

[Barron v. The Mayor and City Council of Baltimore.]

bankments and other artificial means, purposely adapted to bend the course of the water to the wharf in question. These streams becoming very full and violent in rains, carried down with them from the hills and the soil over which they ran, large masses of sand and earth, which they deposited along, and widely in front of the wharf of the plaintiff. The alleged consequence was, that the water was rendered so shallow that it ceased to be useful for vessels of any important burthen, lost its income, and became of little or no value as a wharf.

This injury was asserted to have been inflicted by a series of ordinances of the corporation, between the years 1815 and 1821; and that the evil was progressive; and it was active and increasing even at the institution of this suit in 1822.

At the trial of the cause in Baltimore county court, the plaintiff gave evidence tending to prove the original and natural course of the streams, the various works of the corporation from time to time to turn them in the direction of this wharf, and the ruinous consequences of these measures to the interests of the plaintiff. It was not asserted by the defendants that any compensation for the injury was ever made or proffered; but they justified under the authority they deduced from the charter of the city, granted by the legislature of Maryland, and under several acts of the legislature conferring powers on the corporation in regard to the grading and paving of streets, the regulation of the harbour and its waters, and to the health of the city.

They also denied that the plaintiff had shown any cause of action in the declaration, asserting that the injury complained of was a matter of public nuisance, and not of special or individual grievance in the eye of the law. This latter ground was taken in exception, and was also urged as a reason for a motion in arrest of judgment. On all points, the decision of Baltimore county court was against the defendants, and a verdict for four thousand five hundred dollars was rendered for the plaintiff. An appeal was taken to the court of appeals, which reversed the judgment of Baltimore county court, and did not remand the case to that court for a further trial. From this judgment the defendant in the court of appeals, prosecuted a writ of error to this court.

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The counsel for the plaintiff presented the following points:

The plaintiff in error will contend that apart from the legislative sanctions of the state of Maryland and the acts of the corporation of Baltimore, holding out special encouragement and protection to interests in wharves constructed on the shores of the Patapsco river, and particularly of the wharf erected by Craig and the plaintiff, Barron; the right and profit of wharfage, and use of the water at the wharf for the objects of navigation, was a vested interest and incorporeal hereditament, inviolable even by the state, except upon just compensation for the privation; but the act of assembly and the ordinance of the city are relied on as enforcing the claim to the undisturbed enjoyment of the right.

This right was interfered with, and the benefit of this property taken away from the plaintiff by the corporation, avowedly, as the defence showed, for public use; for an object of public interest—the benefit more immediately of the community of Baltimore, the individuals, part of the population of Maryland, known by the corporate title of the Mayor and City Council of Baltimore. The “inhabitants” of Baltimore are thus incorporated by the act of 1796, ch. 68. As a corporation they are *made liable to be sued*, and authorized to sue, to acquire and hold and dispose of property, and, within the scope of the powers conferred by the charter, are allowed to pass ordinances and legislative acts, which it is declared by the charter shall have the same effect as acts of assembly, and be operative, provided they be not repugnant to the laws of the state, or the constitution of the state, or of the United States. The plaintiff will contend, accordingly:

1. That the Mayor and City Council of Baltimore, though viewed even as a municipal corporation, is liable for tort and actual misfeasance; and that it is a tort, and would be so even in the state acting in her immediate sovereignty, to deprive a citizen of his property, though for public uses, without indemnification: that regarding the corporation as acting with the delegated power of the state, the act complained of is not the less an actionable tort.

2. That this is the case of an authority exercised under a