

contravened the takings clause of the Fifth Amendment, which stated that “private property shall not be taken for public use without just compensation.”¹²

The case was heard before the Supreme Court on February 11, 1833.¹³ On the advice of the Court, Barron’s attorneys “confined their argument to the question” of whether the Fifth Amendment was applicable in this instance and thus whether the Supreme Court actually “had jurisdiction of the case.” Representing Barron, Charles F. Mayer explained the grounds for appeal by positing that Barron’s wharf represented “a vested interest and incorporeal hereditament” and as such “was inviolable even by the state, except upon just compensation for the privation.” In describing the wharf both as a vested interest and as an incorporeal hereditament, Mayer appealed for compensation not only for the tangible property of the wharf (land and water) but for the profits as a means of subsistence as well. He contended that “the benefit of this property [was] taken away . . . for an object of public interest.” Furthermore, he pointed out that the city had not only admitted to this action, they had based their defense upon it. The Court stopped Baltimore’s attorneys, Taney and Scott, before they began their pleadings in an action signaling its foremost concern for settling the question of jurisdiction. Yet because Barron’s appeal was based on a perceived entitlement to compensation from the Fifth Amendment the question of jurisdiction became entwined with the assumptions of absolute property and republicanism.¹⁴

¹² 7 Peters 245-246.

¹³ Only six of the seven justices appointed were present during the 1833 term. Justice Henry Baldwin was absent suffering from what Daniel Webster termed “an alienation of the mind.” See the letter of Webster to Joseph Story, December 27, 1832 in the *Proceedings of the Massachusetts Historical Society* (January 1901), 409.

¹⁴ 7 Peters 245-246.