

of Maryland, passed at December session, 1817, entitled "An act relating to the city of Baltimore;" also, another act of the General Assembly of Maryland, passed at December session, 1821, entitled "An act relating to the paving of certain streets in the city of Baltimore;" and, also, another act of the General Assembly of Maryland, passed at December session, 1822, entitled a supplement to the act entitled "An act relating to the paving of certain streets in the city of Baltimore."

And the defendants, further to support the issue on their part, then offered in evidence to the jury the following ordinances and resolutions of the mayor and city council of Baltimore, to wit, an ordinance, entitled "An ordinance to appoint city commissioners, and prescribing their duties," approved March 9th, 1807; an ordinance, entitled "An ordinance providing for the appointment of wardens of the port of Baltimore, and for other purposes," approved 24th March, 1813; also, a resolution passed at the extra session in July, 1815, No. 4; also, a resolution passed at the February session in 1816, No. 1; also, an ordinance, entitled "An ordinance authorizing the extension of certain wharves therein mentioned," approved 4th April, 1816; also, an ordinance, entitled "An ordinance directing the paving of part of Dulany street, in the city of Baltimore," approved 10th April, 1817; also, an ordinance, entitled "An ordinance for paving Wilks street, Washington street, Castle alley, and County street, within certain distances, and for other purposes, so as more effectually to preserve the navigation," approved 10th April, 1817; also, an ordinance, entitled "A further supplement to the ordinance entitled 'An ordinance for preserving the health of the city,'" approved 3d December, 1821; also, an ordinance, entitled a supplement to an ordinance entitled "A further supplement to the ordinance entitled an ordinance for preserving the health of the city," approved 18th March, 1822.

The defendants, further to support the issue on their part, then offered in evidence to the jury, that the grading and paving of the streets hereinbefore mentioned, to wit, of German, now Pratt street, of Dulany street, of Ann street, of Gough street, of Washington street, of Wilks' street, of County street, of Castle alley, and of the other streets, lanes, and alleys, mentioned in the evidence, and delineated on the plat, were made in pursuance of the acts of Assembly and ordinances hereinbefore mentioned; the dams and abutments mentioned in the evidence, and delineated on the plat, were erected in pursuance of the said acts of Assembly and ordinances; that the dam at I, at the intersection of German and Market streets, was erected in the year 1809, to divert the water which flowed into the cove at E, into the ponds between German and Gough streets; that German street, from Harford run to Market street, was graded and paved in the year 1813; that the abutment at N, at the intersection of Dulany and Ann streets, was erected by the port wardens in 1813, to dam up the water, and raise up the valley to the north of Dulany street at Ann street; that the abutment at M, at the intersection of George and Ann streets, was erected by the port wardens in 1813, to prevent the water from passing westwardly, and for the purpose of diverting it down Ann street: that Ann street, south of Dulany street, was cut down and filled up so as to turn the water down said street, in pursuance of the resolution directing the same; and that the abutment at J K, at the intersection of Ann and Bank streets, was also erected in the year 1815, to prevent the wash from passing further down Ann street, and directing it eastwardly into Bank street, and from thence into Washington street; and

that the abutment at O, at the intersection of Gough and Ann streets, was erected in the year 1822, to prevent the water from passing across Gough street down Ann street, and for diverting it into Gough street, and from thence into Washington, and down into the harbor at Q Q.

The defendants then, further to support the issue on their part, offered in evidence to the jury, by Henry Stouffer, a witness affirmed at bar, that, from the year 1809 to the year 1818, both inclusive, he was one of the city commissioners; that, during that time, his attention was especially directed to the situation of a stream of water which flowed into the cove at E, from the intersection of Dulany and Ann streets; that, except during the fall of heavy rains, the said stream was very inconsiderable, and did no injury, but that the stream, by the fall of heavy rains, was increased by the rain which fell to the northward and eastward, and between and on the hills C B D and E F H, into a formidable torrent, and that it was calculated to do great injury to the navigation, in consequence of the great quantity of earth, gravel, and sand, which the said torrent carried with it to tide water. That it became his duty to examine into the best and most practicable mode of conducting the said stream into the harbor; that a grade had been already established by his predecessors on Dulany street at its intersection with Market street, the level of which grade was above the level of the grade of Dulany street at its intersection with Ann street: that the grounds north of Dulany street, between Ann and Market streets, rise to a considerable elevation; that Harford run already carried down a great quantity of water, earth, and gravel, into the western cove; that the ground south of Dulany street, between Bond street and Harford run, is of a level surface, and would be liable to be overflowed by introducing an additional quantity of water into Dulany street; and that the introduction of the water, earth, and gravel, which came into Dulany street at Ann street, into Harford run, would, in his judgment, have produced in time a serious injury to the western navigation between the town and Point: that a great quantity of earth, gravel, and sand, were already carried into the basin from the west end of the city, from the south side of the basin, through the different streets of the city by Jones's falls, and also by Harford run, and that it was of great consequence to divert the wash from Dulany street to the east end of Fell's point. That the said wash was in part diverted from the western cove by the paving of German street in the year 1813, and afterwards flowed down Market street, and from thence into Fleet and Alisanna streets, and from thence a portion of it flowed into the eastern and western coves, and a portion of it down Market street; that a portion of the said wash, in heavy rains, passed from Market street to Bond street, and from thence through Wilk's street into the cove, passing also over the lots of individuals; that, in consequence of their inconvenience to the settled parts of Fell's point, in the year 1815, the said water was diverted into Ann street, and from thence into Bank street, and from thence into Washington street, and from thence into the harbor at the intersection of Washington and Alisanna, into the basin at Q Q; and that, in his judgment, this was the best possible cause of introducing the said wash into the harbor, having regard to the general interests and prosperity of the city.

And the defendants further offered in evidence by the same witness, that, in the year 1817, a great freshet took place, which did great mischief to the harbor; that the dam at J K was carried away, and, also, a dam between Washington and County streets on Wilk's street, which did great injury to the navigation of the eastern cove, in addition to the wash from Ann street.