

And the defendants offered in evidence by the same witness, that, in his opinion, it was impracticable, although not absolutely impossible, but inexpedient, to carry the water from Ann street into Harris's creek; and that, in the year 1817, an abutment was erected on Gough street near County street divert the water which passed from the northeast into the harbor, as delineated by the small blue line at G, into County street, for the purpose of relieving, in a degree, the property of the plaintiffs, and diverting the water from Washington street, and in order to prevent too much water from entering the basin at one point; that he thought the public convenience required the diversion of the water to the east, which tended west, as it injured the navigation. If Market street had been raised and paved, it might have sent the waters into different directions, but this was not done. As to the tunnel at Harris's creek, it was impracticable, as the distance was perhaps a half mile or more, and through high grounds, and the commissioners, one of whom he was, had several reasons for seeking for an eastern direction for the waters, which were principally four: first, because it would require a change in the grade of a point in Dulany street, on the east of Market street; secondly, because Ann street must have been raised 4 feet, and Dulany street depressed 4 feet, or, what would have been equivalent, Dulany street must have been raised 8 feet to carry off the water from Ann and Washington streets to Harford run; and thirdly, because Harford run, in his opinion, was not sufficient to carry off the waters; and fourthly, because the navigation must have suffered; that all of these measures for turning the waters into the eastern cove were recommended by the witness to the city council, particularly the diversion of the waters down Ann street.

And the defendants further offered in evidence by Nathaniel Hynson, a witness sworn at the bar, that he was one of the city commissioners from the year 1818 to the year 1819, both inclusive; that the said witness concurred with Henry Stouffer and James Martin, the other commissioners, that it would be inexpedient and productive of great evil to carry the wash from the ravine north of Dulany street into Harford run, and thence into the western cove; that, in his opinion, Harford run was insufficient to receive the same; and that the introduction of said wash into Harford run would have been highly injurious to the western navigation, and would have tended, in conjunction with other causes, as stated by Henry Stouffer, to destroy the said navigation; and that, in his judgment, having regard to the best interest of the city at large, the best disposition which could be made of the said wash from Dulany street was the introduction of it into the eastern cove, thereby keeping the same out of the heart of the navigation, and carrying it where it would do least injury.

And the said witness further gave in evidence, that after the said wash was diverted into Market street, and before Ann and Gough streets were opened, that part of said wash which came down the east gutter of Market street passed through Fleet and Alisanna streets into the east cove, near the property of the plaintiffs.

And the witness further offered in evidence, that what was called the town interest was for diverting the water east, but the Point interest was for its running west; and, in order to divide responsibility, the city commissioners united with the port wardens, and agreed upon the erection of mounds, for the purpose of giving the waters an eastern direction, as the western direction would require a very inconvenient grade. That Harford street itself would not have been sufficient, but if the run had been enlarged the water

could have been discharged, unless in case of such a freshet as occurred in August, 1817; that the said disposition of the waters was made after much deliberation, and after taking then what he considered the best advice.

And the defendants further offered in evidence to the jury, by William McDonald, a witness sworn at the bar, that he was one of the port wardens from the years 1813 to 1819, inclusive; that the dams at the intersection of Dulany and Ann streets, and the dam at the intersection of Smith and Ann streets, were erected in the year 1813; that the whole of the work done under the direction of the port wardens was done with a view to preserve the navigation of the harbor; that the wash which collected in Dulany street, at its intersection with Ann street, did great injury to the navigation of the harbor whenever it met the tide; and that when the said wash was diverted into Market street, a pen was erected at the end of the said street to prevent the said wash from going into the navigation; that the dam at N, across Ann street, was erected to intercept the wash which came down the ravine at the intersection of Dulany street and Ann street, and to prevent it from passing into the harbor. And also offered evidence by the same witness, that the grounds eastward, from Ann street to County street, rise to a great elevation, and are very much broken and gullied, and have been a good deal dug for pebble ballast, and that these causes have increased the washings from the hills, and that in his judgment it was of great importance to the general interests of the city to divert the washings from Ann street from the western navigation; that the washing from the hills to the east of Ann street were in his opinion very detrimental, and that the interests of the city required their diversion from the western navigation; that his motive for uniting in this order was the existence of a deep hole dug in the high bank on the side of George or Smith street, by the city and others, for procuring paving sand, and that the waters carried much of these loosened sands into the western cove, whereby the navigation was suffering; his opinion was, that if the waters had been divided and diffused, instead of being united either into eastern or a western direction, the evil would have been inconsiderable; that their general duties as wardens extended to the protection of the whole navigation, but in the particular alteration made they thought the water would be diffused, and would not do injury any where; the eastern navigation did not occur to them, or that any injury could be there done; that he now thinks that the dam above referred to, and made, independent of any alterations subsequently made, nor have caused injury to the navigation any where.

The defendants further offered in evidence by witnesses sworn at the bar, that they and each of them have been for many years residents of Baltimore, and are acquainted with the progressive improvements in the different parts of the city, and with the opening of Ann street, Gough street, Washington street, Wilk's street, County street, and Castle alley; that they are well acquainted with the nature of the wash which collects at the intersection of Dulany and Ann streets, and, in their judgment, the said wash should have been carried into the eastern cove in preference to the western cove, and that the same, having regard to the general interest and prosperity of the city, was properly carried there.

Frederick Schaeffer, one of the said witnesses, said that he is not much of a judge, but supposes that if the water from Dulany street had been carried into Harford run, that it would have injured the western navigation.

The defendant then offered in evidence by David Williamson, that the stream marked on the plat from H to E was generally a dry one in the sum-