truth, strictly speaking, the fee in such highways is not in the city, - each street, lane and alley being condemned as an easement for the use of the public, and to that extent only. It was a serious question at one time, whether the city had a right to collect wharfage under the general authority bestowed by the legislature in the act of 1827, chap. 162, at the several wharves denominated city wharves, and which are constructed at the ends or sides of streets; and the late chancellor Bland, in a case in which that question was raised before him, decided that the act in question was unconstitutional, and all such wharves were free and open for public use, and by such dedication, the enjoyment of them could not be trammeled by the exaction of tolls - vide 3 Bland's, chan. rep. Upon a review of this decision, the court of appeals of the State, while admitting the general reasoning of the chancellor, which denies the right of the corporation to restrict the free use of such wharves to the public, reversed that portion of his decision, which affirms the doctrine that the city cannot collect what rate of wharfage is allowed by the legislature - this must be a reasonable rate - vide 5 Gill and Johnson, 375. The legislature has entire control over the subject of wharfage, so far at least as the power of the city extends, and may limit the corporation in its exercise as they deem conducive to the public interest, not only of the city, but of the State.

It follows from what I have above stated, that I am of opinion that the power of collecting wharfage at the ends of streets, lanes and alleys is dependent alone upon legislative grant, and may, at any time, be taken away from the city by the General Assembly of Maryland, and that in collecting wharfage, the mode and manner prescribed by the act of 1827, chap. 162, is the only lawful and just exercise of the power conferred, and which authorises a demand upon the owners or masters of vessels at the rate of wharfage prescribed. And further that as the streets, lanes and alleys are public highways, that it is not competent for the Mayor and City Council, by any regulation, to forbid the free enjoyment of the same upon the like terms and conditions; neither are they to interfere in any manner, with the rights guaranteed to the public, upon wharves built at the ends of such streets, lanes and alleys.

In the enumeration of the powers of the city contained in the charter, no right to collect wharfage is given, and the only right which they now possess is under the act I have referred to. Much less can there be found any power to rent such property, which implies a delegation of supposed power which they hold. It is a settled maxim of the law that delegated power must be exercised by the regularly constituted agents, and in the mode specified, and cannot be further delegated by the agent. I am clearly of opinion that the city of Baltimore possesses no legal power to rent any of the city wharves where the right to collect wharfage exists in the corporation, or in any manner to regulate the same with a view to grant special privileges. They are designed to be held for the public use, as the streets, lanes and alleys of the city are now enjoyed. Of course I shall not be understood as denying the right of the city to rent any city property which they may possess, binding upon the water, but only to deny the right of renting the water privileges or restricting the same in any manner which may interfere with the rights of the public. I am aware that usage, - and that for many years in duration, has sanctioned the renting of the wharves, denominated city wharves at the end of streets, lanes and alleys; and if no objections are interposed which the Council deem of sufficient moment to cause them to change that policy, perhaps it is not incumbent upon them to discontinue the course heretofore pursued. It is my duty to answer the questions which may be propounded to me only in their legal aspect, and not to express any views of my own, as to what course of legislation is best to be adopted.

Very respectfully,
B. C. Presbman,
Counsellor for the City.

The following communication was received from the Register, read, and on motion of Mr Grafton, referred to the joint Committee on police and jail:

Register's Office,
February 26th, 1850.

To the President and members of the First Branch of the City Council:

Gentlemen: The better to answer your resolution of