the deposits of earth *became* very great; and there still remain large quantities of earth in the streets liable to be carried down by future rains. Before the stream was thus diverted, the water in the cove at the point 22, near to plaintiff's wharf, at least twelve to fourteen feet deep, now, the same spot is entirely dry; this change, produced by the deposit in that part of the cove of the large *quantities* of earth thus carried down by the rain, &c., that, in heavy rains, much of the earth so carried down was precipitated beyond the point Q Q, and formed a long bank or bar, extending in front of plaintiff's wharf, and not distant therefrom; when the streets or parts thereof were paved, more dirt was carried over them and deposited. In 1798, at Gardner's wharf there were 20 feet water in the said cove, at other wharves from fifteen to eighteen; where the water was at that time twenty feet deep, it is now not more than ten feet deep. In 1815, at plaintiff's wharf there were eighteen or nineteen feet water; at that time, he has known the ship Franklin, burthened between four and five hundred tons, and drawing upwards of seventeen feet of water, could and did come up to plaintiff's wharf, receive a full cargo, and sail therefrom, as did other vessels, which have since been obliged to go to other wharves in consequence of the shallowness of the water produced by the deposits aforesaid; these deposits were occasioned by the banks put up as aforesaid, the grading of particular streets, and the cutting of the hills as stated, and the turning of the waters from their natural and accustomed channels, and bringing them down through Ann street to Washington street, thence to the point Q Q. Just before the changes commenced, colonel Braystrew the ship *the ship* General Green down at the said point Q Q, for the purpose of being repaired; there was then more than twelve feet water there, and is now dry land as stated. For one hundred yards after you leave said point, there are not two feet water in ordinary tides; at low tides it is dry: the water at plaintiff's and adjoining wharves was the deepest and best in the whole harbor; now, at the extreme point of the wharf, it does not exceed fourteen feet; and, at a little distance therefrom, a bar is produced by the deposit of the earth; over which bar a ship of ordinary burthen cannot pass; she could not be pulled over it even by means of a fast to the said wharf. At the intersection of Ann and Dulany streets, the pavement is made concave, and the whole of the waters arising as aforesaid are thrown into Ann street; the water might, at less costs, and with less injury, have been continued in its natural channel; if so, it would have been a benefit, as it would have contributed in part to fill up the western cove, which the defendants are now filling up at a very heavy expense, but no damage could have been done to the navigation of the harbor, and, by filling it up, the health of that part of the town would have been promoted; by properly grading and paving the streets, the water now concentrated and carried off through Ann and Washing-