to the present time, to have run over the lands as they did before they were thrown into Washington Street the land between Alliceanna Street and the water line of the plaintiffs lot would have now been dry land - and further proved that at full tide, the land between Alliceanna Street and the water line of the plaintiffs lot, was covered by water up to 1823. In 1812, at Port Wardens line the water was four or five feet deep and up to Alliceanna Street, the land at low tide would be covered with water. That at moderate tide the land between Alliceanna Street and Fleet Street might be waded by one on foot at high tide, it was covered by water, as low down as Fleet Street it was nearly flat land in 1823, and further proved that the City in 1823 began its improvements and filled up East of Harford run, and commenced on that part of the land in controversy nearest the City Dock, and worked backwards towards the water line of the plaintiffs lot, and three or four years ago they began to fill up the land between Fleet and Alliceanna Streets on which there was then water at high tide and proved that the City from 1823 continued to fill up the lands in controversy and that at the institution the same was dry land. The defendants then gave in evidence by Foy (who had been sworn on the survey) that he was one of the health commissioners of the City of Baltimore from 1820 to the present time that between 1812 and 1814 the Mayor and City Council of Baltimore commenced making the South side of Lancaster Street and in 1821 or 1822, they commenced to fill up on the East side of Strawberry Alley South of Alliceanna Street. The board of health under the said ordinance of 1823, commenced in 1824 to fill up the lots between Alliceanna and Lancaster Streets and that of the filling up were paid by the proprietors of the lots on Bond Street and that long after the lots of land were reclaimed South of Alliceanna Street the tide continued to flow above Alliceanna and above Fleet Streets. The deft. also proved by Robt. Graves a competent evidence, that in 1807 William Inloes one of the defts. run out a water fence as designated on the plats by dotted lines from P. to G. that the fence caught the wash that came down Caroline Street, and made the square of ground East of Caroline Street and South of Alliceanna Street firm land they also proved by James Lenley one of the City Commissioners that the city commenced filling up the property now in dispute about 1823, and that when it was done and fully completed, the board of Commissioners made out bills against the owners of the lots on Bond Street for the expense of the same in pursuance of the ordinance of 1823 ch. 19 which bills were paid by defendants they being said owners that the city has never been paid by any one for the filling up of the square between Fleet and Alliceanna Streets in Canal Street. The defendants also gave in evidence the Patent of Fell's Prospect bearing date _____ 1761, which was admitted to be correctly located on the plats in the case so far as the same is located thereon also the ordinance of 4th May 1801 ch. — 1814 ch. — and 1823 ch. 19, and passed 11th March 1823, and the act of 1745 ch. 9 and the act of 1783 ch. 24 - and also gave in evidence the following admissions of title in defendants - "Wilson's Lessee vs. Inloes and others. Ejectment - We hereby agree that the present plaintiffs are the fee simple proprietors of the lot on the South side of Wilk's Street as described in the deed of William Matthews, atty. for Ino. Brown according to its true locations and that defts. are the fee simple proprietors of the lots on west side of Bond Street between Alliceanna and Lancaster Streets the leases of which they have located and that the above admitted facts shall have the same effect as if regularly proved before the Jury. William F. Giles Defs. Atty. G. L. Dulany Atty. for Deft."

And also proved by Mr. Lenley that in 1824, the whole ground

between Fleet and Lancaster Streets was covered with tide water and that at this time the tide water flows over a part of the lot above Fleet Street, and offered in evidence the plats and explanations in this cause - and the defendants also offered to prove that the board of health under the said ordinance of 1823 commenced in 1824 to fill up the lots between Alliceanna and Lancaster Streets and that about the time of the completion of the work, the Commissioners caused a plat to be made of the property improved on which the names of the defendants were set down as the parties chargeable with the payment of the sums due for the filling up of the property in dispute in this action - that this plat was prepared about the time the work was completed, and as witness believes in 1836, and that a part of the work east of Caroline Street having been previously completed bills for the same had been previously made out against and paid by these defendants - that the bills for the property between Caroline and Canal Streets were not presented to or paid by the defendants until after the completion of the work in 1836, and that the witness stated that if there were any contracts as to this filling up, they were in writing. To the admissibility of this evidence of the paying by defts. to the city for the filling up the property in controversy as barely evidence of the contract between the defts. and the city under the ordinance of 1823 ch. 19 and also as wholly irrelevant to the issue in this case the plaintiffs objected. But the Court by consent of the counsel, admitted said evidence pro forma, and it is agreed the pltffs. be considered as excepting to the admission of said evidence and be at liberty to insist on said objection in the Court of Appeals. Whereupon the plaintiffs prayed the Court to instruct the Jury that if they believe from the evidence that the plaintiffs were entitled to the property in yellow shaded lines to the place on the plat where they are intersected by the line of Mountenay's Creek and if the Jury further believe that from thence the land within said lines to the Port Wardens line marked P.W. has been reclaimed from the water in part by the acts of those under whom the plaintiffs claim in planting logs, as stated in the evidence with a view to improve and fill up their lot under the permission of the Port Wardens of the 28th of September 1786, in part also by the acts of Rogers assisted by the operations of natural causes, and that the City of Baltimore by the concurrence of Rogers and the plaintiffs and under the ordinance of 1823, completed the said filling up at the expense of the plaintiffs so as to make the said lot fast land at or before the institution of this suit then the plaintiffs are entitled to recover according to their pretentions as far as the Port Wardens line; and if in addition to these facts, the Jury shall believe that the residue of the land claimed by the plaintiffs was made and annexed by the said City or their authorized agents with the concurrence and at the expense of the plaintiffs to the land within the yellow shaded lines then the plaintiffs are entitled to recover according to their pretensions. 2d. If the Jury believe that the Mayor and City Council or their agents filled up and improved the levee as stated in the evidence under the ordinance of 1823, and charged the different reparian proprietors with the expense of the said filling and improvement opposite to their lots respectively, and if said filling and improvement was completed as far as the plaintiffs are concerned with their consent and co-operation then under the true construction of the said evidence, and of the acts of 1745, 1783 and 1784, the extension filling up and improvement of the plaintiff's lot and in front thereof is virtually their own act, done with the consent and permission of the city authorities within limits described by themselves and that there