

## THE WHARF CASE.

The city collector of wharfage may be directed to keep a separate account of the wharfage for the use of certain wharves until the right to them can be determined. The nature of a public port.—In all public ports there are rights affecting commerce, internal government, and private property, by which the title to, and use of a wharf therein must be controlled.—No wharfage can be allowed and collected which contravenes any congressional regulation of commerce, or the free intercourse, and equal rights secured by the federal constitution.—Anchorage or wharfage may be charged for the use of any place held as mere private property to which vessels may come.—A wharf in a public port is a kind of highway, for the use of which, after it has been once dedicated to the use of the public, no toll can be charged, unless expressly allowed by the General Assembly.—Wharfage where allowed must be reasonable; and when once fixed, cannot be enhanced. The court can pronounce no decree prejudicial to any public right appearing upon the record.—Where each of the litigating parties claims a right to demand wharfage for the use of a public wharf, for the use of which no toll can be legally demanded, they must, both of them, be perpetually enjoined, for the benefit of the public, from collecting wharfage.

THIS bill was filed in August, 1806, by *Cumberland Dugan* and *Thomas McElderry* against *The Mayor and City Council of Baltimore*. The bill itself with almost all the other papers in the case having been lost, a copy of the original bill and answer were, by consent, received in their stead.

It was stated in the bill, that the plaintiffs had, with the consent of the predecessors of the present defendants, made a great length of wharf extending through a considerable portion of that part of Baltimore called Market space; that, as the makers thereof, a right had accrued to them to demand and receive from all vessels lying at or goods landed upon those wharves, a reasonable wharfage; but that they had been prevented from collecting it by these defendants who had, under a pretext of right, taken it to themselves in exclusion of the plaintiffs. Whereupon they prayed, that, until this court should decree who were entitled to receive the wharfage, a receiver might be appointed who should thereafter account for the same; that the defendants should account; and that these plaintiffs might have such other relief as was suited to the nature of their case.

This bill appears to have been sworn to by the plaintiffs, and the following extract was found in the note-book of the then Chancellor.

1806.—KILTY, *Chancellor*.—The plaintiffs claimed certain wharves in the city of Baltimore, and the object was to have the