

No. 157.

Wm. Turner Esq  
vs and the Comrs of the  
County of ... the Circuit  
Court of the United States



E. CLAY TIMANUS,  
MAYOR.

Mayor's Office.

BALTIMORE, MD. 3/13/05.

Hon. Wm. Cabell Bruce,  
City Solicitor.

Dear Sir:-

The accompanying summons was this day served on His Honor, the Mayor, as a member of the Burnt District Commission, to appear before Justice Fuller of the Supreme Court, the First Monday of April next.

Kindly give this matter your attention, and oblige,

Yours very truly,

*Harry W. Rodgers*

Mayor's Secretary.

ENCLOSURES - 2.

The United States of America. 2669

DISTRICT OF MARYLAND, TO WIT:

To The Mayor & City Council of Baltimore & E. Clay Timmons,  
Mayor, Sherlock Swanwick Chairman, Charles K. Lord, John W. Snyder, John T.  
Graham, Members of the Board District Commission of Baltimore City

GREETING:

You are hereby commanded that all excuses and delays set aside you  
be and appear at the Clerk's office of the Circuit Court of the United  
States for the Fourth Circuit in and for the District of Maryland

on the First Monday in April next, to answer unto the bill of  
complaint of Sidney Turner Dyer, by Elisha Dyer Jr. her next friend  
and Elisha Dyer Junior in said court exhibited against  
you. Hereof you are not to fail at your peril, and have you then and there this writ.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of our Supreme  
Court, the Tenth day of March in the Year of our Lord, 1895  
Issued Tenth day of March 1895

Jas. H. Chew

Clerk.

MEMORANDUM: The defendants are required to enter their appearance  
in the suit in the Clerk's Office on or before the first Monday of April  
next; otherwise the Bill may be taken pro confesso.

# The United States of America.

DISTRICT OF MARYLAND, TO WIT:

To The Mayor & City Council of Baltimore and E. Clay Timanus,  
Mayor, Sherlock Snow, Chairman, Charles K. Lord, John W. Snyder, John T.  
Graham, Members of the Board District Commission of Baltimore City

GREETING:

You are hereby commanded that all excuses and delays set aside you  
be and appear at the Clerk's office of the Circuit Court of the United  
States for the Fourth Circuit in and for the District of Maryland

on the *First* Monday in *April* next, to answer unto the bill of  
complaint of *Sidney Turner Dyer*, by *Elisha Dyer Jr.* her next friend  
and *Elisha Dyer Junior* in said court exhibited against  
you. Hereof you are not to fail at your peril, and have you then and there this writ.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of our Supreme  
Court, the *Tenth* day of *March* in the Year of our Lord, 18*90*  
Issued *Tenth* day of *March* 18*90*

*Jas. H. Chew*

Clerk.

MEMORANDUM: The defendants are required to enter their appearance  
in the suit in the Clerk's Office on or before the first Monday of *April*  
next; otherwise the Bill may be taken pro confesso.

W. Cabell Bruce,  
CITY SOLICITOR.

Edgar Allan Poe,  
DEPUTY CITY SOLICITOR.

Joseph S. Goldsmith,

Albert C. Ritchie,

Sylvan Hayes Lauchheimer,  
ASSISTANT CITY SOLICITORS.

2669  
Department of Law,

Court House.

Henry W. Weeks,  
CLERK.

Baltimore, Md., March 13, 1905.

Edgar Allan Poe, Esq.,  
Deputy City Solicitor.

Dear Sir,-Please find enclosed copies of subpoenas handed me by the Burnt District Commission and his Honor, the Mayor, in the matter of the case of Sidney Turner Dyer, by Elisha Dyer, Jr., her next friend, et al, vs. The Mayor and City Council of Baltimore, et al, in the Circuit Court of the United States.

Please be so kind as to take charge of this case and see that the proper defenses are seasonably interposed on behalf of the City and the members of the Burnt District Commission.

Truly yours,

*W. Cabell Bruce*  
City Solicitor.

WCB/HWW.  
Encls.

The United States of America. 2669

DISTRICT OF MARYLAND, TO WIT:

To The Mayor & City Council of Baltimore and E. Clay Timanus,  
Mayor, Sherock Swann, Chairman, Charles K. Lord, John H. Snyder and John T.  
Graham, Members of the Board District Commission of Baltimore City

GREETING:

You are hereby commanded that all excuses and delays set aside you  
be and appear at the Clerk's office of the Circuit Court of the United  
States for the Fourth Circuit in and for the District of Maryland

on the First Monday in April next, to answer unto the bill of  
complaint of Sidney Turner Dyer, by Elisha Dyer Jr. her next friend  
and Elisha Dyer Junior in said court exhibited against  
you. Hereof you are not to fail at your peril, and have you then and there this writ.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of our Supreme  
Court, the Tenth day of March in the Year of our Lord, 1890

Issued Tenth day of March 1890

Jas. H. Chew

Clerk.

MEMORANDUM: The defendant s are required to enter their appearance  
in the suit in the Clerk's Office on or before the first Monday of April  
next; otherwise the Bill may be taken pro confesso.

2669

June 12, 1905.

Joseph S. Goldsmith, Esq.,  
Assistant City Solicitor.

Dear Sir,-Will you not please take charge with Mr. Poe of the following cases: Sidney Turner Dyer, et al vs. Mayor and City Council of Baltimore, et al, in the Circuit Court of the United States; Cumberland Dugan vs. Mayor and City Council of Baltimore, et al, in the Circuit Court of Baltimore City; Carter, Hughes & Co. vs. Mayor and City Council of Baltimore, in the Circuit Court of Baltimore City; Laura Patterson, et al vs. Mayor and City Council of Baltimore, et al, in the Circuit Court No. 2 of Baltimore City; and Mary Lee Andrews vs. Mayor and City Council of Baltimore, et al, in the Circuit Court No. 2 of Baltimore City.

Truly yours,

City Solicitor.

WCB/HWW.

W. Cabell Bruce,  
CITY SOLICITOR.  
Edgar Allan Poe,  
DEPUTY CITY SOLICITOR.  
Joseph S. Goldsmith,  
Albert C. Ritchie,  
Sylvan Hayes Tauchheimer,  
ASSISTANT CITY SOLICITORS.

Department of Law,  
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~~Henry W. Weeks,~~  
CLERK.

2669

Baltimore, Md., June 12, 1905.

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Truly yours,

*W. Cabell Bruce*  
City Solicitor.

WCB/HWW.



*George R. Heffner,*  
*Comptroller.*

*Department of Finance.*  
*Sub-Department, City Comptroller,*  
*City Hall,*  
*Baltimore, Md.,*

2nd DISTRICT.

Merchants & Miners' Transportation Company,  
Foot of Long Dock,

Henry Williams, foot of Commerce Street,

Martin Wagner, foot of Gay Street,

3rd DISTRICT.

Baltimore Yacht Club, foot of South Street,

Baltimore, Chesapeake & Atlantic Railway Company,  
Foot of South Street,

4th DISTRICT.

Baltimore Steam Packet Company, foot of Barre Street,

Baltimore, Chesapeake & Atlantic Railway Company,  
Foot of Camden Street,

Chester River Steamboat Company, foot of Conway Street,

~~Ericsson Line, Light & Pratt Streets,~~

Dyer case

Dillon a man Cap p 194 note  
28 Mich 221 How in People.

59 Mich 43 Scott on Laying  
Rights to lease to private persons

105 U.S. 169 R.R. Co. v. Ellender

What constitutes a public use  
37 Mich 559 New Cent Co. v. George Creek

79 Mich 212 In re ... 410

Who controls the ... and  
amount of property to be taken  
for what purpose (same)

93 Mich Epstein case

31 Mich <sup>346</sup> In re ... case

2 Dill. U.S. 70 Ill. Council ...

51. La. Ann. p. 1  
towards end of core  
cont. irregularly  
poured to close part  
of possible waves

Security Wharves

156 No 28

Held that petitioner had  
no right to raise port  
right & lease conferred  
by charter of St John

135 D. L. 9 208

In re Mayor of N. Y.  
N. Y. Customs & P. R. Rom  
conclusive of the case

95 D. W. Rep 41

Rank. in Shadley  
not especially good.

25 Fed Rep 309

The Clearwater  
Right of city to lease  
public wharves not  
even questioned.

17 Quebec Super Ct 270  
Taylor re Montreal Harbor  
Com.

p 201 etc strong decision  
appears by to case at bar

Where portion taken, there is an apportionment of the rent.

Commissioners vs. Johnson, 66 Miss., 249.  
 Barelay vs. Picker, 38 Mo., 143.  
 O'Brien vs. Ball, 119 Mass., 29.  
 Dye vs. Wightman, 66 Pa. St., 425.  
 Lodge vs. Martin, 31 App. Div. N.Y., 13.  
 Taylor, Landlord and Tenant, Sec. 519.  
 Biddle vs. Hussman, 23 Mo., 579, 602.  
 Kingsland vs. Clark, 24 Mo., 24.  
 Cuthvert vs. Kuhn, 3 Whart., 357.  
 Voegtly vs. Pittsburg, 2 Grant, cases, 243.  
 Uhle vs. Cowan, 192 Pa. St., 443.  
 Taylor, Landlord and Tenant, Sec. 386, 519.  
 R.I. vs. Hayden, 20 R.I., 544.

Private contracts are property and may be condemned.

10th Amer. & Eng. Encyclop. 1088, 1089, and notes.  
 Langdon vs. Mayor &c., 93 N.Y., 161.  
 Opening of 32nd St., 102 Penn. St., 115.  
 Met. C.R. Co. vs. Chicago, 87 Ill., 318-324.  
 Long Island vs. Brooklyn, 166 U.S. 690-691-692-693.  
 U.S. vs. Lynch, 188 U.S., 485.

Providing for injury as to damages before competent Court  
 and allowing appeal is due process of law.

Pearson vs. Yewdall, 95 U.S. 296 (Rose's notes No. 9,  
 p. 256).

Eminent domain is inherent in government as such, and is as  
 indestructible as the State itself, and all property, tangible as well  
 as intangible, is held subject to this right.

Adirondack Ry. Co. vs. N.Y., 176 U.S., 346, 347.  
 Long Island vs. Brooklyn, 166 U.S., 689.

Crowe vs. Wilson, 65 Md., 479, 481, 483, 484.  
Kopp vs. Herman, 82 Md., 350.

Balte. vs. Canton Co., 63 Md., 235, 237.

Nature of 99 years Lease.

Banks vs. Haskie, 45 Md., 207.  
Baltimore & Ohio vs. Canton Co., 63 Md., 218.  
Crowe vs. Wilson, 65 Md., 479.  
Kopp vs. Herman, 82 Md., 339.

Sept 20, 1969

Rule 26

No. 7 Returns Humel case  
maybe France.

No other case, except under  
Special Specular Criminals  
Blessman Let's Case

But it has been held that a statute providing for an assessment of damages by a board of City Officers or by Commissioners appointed by the Council was valid when an appeal was given to an impartial tribunal.

Case 1. *H. Wayne* 121 Ind. 389, *St Paul v. Nickl.*  
42 Minn. 262, *Fulton v. Dora* 8 How. 78. refer to

7 May



Dear Edgar:

The above cases appear to be precisely in point. Will you not please examine them & see whether they are & let me have an abstract of them.

W. P. B,  
C.S.

~~12~~ 12, Ind. 390 & 391

If the property of a citizen  
is demanded by a private  
corp. the corp cannot  
be invested with the  
authority to select the  
commissioner in a case  
where there is no right  
of appeal; but here  
the corp is invested with  
the authority to appoint  
in a governmental one  
and its officers are  
public officers charged  
with purely public  
duties.

They have no private  
interest to subserve  
and no benefit  
can accrue to them  
as individuals.

These corp. are govern-  
mental instrumentalities  
and they are invested  
with delegated  
governmental power.  
It is held that interest  
as a tax payer will  
not disqualify a  
public officer charged

with a sworn duty  
public duty all the  
answer by the voters of  
a city cannot justify  
we said to have any  
other private interest  
than that of taxpayers.

Doubtful therefore if  
act would be unconsti-  
tutional even if the  
right of appeal was given

27 minutes. Still a messenger 123

The Tribunal (County Court)  
which is designated in  
this instance is a board  
of public officers created  
under the general law of  
the State ~~acting~~ under  
the obligation of an  
official oath and therefore  
a competent and impartial  
tribunal.

25 Min. 124

Burgessman v. ~~the~~

See 38 Town supervisor authorized  
to assess damages  
occasioned by any land  
owned by the laying out  
or opening of any  
public road in case  
the amount of damages  
is not agreed on.

appeal given to the  
County Com.

Claimed that see 38  
unconstitutional because  
the supervisor represents  
the town which is the  
party besting for the  
right jury & they are  
therefore not a proper  
impartial tribunal

Supervisor are standing  
public officers a part  
of whom require election  
it to act in matters of  
this kind of the County  
Com. do not represent  
the town at all. Hence laws

Where portion taken, there is an apportionment of the rent.

Commissioners vs. Johnson, 66 Miss., 249.  
(See 63 Iowa, 28; 124 Pa. St., 297).  
Barclay vs. Picker, 38 Mo., 143.  
O' Brien vs. Ball, 119 Mass., 28.  
Dye vs. Wightman, 66 Pa. St., 425.  
Lodge vs. Martin, 31 App. Div. N. Y., 13.  
Taylor, Landlord and Tenant, Sec. 519.  
~~Opening 25th St., 8 Phil., 488.~~  
Biddle vs. Hussman, 23 Mo., 579, 602.  
Kingsland vs. Clark, 24 Mo., 24.  
Cuthvert vs. Kuhn, 3 Whart., 357.  
Voegtly vs. Pittsburg, 2 Grant, cases, 243.  
Uhle vs. Cowan, 192 Pa. St., 443.  
Taylor, Landlord and Tenant, Sec. 386, 519.  
R. I. vs. Hayden, 20 R. I., 544.

Private contracts are property and may be condemned.

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Langdon vs. Mayor &c. 93 N. Y., 161.  
Opening of 32nd St., 102 Penn. St., 115.  
Met. C. R. Co. vs. Chicago, 87 Ill., 318-324.  
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U. S. vs. Lynch 188 U. S., 485.

Providing for injury as to damages before competent Court, and allowing appeal, is due process of law.

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Eminent domain is inherent in government as such, and is as indestructible as the State itself, and all property, tangible as well as intangible, is held subject to this right.

Adirondack Ry. Co. vs. N. Y., 176 U. S., 346, 347.  
Long Island vs. Brooklyn, 166 U. S., 689.

- Grand - Wilson 65 vol 479, 481, 483, 484  
Kapp - Herman 82 vol 350.  
44

2100  
Whitcomb case

Back. & Conts

63 and 235, 237

State of 99 years  
Lease.

2107

Power may be delegated.

10 Am. & Eng. Encyclop., 1053.

May be delegated to municipal corporations.

Ibid., 1059.

Legislature declared the use public.

Ibid., 1069, 1070.

Uses considered public. Highways.

Ibid., 1072.

Land taken for a public park is a public use.

Shoemaker vs. U.S., 147 U.S., 297.

Street.

Garrison vs. City of N.Y., 21 Wall., 203.

Public use declared by Legislature will generally be respected  
by the Courts.

U.S. vs. Gettysburg, 160 U.S., 680.

What property may be taken.

10 Am. & Eng. Encyclop., 1088, 1089.

Compensation.      Market value.      (Read)

Ibid., 1151, 1152, 1153, 1154, 1155, 1157.

Reduction of rent.      Element of compensation.

Ibid., 1165.

Lessee.

Ibid., 1184, 1185, 1188, 1194.

Lessee entitled to compensation, and, therefore, taking does not amount technically to an eviction.

No apportionment when part taken.

Corrigan vs. Chicago, 144 Ill., 537, 543.

Where part taken, covenant not affected, and no apportionment.

Parks vs. Boston, 15 Pick., 198.  
Patterson vs. Boston, 20 Pick., 159.  
Workman vs. Mifflin, 30 Pa. St., 362.  
Stebbins vs. Village, 136 Ill., 37.  
Corrigan vs. Chicago, 144 Ill., 537.  
Gluck vs. City of Baltimore, 81 Md., 315.

Where all and where only a part taken.

Corrigan vs. Chicago, 144 Ill., 538, 545.

Covenant to pay rent remains in force although all the property taken.

2 Lewis, p. 1009.

Foote vs. Cincinnati, 11 Ohio, 468.

Foltz vs. Huntly, 7 Wend., 210.

Chicago vs. Garrity, 7 Ill. App., 474.

Where portion taken, there is an apportionment of the rent.

Commissioners vs. Johnson, 66 Miss., 249.

(See 63 Iowa, 28; 124 Pa. St. 297).

Barclay vs. Picker, 38 Mo., 143.

O'Brien vs. Ball, 119 Mass., 28.

Dye vs. Wightman, 66 Pa. St., 425.

Lodge vs. Martin, 31 App. Div. N.Y., 13.

Taylor, Landlord and Tenant, Sec. 519.

Opening 25th St., 8 Phil., 488.

Biddle vs. Hussman, 23 Mo., 579, 602.

Kingsland vs. Clark, 24 Mo., 24.

Cuthvert vs. Kuhn, 3 Whart., 357.

Voegtly vs. Pittsburg, 2 Grant, cases, 243.

Uhle vs. Cowan, 192 Pa. St., 443.

Taylor, Landlord and Tenant, Sec. 386, 519.

R.I. vs. Hayden, 20 R.I., 544.

Market value. Measure of damages.

Boom Co. vs. Patterson, 98 U.S., 408.

Searl vs. School District, 133 U.S., 565.

Bauman vs. Ross, 167 U.S., 574.

Sharp vs. U.S., 190 U.S., 341.

The power extends to every species of property within its territorial jurisdiction, and to every variety and degree of interest therein.

10 Am. & Eng. Encyclop., 1088, 1089, and notes.

Private contracts are property and may be condemned.

Ibid., 1089.  
Langdon vs. Mayor &c., 93 N.Y., 161.  
Opening of 32d Street, 102 Pa. St., 115.

The right of eminent domain cannot be surrendered, and the legislature may exercise it whenever the public exigencies require.

Ibid.  
Brunner vs. Boston, 102 Mass., 22.  
People vs. B. & O., 117 N.Y., 155.  
Long Island vs. Brooklyn, 166 U.S., 689, 690.

Contracts are merely property and must yield.

Ibid.  
Met. C.R. Co. vs. Chicago, &c., 87 Ill., 318, 324.

Contract is a mere incident to tangible property, and contract is property which, like any other property, may be taken.

✓ Long Island vs. Brooklyn, 166 U.S., 690, 691, 692, 693.

All property, including franchise, may be taken.

10 Rose (U.S.) notes, 250 et.  
Greenwood vs. Freight Co., 105 U.S., 22.  
Charles River Bridge vs. Warren Bridge, 6 How., 638.  
Richmond vs. Louisa, 13 Howard, 83.

Charter is a contract and private property, but like all private property is subject to the right of eminent domain.

West River vs. Dix, et al., 6 Howard, 507, 536, 532.  
4 Rose, notes, 675.

All private property held subject to right of eminent domain.

✓ U.S. vs. Lynch, 188 U.S., 445.

Contracts in deeds. No impairment.

Stevenson vs. Loehr, 57 Ill., 509.  
Ellis vs. Welsh, 6 Mass., 246, 252.

Whatever exists in any form, whether tangible or intangible, is subject to the exercise of the power of eminent domain.

✓ Met. C. R. Co. vs. Chicago, &c., 87 Ill., 324.  
✓ Waterworks vs. Burkhart, 41 Ind., 369.  
✓ Long Island vs. Brooklyn, 166 U.S., 689.

Providing for injury as to damages in condemnation proceedings under eminent domain, before competent court, and allowing appeal, is due process of law.

✓ Pearson vs. Yewdall, 95 U.S., 296 (Rose's notes No. 9, p. 256).

Published notice is sufficient.

Huling vs. Kaw, 130 U.S., 563 (11Rose's notes, 756).

Assessment may be made originally by Commissioners.

Supply Co. vs. Brooklyn, 166 U.S., 695.  
Long Island vs. Brooklyn, 166 U.S., 686.

Eminent domain is inherent in government as such, and is as indestructible as the State itself, and all property, tangible as well as intangible, is held subject to this right.

✓ Adirondack Ry. Co. vs. N.Y., 176 U.S., 346, 347.  
✓ Long Island vs. Brooklyn, 166 U.S., 689.

In the Whitcomb case argue that there is no impairment of the obligation of the contract, because, in case the leasehold is taken, the lessee must receive compensation for what is taken, and, if he receives this, the fact that he continues to pay the old rent to the landlord makes no difference, as the difference between his former possession and present possession is made good by the compensation which is awarded to him.

See Daily Record, Wednesday, Dec. 14, 1904, page 569.

U.S. Circuit Ct  
Dyer

W. & O. C. of Balt

authentic

Express authentic ground  
city by Legislature by Bureau  
of that act to ascertain  
purpose for whom does  
press

Vol 30 2nd Ed. U.S. Circuit Ct  
Dyer, 7200 U.S. Wharff  
478, 479, 480 + 488

3. Blank 383 What case

57 La Ann 1 Florida v New Orleans  
103 Mich 103 Michigan v Balt  
55 7 J 357 Dugan v Balt  
37 Ind 199 Hayshunt v Balt

75 Fed Rep 309 The Ocean  
2 Ill 444 White v Balt

95 U.S. 80 Frazier v Rockwell  
100 U.S. 454 Dyer v Balt

7 Ind 500 Stewart v Balt  
79 Ind 481 72 Ind 611 Ulman case

62 Ind 427, 435 Jenkins v Whyte

135 - 2nd Ed. Supplement  
Enclosed Volume 10 2nd Ed. Supplement pp 107-108

# Points

Widening & extending of  
public library.  
By \$600,000 loan &  
very description of burnt  
district & surrounding area,  
a large amount of property  
south of Pratt St.

If breadth of their argument  
equals breadth of their view  
as to what is meant by  
extension to public library  
we could easily get things  
today.

156 mo. 28

51 La. Ann. ✓

75 Fed. Rep. ✓

135 h. y. ✓

26 Mich.

59 Mich.

2 Ill. (U.S.)

118 Cal. ✓

68 mo.

8 Tex. Civ. App. ✓

17 Ind. Sup. Ct. ✓

39 La. Ann. 275

21 Fed. Cas.

97. h. W. Rep. ✓

~~92 July 95~~

~~Robert W. Johnson~~

21 Texan Riv. Apr  
10 2 Weeks & Salvage

~~46 U.S. 453~~

~~46~~

IN THE  
**Circuit Court of the United States,**  
For the District of Maryland.

---

*IN EQUITY.*

---

SIDNEY T. DYER ET AL.

vs.

THE MAYOR AND CITY COUNCIL OF BALTIMORE  
ET AL.

---

**Brief for Plaintiffs on Demurrer to Bill.**

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I.

The scheme of new wharves provided for in the Ordinance No. 149 and the map accompanying the same appears upon its face to be beyond the powers of the Burnt District Commission as defined in the Act of 1904, ch. 87.

That statute purporting, as it does, to authorize an exercise of the power of eminent domain must be strictly construed.

Binney's Case, 2 Bland, Ch. 99, 129.

Cooley, Constitutional Lim., 7th Ed., pp. 762  
and 763.

Ligare vs. City of Chicago, 139 Illinois, 46, 64.

C. & N. W. Ry. Co. vs. Gulp, 133 Illinois, 657.

Niagara Falls, etc., R. R. Co., 108 N. Y. 375.

Belcher Sugar Ref. Co. vs. St. Louis Grain Ele-  
vator Co., 82 Mo. 121.

As to the rule generally in regard to statutory construction in Maryland—

See—Foster vs. Blight, 2 Cranch, 399.

Scaggs vs. Balto. & Wash. R. R. Co., 10 Md.  
268, 277.

Maxwell vs. Baldwin, 40 Md. 273.

Gough vs. Pratt, 9 Md. 527, 532, 533.

The Act authorizes the condemnation of property for “additions or extensions to the public wharves or docks.” The Ordinance and Map contemplate the construction of entirely new wharves and docks, obliterating the old wharves and docks, both public and private, within the territory south of Pratt street. This is not within the power conferred by the Act of Assembly.

The word “addition” means something added to another thing, and not something disconnected therewith; and the supposed addition cannot be of greater magnitude—certainly not of vastly greater magnitude—than that to which it is alleged to be added.

Richardson vs. German-American Fire Ins. Co.,  
85 Hun. 266, 268.

As to this distinction between an *addition* to existing buildings, wharves or other structures, and entirely *new* buildings, wharfs or structures, see—

Peoria Sugar Ref. Co. vs. People's Fire Ins. Co.,  
24 Fed. 773, 776-7.

Similarly, “the word ‘*extension*’ imports the continuance of an existing thing, and must have full effect given to it where it occurs.”

Brooke vs. Clarke, 1 B. & Ald. 396, 403, per Ld.  
Ellenborough.

Moreover, the supposed “extension” must not be out of all proportion to the thing it is proposed to extend. Thus,

the prolongation of a five mile railway for seventy miles constitutes an entirely new road and not an *extension*.

*N. Y. Central, &c. R. R. Co. vs. Buffalo, &c. Ry. Co.*, 96 N. Y. App. Div. 471.

Said the Court :

“The term ‘extension’ conveys to the mind an enlargement of the main body, the addition of something of less import than that to which it is attached.”

96 N. Y. App. Div. 475.

See also—*Re Charlotte Street*, 23 Pa. St. 286.

*Seattle, &c. Ry. Co. vs. State*, 7 Wash. 150, 154-158, is in point. The Legislature of Washington authorized a city “to project or extend its streets over and across any tide lands within its corporate limits.” The Court held that the words project or extend were synonymous, and referred to *existing* streets, so that the municipality had no power to construct an entirely *new* street skirting the shore of the tidal flats.

Inasmuch as those cases did not deal with statutes conferring the power of eminent domain and therefore to be strictly construed, they are the stronger authority for the Complainants.

For cases in which Courts have construed statutes involving an exercise of the power of eminent domain and have confined within the words of the enactment the objects for which condemnation could be had, see—

*City of East St. Louis vs. St. John*, 47 Ill. 463.

*Re Widening of 34th Street*, 10 Phila. 197.

*Chicago & N. W. Ry. Co. vs. Chicago*, 132 Ill. 372, 375-376.

Corroborative evidence that the words “additions or extensions to the public wharves or docks” mean what they say, that is, additions or extensions to existing public wharves or docks, is afforded by a part of Sections 17 and 20

of the Act, where the language is "any addition \* \* \* or extension to any public wharf or dock," in the singular. See also section 27.

The power vested in the Burnt District Commission to make "additions or extensions to the basin or harbor" cannot by a latitudinarian construction be construed as equivalent to a general power to improve the harbor or to improve navigation, so as to enlarge the power to make additions or extensions to the public wharves or docks. That the word *harbor* in this connection is used to designate a *place* and not, by a kind of figure of speech, to denote navigation or harbor facilities in general is evident from its being coupled with the word *basin*, a word also of purely local signification. Then too, the Act (Section 8) requires the Commission to give the "dimensions or extent \* \* \* of any additions or extensions it proposes to make to the harbor or basin of Baltimore;" thus showing that physical additions or extensions to the harbor or basin were alone what the Legislature had in mind. See also Sections 23 and 27.

The Act does not contemplate any comprehensive scheme for the improvement of navigation facilities except in the manner therein mentioned, namely, by adding to or extending the basin or harbor, by filling up the basin to a limited extent, or by adding to or extending public wharves and docks. The statute as a whole shows that in the eyes of the Legislature the most important part of the scheme related to the widening, opening, extending and straightening of streets, and the laying out of squares, plazas and market places. Projected improvements to the harbor and the public wharves and docks were evidently deemed of secondary importance. The Act of 1904, ch. 468, authorizing a \$6,000,000 loan, provides that the monies thus obtained should be available "for supplying additional means for defraying the expenses and cost of carrying into execution the plan of improvements adopted or to be adopted under the terms of the Act," commonly known as the Burnt District Act. In other words, the proceeds of the loan were not to be applied exclusively or even

primarily to dock and wharf improvements. There is therefore nothing to suggest that the General Assembly supposed that any dock or wharf improvements made under the prior Act might cost as much as \$6,000,000. The street improvements, or some of them, were expected to be very expensive. Thus the projected widening of Baltimore street would alone, according to the estimates, have cost in the neighborhood of \$2,000,000. Moreover, very costly changes in the public wharves and docks might lawfully be undertaken under the Burnt District Act. For example, the Commission had power to fill up the basin—an expensive undertaking—and also to enlarge the basin or harbor, an enterprise which might cost an indefinite amount, according to the extent of the enlargement or excavation. Moreover, it may be well doubted whether the \$6,000,000 appropriation is in fact sufficient to defray the expenses of the comprehensive scheme of new wharves and docks which is now being undertaken. Indeed, one of the reasons assigned by the Burnt District Commission for the ridiculously low valuations which they have placed upon the property south of Pratt street, is that if the property-owners were paid the true value of their land, the funds at the City's disposal would prove insufficient for its purpose!

## II.

In any exercise of the power of eminent domain in connection with the authority expressed to be conferred upon the Burnt District Commission by the Act of 1904, chapter 87, to lay out additions and extensions to be made to the public wharves and docks of Baltimore City and to acquire the lands and property within said burnt district which may be requisite to make such additions and extensions, the settled principles of law require that the proceedings should show distinctly, in relation to any piece of property sought to be so acquired, WHAT public wharf, or WHAT public dock it is, that is to be so extended or added to,

and to define precisely the particular additions or extensions desired.

In regard to the widening and extension of streets [section 2, (1)] where the authority is expressed in similarly comprehensive terms, it certainly would never be seriously contemplated to condemn a certain parcel of land, the property of a certain individual, for the general purpose of widening or extending streets within the district; but it would be seen to be necessary to specify the street and the bounds of the extension or addition deemed requisite to be made to it.

### III.

The City is contemplating a fraud upon the Burnt District Act, inasmuch as the Act authorizes additions and extensions to *public* wharves and docks, while the City, under color of the power so conferred, is really intending to construct wharves which shall not be *public* wharves.

Where a municipal corporation having power to condemn for one purpose, undertakes to condemn ostensibly for that purpose, but really for another object, a Court of Equity has undoubted power to look behind the mere form of the proceeding, and, seeing that the real intent is unauthorized, to enjoin the threatened condemnation as *ultra vires*.

*Fine for us* — Lynch vs. Comm'rs of Sewers, 32 Ch. D. 72. 79

— Farist Steel Co. vs. City of Bridgeport, 60  
Conn. 72.

Ligare vs. City of Chicago, 139 Illinois, 61.

Forbes vs. Delashmutt, 68 Iowa, 164.

This doctrine does not trench upon the principle that the expediency or necessity of a proposed taking is for the Legislature. The objection is not that the establishment of public wharves is unnecessary or inexpedient, but that the City is not really intending to construct *public* wharves, but some other kind of wharves. Hence, if this intention is

alleged in the bill, the complainants are entitled to an injunction. Therefore, it is necessary to see just what a *public wharf* is.

“Piers or landing places, and even wharves, may be private or they may be in their nature public, although the property may be in an individual owner; or, in other words, the owner may have the right to the exclusive enjoyment of the structure, and to exclude all other persons from its use; or he may be under obligation to concede to others the privilege of landing their goods, or of mooring their vessels there, upon the payment of a reasonable compensation as wharfage.”

*Dutton vs. Strong*, 1 Black. 23, 32.

As Judge Dillon says :

“Wharves, piers, quays and landing places may be either public or private. \* \* \* If *public*, they may be used by persons generally upon payment of a reasonable compensation.”

1 Dillon on Mun. Corps., 4th Ed., sec. 105.

A public wharf is a public highway, like a turnpike road, which everybody has a right to use, upon payment of reasonable tolls by way of wharfage.

*Dugan vs. City of Baltimore*, 5 G. & J. 357, 374-5.

A public wharf which any individual or corporation should have the exclusive right to use is a contradiction in terms, just as much as to speak of a common carrier who is to carry for one person exclusively, or a highway which one person shall have the exclusive right to use.

See also :

*West Coast Naval Stores Co. vs. Louisville, &c. R. Co.*, 121 Fed. 645.

This principle that a public wharf is a public highway is carried so far that no tolls can be collected at a public

wharf although exacted from all persons equally, without express legislative authorization.

City of Chester vs. Hagan, 116 Fed. 223.

To be sure, there may be public wharves which the city or State owning them has the right to lease or even alienate ; for the public may own property which it may part with for a consideration, where the property was acquired otherwise than by condemnation so that no private rights are involved. The State, like any private person, may sell or give away its property, whether in perpetuity or for a term of years ; but the property then becomes private. Thus, if the State owns a public wharf, acquired otherwise than by condemnation, no constitutional rights of anybody would be violated if the State should sell it or lease it so as to give exclusive or uncontrolled right of user to the vendee or lessee ; but upon such sale or lease the wharf *ipso facto* ceases to be a public wharf so long as the private ownership or right of exclusive user continues. The definition of a public wharf is a wharf which everybody has an equal right to use.

Thus, the Legislature may constitutionally authorize a city to lease a public wharf (where the wharf was not acquired by condemnation, so that no private rights are involved) to a ferry company, and may confer upon the lessee the exclusive right of user, *Broadway, &c. Ferry Co. vs. Hankey*, 31 Md. 346 ; but while such lease continues the wharf ceases to be a public wharf, unless indeed the case would be altered by the fact that a ferry is itself a public use, since everybody has the right to use the ferry.

*Prima facie*, however, any lease of a public wharf is construed as a mere farming of the wharfage or tolls and not as conferring upon the lessee exclusive rights ; just a lessee of a railway is bound to operate it as a common carrier and to afford equal transportation facilities to all persons. This is evidently the sort of leasing referred to in section 8 of the Baltimore City Charter.

Taylor vs. Beebe, 3 Robertson (N. Y.) 262, 268.

Now it appears from the Bill that the object of the defendants in the threatened condemnation is "that the use of the lands to be acquired, and of the wharves to be constructed adjacent to existing land, shall be given over for money considerations to persons corporate and natural who may apply for the same" (p. 9); that "no part of the said lots of ground and adjacent wharves in which your oratrix is interested as aforesaid \* \* \* is to be used for public wharves or in connection with public wharves" (pp. 10-11); that the "wharves and docks proposed to be constructed in accordance with the plan exhibited and shown by Complainants' Exhibit No. 4, are not to be public wharves and docks, but that the defendants plan and intend to lease out the other wharves designed to be constructed as aforesaid, for terms of years to private persons, firms and corporations" (p. 15); and that the result will be "to transfer, indirectly through said municipal corporation, to its lessees, private individuals or private corporations, the use and enjoyment of land which previously to the creation of said Commission was enjoyed by the various original owners, including your oratrix, substantially in the same manner as such lessees of the City are to be entitled to use it?" (P. 9.) See also Plaintiff's Exhibit No. 7.

We submit, therefore, that the City is not intending to construct *public* wharves and docks, and that the threatened condemnation for any other purpose is *ultra vires*, and should be enjoined.

#### IV.

If the Legislature had attempted to confer the power to condemn for the purpose of leasing out to private individuals for their exclusive use, the attempt would be in violation of the Fourteenth Amendment and of the Constitution of Maryland.

Condemnation for other than a public use is forbidden by the Fourteenth Amendment.

Mo. Pac. Ry. Co. vs. Nebraska, 164 U. S. 403.

In order to constitute a public use, it is not enough that the improvement may indirectly benefit the public by promoting commerce or industry: it is essential that the property taken shall be open to use by any member of the public, or of some specified class of the public, either gratuitously or upon payment of reasonable tolls or fees.

Memphis Freight Co. vs. Memphis, 4 Coldwell  
(44 Tenn.), 419, 423-428.

Thus, a street is a public use because everybody has the right to use it. So, a railway is a public use because everybody has the right to have himself or his goods carried upon payment of reasonable fare or freight. The same thing is true of a common grain elevator. Even a lateral railway to a coal mine or oil well may be a public use, because although the road will be in fact chiefly, if not altogether, used by one person or company, yet everybody has the *right* of user. Ulmer vs. Line Rock R. R. Co., 98 Me. 579. New York Mining Co. vs. Midland Mining Co., 5 Atl. Rep. 217, 221 (Md.) The same principles apply to gas, electric-light, water and irrigation companies: everybody within the district which they serve has the right to the use of the gas, electricity or water, as the case may be.

The Mill Acts (unless they can be sustained, as the Supreme Court has held, as an exercise of the police power, on the ground that no property is *taken* in the constitutional sense) must be deemed an exception to the general principle. They are very old Acts, many of them antedating the Revolution; and if they are constitutional at all—a point on which the authorities are divided—it is universally recognized that they can be upheld only on the ground of inveterate practice, and establish no principle which can be extended to other cases. It is well settled that land cannot be taken for the use of a manufacturing company, etc.

Moreover, the property condemned must be *wholly* for a public use. To be sure, individuals may *incidentally* receive

a private benefit, as in the case of railway and other public service companies ; but the public cannot lawfully be excluded from use of any of the property condemned.

    Berrien Springs Water Co. vs. Berrien Circuit  
     Judge, 94 N. W. Rep. 379 (Mich.)

    Attorney-General vs. Eau Claire, 37 Wisc. 400.

    Fallsburg Power and Mfg. Co. vs. Alexander, 43  
     S. E. Rep. 194.

*Re* Eureka Basin Co., 96 N. Y. 42.

The fact that the public cannot always, at their pleasure, enter upon every part of the condemned property is no exception to this doctrine. Thus, the public may be warned to keep off the grass in a public park, prohibited from bathing in a public reservoir, from walking upon a railway company's tracks or riding on its locomotives, but every part of the property taken must be employed in giving to the public the service or use for which the condemnation is had.

We submit, therefore, that property cannot be condemned for the purpose of leasing it to private individuals for their private purposes, as the city intends to do.

    See—Sanborn vs. Van Duyne, 96 N. W. Rep. 41,  
     (Minn.)

If the proposed lessees were themselves, all of them, necessarily to be engaged in public service, the case might be different. For example, it might more plausibly be contended that the condemnation of a wharf could constitutionally be authorized for the purpose of leasing it to a railway company, a ferry company, a steamship company or other common carrier ; on the ground that, while every person might not have the right to moor at the wharf, yet he would have the right to bring his goods there for shipment by the carrier.

This is the ground upon which the case of *Re* City of New York, 135 N. Y. 253, so strongly relied upon by the other side, is to be supported. The case proceeds upon the

assumption that the condemned property would be leased to steamship companies engaged in trans-atlantic commerce, *i. e.*, to common carriers. In the case at bar there is no ground for this assumption or inference, but the contrary appears. The bill alleges (p. 9) that the City's lessees, private individuals or private corporations, are to enjoy the property substantially in the same manner as the complainants now do—that is, for their own private purposes, dissociated from any public use.

We submit that the case is in substance indistinguishable from *Re Eureka Basin Warehouse, &c., Co.*, 96 N. Y. 42. There the Court held that land could not be condemned for constructing a basin or harbor where only a small part of the resulting wharf-space was required by statute to be open for public use.

It is not, of course, conceded that the City could constitutionally condemn land as a highway for the purpose of assigning it for another sort of public use.

Moreover, only so much property can be condemned as is to be used for the public purpose in question.

*Gregg vs. Mayor, &c., of Baltimore*, 56 Md. 256, 272-3.

*Cooley on Const. Lims*, 7th Ed. p. 777, note 1, and cases cited.

And, in Maryland at least, it is also settled that no other or greater interest in the property can be condemned than the right to put it to the specific public use mentioned in the condemnation proceedings, without any power in the corporation condemning to put it, or authorize it to be put by a vendee or lessee, to any other use whatsoever.

*Kane vs. Mayor, &c., of Balto.*, 15 Md. 240, 249, 251.

Exhibit No. 4 shows that the Cable street property at the head of Patterson's Dock, is to remain, after the completion

of the contemplated new wharves and docks, substantially in the same situation as at present. It is not to be used in the construction of any of the new wharves or docks, but is to remain as at present. Hence, even if property could constitutionally be taken for the purpose of constructing new wharves and docks which will not be open to the public, under the plea that the public interests would be subserved by the construction of wider and deeper docks, still our Cable street property could not be taken. Hence, unless the Court is prepared to say that the city could constitutionally be authorized to condemn private property for the purpose, not of enlarging docks or wharves, but of leasing the land to other private persons for their own exclusive use, the demurrer must be overruled.

The Legislature certainly could not condemn a street or other highway for the purpose of leasing to a private person the exclusive right of travelling upon the highway.

See—VanWitsen vs. Gutman, 79 Md. 405.

Yet that is substantially what is being undertaken here; for a public wharf is a highway quite as much as a street.

Dugan vs. Baltimore, 5 G. & J. 357, 374-5.

The power exercised by the City in the regulation of the public streets to grant to owners of adjacent property certain privileges—"franchises" so called—as, to construct areas or vaults or porches, evidently has nothing at all to do with the present question.

In some cases such action of the municipality may be regarded as a partial release to the owner of the fee of a small portion of the public easement. In all cases it is a transaction simply between the grantee and the city. If the fee of the street bed happens to be in a third person, who is not consulted, his right is not affected. If the owner of the soil of the street does intervene, as, sometimes, in the case of the erection of electric light or trolley poles, the

question simply is, "is the erection in question a proper use of the street as a public highway—that is to say, within the purpose for which it was dedicated or condemned?"

## V.

The machinery of condemnation provided in the Act of 1904, ch. 87, does not afford the landowner due process of law, as required by the Fourteenth Amendment, and violates the Maryland Constitution, for the following reasons :

*A.* Due process of law requires that the Commissioners entrusted with the duty of valuing property for purposes of condemnation be *impartial*; and an agent of the corporation which is condemning is not deemed an impartial judge within this rule.

Powers vs. Bears, 12 Wisc. 213.

*Re* Woodland Ave., 178 Pa. St. 325.

House vs. City of Rochester, 15 Barb. 517.

Here the Burnt District Commissioners are expressly constituted agents of the city, and, to make matters even worse, are constituted agents for the purchase of the very land the value of which they are to adjudicate for purposes of condemnation. How can they be impartial? Must they not have all the animus of a buyer? How can they separate their two capacities? If they are loyal agents, they are bound to be partial judges; and the bill alleges, and the demurrer admits, that they are in point of fact acting solely in the interest of the city, their principal, as indeed the provisions of the Act of Assembly shows must be the case.

In this connection, significance attaches to the omission of the requirement—found in all the ordinances for opening streets which have come before the Court of Appeals (City Code of 1869, pp. 828-9; City Code of 1893, Art. 48, Sec. 2)—that the Commissioners shall before acting in any case take an *oath* to exercise their duties *impartially*. This omis-

sion alone would according to at least one case (*Lumsden vs. Milwaukee City*, 8 Wisc. 485) be sufficient to vitiate the Act. At all events, it is a significant circumstance, and goes to strengthen the objections to the procedure.

But, it will be said, the landowner can appeal to an impartial tribunal. It is submitted that this would not be a sufficient answer to the objection founded upon the Commission's partiality, even if the right of appeal were absolute and unfettered. Thus, the statutes held unconstitutional in *Re Woodland Ave.*, 178 Pa. St. 325, and in *House vs. City of Rochester*, 15 Barb. 517, respectively, gave a right of appeal to an impartial Court (Pa. Pub. Laws, 1870, ch. 692, sections 1-4, page 751, and N. Y. Laws of 1850, ch. 262, sections 193 *et seq.*, particularly sections 199 and 201), yet that fact was not thought sufficient to support their constitutionality. And upon principle, is it reasonable, is it fair, is it due process of law, to put upon one litigant the burden of appealing from a partial judge—a judge who is acting as attorney or agent for the opposite party in the very litigation in question? The appellant must incur heavy expenses which are not taxable as costs and for which he cannot be reimbursed even if the costs of the appeal are eventually put upon the other side. Moreover, some weight is bound to be given by the jury to the judgment of the Commission. To be sure, no jury is likely to be so unfair as to award the inadequate sum which the Commission offers, but nevertheless they would inevitably be influenced somewhat by the Commission's determination.

Besides, the Act carefully provides (sec. 19) that no commissioner shall act in any case in which he has an interest that might perhaps lead him to favor the property owners. If a bias adverse to the city is a disqualification, should not the same thing be true of the necessary bias in its favor?

At all events, even if the right of appeal would under any circumstances be sufficient to sustain the constitutionality of an Act which provides for a trial of fact before biased Judges

who are acting as attorneys or agents for one of the litigants in the subject-matter of the litigation, certainly the right of appeal, in order to have that effect, must be exceptionally free, clear, and efficacious. Instead of this, the appeal allowed by the Act of 1904 is more limited and circumscribed than any Maryland precedent warrants. We shall point out two particulars in which it is so unreasonably circumscribed as, we submit, clearly to bring this Act within the ban of the Fourteenth Amendment.

*B.* The Fourteenth Amendment, in eminent domain cases, requires reasonable notice and a fair opportunity to be heard before an impartial tribunal.

Burns vs. Multnomah R. Co., 15 Fed. 177, 183.

It is true that personal notice in condemnation cases is not indispensable, at least as to non-residents, because the proceeding partakes of the nature of a suit *in rem*. As in other actions *in rem*, however, some service of notice or process upon the *res* itself is necessary in addition to publication in the newspapers, at the outset of the proceeding.

Pennoyer vs. Neff, 95 U. S. 714, 727.

This is a most just constitutional requirement. Notice by publication is at best very uncertain; but every landowner can keep some reliable tenant or bailiff in possession of his property, who will either forward to him any notices served upon the land, or in other ways will see that the steps necessary for the protection of his interests are duly taken. If therefore, as the Federal Constitution requires, his land cannot be taken without service upon the land itself, the owner is reasonably sure of actual notice of the proceedings. The requirement of service of notice upon the land to be taken is the more reasonable inasmuch as it can always be observed without impeding the public improvement.

Yet the Act of 1904 not only wholly fails to provide for notice served on the land itself, but by implication negatives the necessity for such service.

Moreover, any notice, whether by publication or otherwise, must be reasonable with respect to length; this is required by the Fourteenth Amendment.

Roller vs. Holly, 176 U. S. 398.

There, five days after actual receipt of the notice was held insufficient in the case of a non-resident. Here, the time allowed for appeal is only fifteen days after the publication of the first notice. The publication may be in any two of the numerous newspapers printed in Baltimore, and is repeated only once. There is no reasonable endeavor to give the plaintiffs, who, while residents of New York, spend much of their time in Europe, a fair opportunity of defending their interests. Can it be said that the complainants will probably receive notice of the proceeding in time to repair to Baltimore, consult counsel, and have the necessary legal papers prepared and filed, all before the expiration of fifteen days from the first of the two publications?

So far as our researches have gone, no previous statute in Maryland have ever provided so short a period of publication. Under the Act of 1838, ch. 226, the time limited for appeal (30 days) was not to begin to run until the expiration of 30 days after the first publication in *three* newspapers. Later ordinances provided, in street cases, that the appeal might be taken within thirty days after the first of four weekly publications in two newspapers. The question of the sufficiency of the notice prescribed by the various statutes and ordinances in street cases has never been argued in the Court of Appeals, still less in the Supreme Court of the United States; and no Maryland statute or ordinance has, we believe, ever prescribed so short and inadequate a notice as the Act of 1904.

If, in 1838, when there were only one or two newspapers in the city, and they small affairs of not more than a few pages, sixty days' publication in three newspapers was deemed essential, what shall be said of a statute which

requires only two weekly publications of a brief notice hidden away in the multitudinous pages of a modern city newspaper and does not inform the property owner in which of the numerous Baltimore papers he is to look for the advertisement on which his rights depend?

The notices of the proceedings before the Commission prescribed by Secs. 8 and 10 (p. 151) cannot help the Act; because, the Commission being mere agents for the city, the notice which the landowner needs is notice giving him an opportunity to appeal to an impartial tribunal, and to secure his constitutional right of trial by jury. The notices of the proceedings before the Commission do not enable the landowner to foresee when the Commission are likely to return their papers to the City Register. After concluding the ten days' review provided for by Sec. 10, (p. 151,) the Commission often keeps the papers in its possession for months, dickering with property owners as to the terms of possible purchase by the Commission, before the papers get to the Register.

Again, under the Maryland Constitution, private property cannot be taken "without just compensation as agreed upon by the parties or awarded by a jury." Where a property owner has actual notice of an award by Commissioners and of his right to appeal to a jury, he may, as was held by the Court of Appeals in *Stewart's Case*, 7 Md. 500, 514, be said to waive a jury trial and to agree to accept the Commissioners' award. But how can he *wave* a jury trial unless he be given *actual*, and not merely constructive, notice of the opportunity to pay a jury trial.

C. The Act of 1904 provides (sec. 12, pp. 153-4), that the costs of the appeal and jury trial shall be in the discretion of the City Court. The law as to costs in condemnation cases is well stated by Mr. Lewis:

"By the Constitution the owner is entitled to just compensation for his property taken for public use. He is entitled to receive this compensation before his

property is taken or his possession disturbed. If the parties cannot agree upon the amount, it must be ascertained in the manner provided by law. As the property cannot be taken until the compensation is paid, and as it cannot be paid until it is ascertained, the duty of ascertaining the amount is necessarily cast upon the party seeking to condemn the property, and he should pay all the expenses which attach to the process. Any law which casts this burden upon the owner should, in our opinion, be held to be unconstitutional and void."

2 Lewis on Eminent Domain (2d Ed.) sec. 559.

As the land-owner in Maryland has a constitutional right to a jury trial before his property can be taken, how can he be required to pay the costs thereof?

The provision as to costs cannot be rejected as invalid while the rest of the Act is sustained because, for one reason, the possibility of being required to pay costs is held up *in terrorem* over the property-owner in order to induce him to accept the award of a biased tribunal. Moreover, it is part of the general scheme of the statute of treating the property-owner as *prima facie* in the wrong unless he abides by the Commission's prejudiced award. The whole act proceeds on the theory that the constitutional rights of the owner are satisfied by a hearing before the necessarily prejudiced Commission, the appeal being a mere privilege accorded *ex gratia*.

The City Solicitor has adverted to the points of resemblance between the procedure provided in the Burnt District Act and that prescribed in the ordinances for opening streets which were passed upon by the Court of Appeals in Steuart's Case, 7 Md. 517; Clunet's Case, 23 Md. 44, and the other cases cited by the defendants. We submit that the points of difference are far more important than the resemblances; in all those cases, the Commissioners were impartial in fact; were not agents for the city; were required to make oath to act with impartiality; and the provisions for notice were much more reasonable, and the period for appeal much

longer than that provided in the said Act of 1904. Moreover, none of the points which we make was argued or decided—even if any of them might have been made under the circumstances of those cases. Furthermore, the decisions referred to were rendered before the adoption of the 14th Amendment, and long before the controlling authorities in the Supreme Court upon the construction of that Amendment, such as *Pennoyer vs. Neff*, 95 U. S. 714 and *Roller vs. Holly*, 176 U. S. 398.

Finally, even if no one of the objections to the procedure provided by the Act of 1904 would, standing alone, be sufficient to vitiate the law, yet we submit that all of them taken together certainly have that effect. The due process of law prescribed by the Fourteenth Amendment means in the last analysis, among other things, reasonable and just procedure. To argue that because this or that objectionable provision might not in itself necessarily render the Act obnoxious to the Constitutional requirement of reasonableness, therefore the sum of a number of such objectionable provisions cannot do so involves, we submit, a palpable sophism.

#### VI.

The Act of Assembly, avoiding as it does all mention of the private docks which existed in this part of the city, and contributed so largely in the past to public convenience, shows no indication of a purpose to discard and destroy them *in toto*.

ARTHUR W. MACHEN,  
ARTHUR W. MACHEN, JR.,  
*For Plaintiffs.*

Sidney Turner Dyer,  
 by Elisha Dyer, Jr.,  
 her next friend,  
 Elisha Dyer, Jr.,  
 Complainants,

vs.

Mayor and City Council of  
 Baltimore, and  
 E. Clay Timanus, Mayor,  
 Sherlock Swann, Chairman,  
 Charles K. Lord,  
 John W. Snyder,  
 John T. Graham,  
 Members of the Burnt  
 District Commission of  
 Baltimore City,  
 Defendants.

In the Circuit Court of  
 the United States for the  
 District of Maryland.

In Equity.

The demurrer of the Mayor and City Council of Baltimore, and E. Clay Timanus, Mayor, Sherlock Swann, Chairman, Charles K. Lord, John W. Snyder, John T. Graham, Members of the Burnt District Commission, Defendants, to the Bill of Complaint of the above named Plaintiffs.

The Defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the said Bill of Complaint contained to be true, in such manner and form as the same are herein set forth and alleged, demur to said Bill, and for cause of demurrer show:

1. That it appeareth by the Plaintiffs' own showing by said Bill that they are not entitled to the relief prayed by the Bill against the Defendants.

2. That it appeareth by the Plaintiffs' own showing by said Bill that they have a complete, full and adequate remedy at law.

3. That it appeareth by the Plaintiffs' own showing that they have not stated in their Bill such a case as

entitles them to any relief in equity against the Defendants.

Wherefore, and for divers other good causes of demurrer appearing in the said Bill, the Defendants demur thereto. And they pray the judgment of this Honorable Court whether they shall be compelled to make any answer to the said Bill; and they hereby pray to be hence dismissed with their reasonable costs in this behalf sustained.

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Mayor.

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City Solicitor.  
Solicitor for Defendants.

I hereby certify that the foregoing demurrer is in my opinion well founded in point of law.

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City Solicitor.  
Solicitor for Defendants.

STATE OF MARYLAND, )  
BALTIMORE CITY, ) ss:-

I hereby certify that, on this..... day of April, 1905, before me, the subscriber, a Notary Public, of the State of Maryland, in and for the City of Baltimore, duly commissioned and qualified, personally appeared Hon. E. Clay Timanus, Mayor of Baltimore, and on his

own behalf, and on behalf of the other Defendants, made oath  
in due form of law that the foregoing demurrer is not inter-  
posed for delay.

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Mayor.

Sworn to and subscribed before me.

---

Notary Public.

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In the Circuit Court of the  
United States for the Mary-  
land District.

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Sidney Turner Dyer, et al,

vs.

Mayor and City Council of Bal-  
timore, et al.

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BRIEF ON BEHALF OF THE MAYOR AND  
CITY COUNCIL OF BALTIMORE.

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Sidney Turner Dyer, et al,

vs.

Mayor and City Council  
of Baltimore, et al.

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In the  
Circuit Court of the United States  
for the Maryland District.

BRIEF ON BEHALF OF THE MAYOR AND CITY COUNCIL OF BALTIMORE.

The Burnt District Commission shall have the following powers and be charged with the following duties:

"4. To lay out additions and extensions to be made to the public wharves and docks of Baltimore City, and to be made to the basin or harbor of the City of Baltimore, and to acquire for and in the name of the Mayor and City Council of Baltimore the lands and property within said Burnt District which may be requisite to make such additions and extensions, and to define the extent to which said harbor or basin is to be filled in in said Burnt District." Burnt Dis. Com. Act, Sec. 3 (Chap. 87, Acts of 1904).

Each of the other paragraphs in this section conferring powers upon the Commission in relation to streets, etc. ends with the restriction "in said burnt district." This paragraph alone omits these words.

The words mean to lay out additions and extensions to be made, not to the existing public wharves and docks of Baltimore City in the Burnt District individually considered, but to lay out in the Burnt District additions and extensions to be made to the public wharves and docks of Baltimore City wherever situated considered as a whole. They mean the same thing as "additions and extensions to be made to the public wharf and dock system of Baltimore City." The words "in said burnt district" were advisedly omitted in connection with the wharves and docks. Read this way, the terms "additions and extensions" are broad enough to cover both the construction of new wharves and docks and the reconstruction of old ones. The language is not "additions and extensions to be made to the public wharves and docks of Baltimore City in the Burnt District," but to the public wharves and docks of Baltimore City. The greater part of the public wharves of Baltimore City are outside of the Burnt District. If the purpose of the Legislature was simply to make a few limited additions and extensions to existing wharves and docks, why should such a simple task not have been left

to the Harbor Board, acting under the authority of an ordinance merely, instead of being committed to a Special Commission? City Charter, Sec. 6, sub-title "Condemnation of Property," p. 5. And why should the Dock and Pier Scheme have been such a predominant feature of the Citizens' Movement which inspired the Burnt District improvements, or have aroused so much popular enthusiasm and stimulated so much discussion in the public press, or have been held up in so many stirring ways as promising an immense expansion of the commerce of the Port, or have been the subject of such an exciting popular election, or have led to a popular loan of \$6,000,000, or have occasioned applications for dock privileges from all the great railroad and many of the great steamship companies which use our water front; not to speak of scores of other less important applicants? Every such Act as the Burnt District Act must be read in the light of the public motives and objects in which it originated. It is well known that when the Act was passed, property throughout the Dock and Pier District was in a decadent condition, and that the public wharves and docks there were wholly unsuited to the demands of modern commerce. What was wanted was new docks and piers, not patched up wooden wharves.

How foreign to the intention of the Legislature was the contracted purpose imputed to it by the plaintiffs is likewise shown by the fact that the Commission is also given the power to lay out additions and extensions to be made to the basin or harbor of the City of Baltimore, and to define the extent to which the harbor or basin is to be filled in in the Burnt District. Even, however, if the powers of the Commission are confined to additions and extensions to existing wharves and docks, why can the plan of the Commission not in every respect be reasonably treated as additions and extensions to the City Dock, Jones' Falls Dock, Long Dock, the wharf at the head of Smith's Dock, the wharf at the foot of Commerce Street and Bowly's Wharf, all City docks and wharves grouped in close proximity to each other, without doing violence to the language of the Act? Nay, why could they not reasonably in every respect be treated as additions and extensions to the City Dock and Long Dock, or to either of these two docks alone? A new dock

parallel to Long Dock, for instance, with a pier between for access to the water front and for sites for warehouses, elevators and other aids to wharf and dock purposes, is, after all, but an addition and extension to Long Dock, and so with any number of such parallel docks and piers. Every inch of space between Light Street and the eastern end of the City Dock in the territory south of Pratt Street and north of the north shore of the basin will, under the plan of the Burnt District Commission be utilized for wharves and docks and their accessories, forming, when the plan has been carried into full effect, really but one consolidated and expanded dock with its accessories. A glance at the map showing the plan of the Burnt District Commission will clearly demonstrate this. Ways, elevators and warehouses are but incidents to the public use of the docks.

2 Dillon (U. S.) 70.

The Report of the Burnt District Commission and the map accompanying it, and Ordinance No. 149, adopted November 10, 1904, approving the Report and map, are in entire conformity with the powers conferred upon the Burnt District Commission by the Act.

"We respectfully report to you," declares the Report, "that we have laid down on the map designated 'Burnt District Commission, Amended Map showing property to be acquired for dock improvements' which we transmit herewith and have located on the ground certain additions and extensions which we propose to make to the public wharves and docks of Baltimore City and to the basin or harbor of the City of Baltimore."

"In detail for the purposes of said additions and extensions we propose to acquire for and in the name of the Mayor and City Council of Baltimore all the lands and property within the territory in the City of Baltimore in the State of Maryland bounded as follows."

It is true that on the face of Pier No. 4 as delineated on the map are inscribed the words "Reserved for General Use"; and that nothing is inscribed upon the face of other piers delineated on the map, but all the additions and extensions indicated upon the map, the Report tells us, are additions and extensions that the Commission proposes to make

to the public wharves and docks of Baltimore City. Pier No. 4 is simply to be a sort of quay for vessels of all sorts without distinction or classification, which will not require special accommodations, because their need for landing privileges will be more or less limited or casual. It is nowhere alleged in the Bill that this pier will not afford ample space for the purpose for which it is intended, and it is confidently expected by the City that it will. Its reservation for general use is not at all inconsistent with the intention or right of the City to set aside other wharves or docks under proper harbor regulations for the use of special classes of vessels.

Its (a City's) right to appropriate different parts of the bank called the wharf to different uses of a proper character admits of no doubt. It may set apart a portion exclusively for steamboats and require them to land there and not elsewhere. So it may require rafts, woodboats, coal boats, grain boats, etc. to land at specified and separate parts of the wharf.

2 Dill., Cir. Ct., 71.

So far, therefore, as the City is acting in this matter through the agency of the Burnt District Commission - the body, be it remembered which is exclusively charged with the duty of acquiring land for the wharves and docks, and a body, be it further remembered, which has no power whatever to specify the particular uses to which the wharves and docks shall be applied after they are constructed, it is, under the statute and ordinance, simply doing what the Act and ordinance duly authorize it to do, that is to say, acquiring land for the purpose of making additions and extensions to the public wharves and docks of Baltimore City. Even, therefore, if we assume that when the land is acquired the City will not, acting through any other agency, be empowered to grant exclusive interests in any of the wharves and docks, how can that fact be made the basis for such relief as is asked for in this case? Because the Board of Estimates, which has no authority under the Charter to invite applications for dock space, is contemplating

an unlawful disposition of some of the docks and wharves when constructed, is that any reason why the Burnt District Commission should not be permitted, in the exercise of its lawful powers under the Act and ordinance, to acquire the land upon which the wharves and docks are to be constructed for purposes indisputably legitimate? Plainly the prayer in the Bill, if the Bill is maintainable at all, should not be that the Act and the ordinance be set aside, and that the Burnt District Commission be enjoined from taking the land, but that the Mayor and City Council of Baltimore be restrained, when the wharves and docks are constructed, from appropriating them to private uses. There is no such prayer in the bill, and if there were, it would be premature. It is obvious that even if this Court were to enjoin the City from granting exclusive interests in any of the wharves and docks, the City might still go on, as it certainly would go on, to acquire the land for purposes disassociated from such exclusive interests. In any view of this case, therefore, the relief prayed by the Bill is wholly misconceived. But there would be nothing unlawful in the granting by the City of exclusive interests in the wharves and docks, when constructed; provided that sufficient space was set apart for the public generally.

Matter of Mayor, etc. of N. Y., 135 N. Y., 260, a recent and luminous decision which leaves little to be said by any one upon this subject;

Taylor vs. Montreal Harbour Commissioners,  
17 Quebec Sup. Ct., 285, et seq.

The Broadway and Locust Point Ferry Co. vs.  
Hankey, 31 Md., 346.

City Charter, Secs. 7 and 8.

In 75 Fed. Rep., 309, in re <sup>the</sup> Clear Water, the right of the City to lease part of the public wharves was not even questioned. Indeed, such an interest is but analogous to the privileges granted to individuals in the public highways which have been declared to be in the interests of the public.

Townsend vs. Epstein, 93 Md., 553-555.

The safe and speedy transportation of passengers and freight is a matter of vital public concern, and the simple truth is, as 135 N. Y. points out, that the necessities of some classes of vessels have become so exacting under modern conditions of commerce, that it is but subserving a public use to grant them exclusive dock privileges. None but exclusive privileges will answer their purposes, if the public interests are not to suffer, and commerce is not to be diverted to other ports. By the exercise of the immense pecuniary resources inherent in the power of taxation, the public can, much more readily than any individual or individuals, plan and execute a great and uniform wharf and dock system for the accommodation of commerce; but of what advantage would such a system be to such a steamship line, for instance, as the Merchants and Miners Transportation Company, if its use of a pier had to be timed by anything but its own pressing exigencies? In a City on navigable water, nothing is more important than the privilege of constructing wharves or piers for the promotion of commerce.

McMurray vs. Balto., 54 Md., 110.

It is for the Mayor and City Council of Baltimore and the Legislature to determine to what extent and on what occasion and under what circumstances the power of eminent domain shall be exercised, and the Courts have no right to review or control the decision of the Mayor and City Council or the Legislature on these points, and this is true, no matter what sort of additions and extensions is contemplated by the Act.

Van Witsen vs. Gutman, 79 Md., 412.

M. & C. C. of Balto. vs. Clunet, 23 Md., 468.

Meth. P. C. vs. M. & C. C. of Balto., 6 Gill, 31.

If the use is public, the fact that it is coupled with private objects of gain and emolument is immaterial.

New Cent. Coal Co. vs. George's Creek Coal  
and Iron Co., 37 Md., 560.

#### AS TO NOTICE.

The points made by the Bill under this head are stale. The procedure in the Act, apart from the power to purchase property and

reasonable abbreviations of periods required for notices, is copied almost verbatim from the provisions of the City street condemnation law, which, in its main features, has been in force since 1838, and has hundreds of times been drawn into controversy in the Courts. The whole system of laying out streets, etc., has the sanction of the highest judicial authority of the State. *McLellan vs. Graves*, 19 Md., 369; *M. & C. C. of Balto. vs. Clunet*, 23 Md., 464-468. So long as the right of appeal is allowed by means of which a trial by jury can be had, the right of trial by jury is not taken away. *Steuart vs. M. & C. C. of Baltimore*, 7 Md., 507. Personal notice is not necessary. *Meth. P. C. vs. M. & C. C. of Balto.*, 6 Gill, 400 - 401. *Ulman vs. M. & C. C. of Balto.*, 72 Md., 611. *M. & C. C. of Balto. vs. Ulman*, 79 Md., 469.

Even if the provision in the Act regarding costs on appeal was unconstitutional, it would not affect the validity of the Act in other respects. <sup>#</sup> There is nothing in our present Constitution to prohibit the legislature from passing a law authorizing private property to be taken for public purposes, if provision is made for compensation first to be paid or tendered to the owner, the ascertainment of which is to be made by contract with him, or by the assessment of Commissioners giving to the owner the right of appeal from their decision, and securing to him a trial by jury for the appellate tribunal.

*Steuart vs. M. & C. C. of Balto.*, 7 Md., 514.

The Burnt District Commission Act does not provide that immediately upon the passage of an ordinance the Commission is to negotiate with the property holders, and in case it cannot agree with them, is to proceed to condemnation. It provides that upon the passage of the ordinance, the Commission is to proceed to value the property and to award damages. *B. D. C. Act, Sec. 8.* The right to purchase sustains a purely secondary and incidental relation to the main power and function of the Commission, that of valuing the land and awarding damages. The condemnation procedure goes on even if the property holder accepts the valuation of the Commission, and executes a deed to the City. Act

Sec. 8. The provision for purchase in the Act really originated in tenderness to the property holder; to save delay so far as he was concerned, and the loss of income, of which he had already suffered enough by the fire, and which would be still further aggravated by a protracted condemnation. No one ever suggested that the Commissioners for Opening Streets are agents of the City and too biased to value the property of the citizen. Why should this be true any more of the Burnt District Commission simply because after they have valued property, as the Commissioners for Opening Streets do, they are given the additional power, if the valuation is satisfactory to the citizen, of taking a deed from him.

Besides the valuation of the Commission is subject to appeal and the right of trial by jury. This was not a feature of the irrelevant cases cited by the other side in this connection.

All persons appointed by the Mayor must take an official oath. City Charter, Sec. 25; Md. State Constitution, Art. 1, Sec. 6.

There are no facts stated in the Bill, which, when admitted by the demurrer, are sufficient to entitle the plaintiffs to the particular relief they pray for, or to any relief. When an injunction is prayed, facts must be stated in the bill from which the Court can judge for itself whether there is any ground for the apprehension of injury. Mere allegations of purposes and motives and apprehended injury are insufficient in the absence of such facts.

The only authority that can grant exclusive franchises in the proposed docks and piers is the Mayor and City Council of Baltimore in its legislative capacity. The Board of Estimates will have no power except to fix the compensation for and the terms of such grants, in case franchise ordinances are ever referred to it by the City Council, which may never be. City Charter, Sec. 37. And even if such ordinances are referred to it, the City Council may refuse to pass them after they come back to it. Ibid. The Board of Estimates has no power under the Charter to initiate any franchise ordinance. Ibid. If the Board of Estimates is wrongfully inviting applications for exclusive interests in the docks and piers, that is nothing, in the

absence of statements in the Bill supported by facts, that the Burnt District Commission and the Mayor and City Council of Baltimore City in its legislative capacity are participating in its unlawful action. When the Board of Estimates invited the applications for exclusive interests, it was simply doing what it often does merely because it happens to be composed of the higher executive officials of the City, that is to say, outlining policies in the shape of suggestions to be adopted or to be rejected accordingly as the Mayor and City Council of Baltimore, in its legislative capacity chooses to adopt or reject them. Their action, such as it was, was wholly contingent upon there being any space left for exclusive interests. They were acting under an opinion from this office, a copy of which is herewith delivered.



charged with the following duties:

"To lay out additions and extensions to be made to the public wharves and docks of Baltimore City, and to be made to the basin or harbor of the City of Baltimore, and to acquire for and in the name of the Mayor and City Council of Baltimore the lands and property within said burnt district which may be requisite to make such additions and extensions, and to define the extent to which said harbor or basin is to be filled in in said burnt district".

Section 27 of the same Act provides that:

"In the widening of Light Street on the east side thereof, or of East Pratt Street on the south side thereof, should the said Commission so decide to widen them or either of them, or in widening any public wharf or dock, the said Commission shall lay down and fix the breadth of said widening on the map or maps to be sent with the report or reports, as herein provided, to the Joint Body hereinbefore provided for, and on its approval, as hereinbefore provided, by said Joint Body, the Mayor and City Council of Baltimore are hereby authorized to provide by ordinance or ordinances for filling up the harbor or basin of Baltimore to the extent necessary to make such widening of both or either of said streets and of any such public dock".

By these two sections the most ample authority is conferred in connection with the public wharves and docks and basin or harbor of the City of Baltimore. It was manifestly never intended that the power of the Burnt District Commission should be restricted to merely adding to, in the nature of widening, and in extending, in the nature of lengthening, the old existing public wharves and docks.

The City had been visited by a vast conflagration. The entire district had been swept of all buildings, and south of Pratt Street, between Jones Falls and Light Street, there only remained unimproved land and an expanse of water. A great opportunity was thus

presented to the City to acquire and own this vast water front, and to improve it in such a way as would tend to greatly increase the commerce of the port, and thus advance the commercial prosperity of the City. The Citizens Committee was appointed, and plans adopted and recommended which embraced the acquisition by the City of this water and the re-modelling and improving of all existing wharves, piers and docks in the locality. The Legislature not only passed the Burnt District Act conferring upon the Burnt District Commission the powers above mentioned, but also authorized a loan by the City of six million dollars to be used in connection with the four million of the Western Maryland Fund, in order that the City might have ample funds to carry on the extensive and magnificent plan of improvements thus contemplated. It <sup>can</sup> is, therefore, seriously <sup>he</sup> contended that all this enthusiasm in connection with the docks and piers, evidenced by the passage of the Acts in question and by the special election authorizing the six million dollar loan, was aroused merely for the purpose of enabling the City to reconstruct on the most limited scale indeed, and along the most narrow and meagre lines, its existing insignificant possessions, not deserving the names of docks, wharves and piers. Is it not too plain for discussion that when the Legislature used the words "additions and

extensions to the public wharves and docks" in connection with the broad powers conferred over the harbor and basin, and authorized the loan of six million dollars to provide additional means for carrying out the improvements contemplated, it intended to confer upon the Mayor and City Council of Baltimore the power not only to add to its existing wharves and docks, but also to extend them by building new ones. We pass, therefore, to the other objections urged by the complainants.

~~First~~. We call the Court's attention to the case of Van Witsen vs. Gutman, 79 Md., p. 412, where the Court says that it lies in the discretion of the Mayor and City Council of Baltimore and the Legislature to determine to what extent and on what occasions and under what circumstances the power of eminent domain shall be exercised, and that the courts have no right to review or control the decisions of the Mayor and City Council or the Legislature on these points. This Court, therefore, has no authority to interfere in any way with the amount of property which the Mayor and City Council has determined the interest of the City requires shall be acquired by condemnation for the purpose of wharves, docks and piers.

The complainants insist that the Burnt District Commission Act is unconstitutional, because it fails to provide for proper notice

*because*

to the property owners, and also ~~gives~~ the right to a jury trial as not secured without the risk of the costs of the appeal being thrown upon the owner. The conclusive answer to all these objections is found, we think, in the decisions of our own Court of Appeals, where the same objections were made and overruled. We will not attempt to go into the cases themselves, but will simply give the Court a reference to them.

Stewart vs. Mayor and City Council of Baltimore, 7 Md., 500, disposes of the objection relating to the provision about a jury trial.

6 Gill, p.  
19 Md.,  
23 Md.,  
79 Md., pp. 478, 482, Baltimore vs. Ulman, and  
62 Md., p. 435, Jenkins vs. White,

settle conclusively the objections based on the question of *sufficiency* notice.

All the questions raised here were raised in either one or several of the cases above cited, and the validity of the law upheld. The Burnt District Commission Act being on its face free from objections, and Ordinance No. 149 being passed in strict conformity with said Act, and the plans adopted thereby being within the purview of the Act, and the City being clothed with ample power to acquire the

property in question for the purpose of public wharves, docks and piers, on what possible theory can the Court declare the Act and Ordinance in question invalid, and enjoin the City from condemning the property? The complainants say because the City intends after it has acquired the property to lease out part of it to private individuals and corporations, and thereby derive revenue therefrom. Our answer to this is twofold:

1. The mere allegation that the City will make an improper use of the property after it acquires it does not justify the Court in restraining the City from condemning under a valid law and ordinance for a lawful purpose expressly appearing. As we have shown, the right of the City is ~~undoubtedly~~ to acquire by condemnation the land in question for a public wharf. <sup>is undoubtedly</sup> If after the City acquires the property for this purpose it attempts to devote **it** to an improper purpose, it will be time enough then for the Court to interfere to restrain its illegal act. Moreover, even if the question can be now raised, and even if the Court thinks, that the alleged future action of the City after it acquires the property is ultra vires and illegal, still the Court could not restrain the City from acquiring the property by eminent domain, but could only restrain the City from devoting it after

thus acquired to the alleged illegal use.

2. The use which it is alleged the City intended to make of part of the property to be acquired for public wharves, docks and piers is not illegal, but is a proper and valid use and in the interest of the public. We respectfully submit that the case of the Broadway and Locust Point Ferry Co. vs. Hanie, .....Md.,....., is conclusive of this point. There the Court held that the Legislature had the right to grant to the Ferry Company the exclusive use and enjoyment of part of the public wharf.

The complaint in this case is that the City intends to grant, under Sections 7 and 8 of the City Charter, to individuals and corporations exclusive use and enjoyment of part of the public wharves in course of construction. If the Legislature can grant directly to a corporation the exclusive use of part of the public wharves, manifestly the Legislature could confer upon the City of Baltimore the power to grant to individuals or corporations special rights or franchises in parts of the City's wharves not needed for the use of commerce generally, especially when we bear in mind that by virtue of clauses 7 and 8 of the City Charter the City retains itself, with full power to regulate and control in the interest of the public, the rights granted.

Moreover, it is exactly what is being done every day in connection with the public highways of a municipality. Every electric light pole, every telephone pole, every pipe erected on or upon the public highway, every step, portico or bay-window projecting upon the public highways, amounts to an exclusive use by the owner of the obstruction of that part of the highway covered by the obstruction, and yet it has never been contended that the City or the State was without power to grant such rights and franchises.

As said by our Court of Appeals in 93 Md., p. 553, in the case of Townsend, Grace & Co. vs. Epstein, speaking of the validity of an ordinance granting to the owners of property on Mt. Vernon Place the right to erect steps, porticoes, porches, or other architectural ornaments, upon the public highway, "this was a privilege in the interest of the general public and tending to the general comfort and enjoyment of the homes in the district to which the ordinance applied", and the ordinance was accordingly upheld. Again, on p. 555 of the same case, "the streets and highways are held in trust for the benefit, use and convenience of the general public. There are many ways in which the power to control and regulate the use of the streets can be and must be exerted by the municipality to meet the necessities and the convenience

of an urban population, but the exertion of this power must have for its object a public purpose".

It is manifest that the alleged use which the City is to make of part of the property thus acquired is to meet the necessities of commerce, and that the proposed use has for its object a public purpose.

Again, as said by the Court of Appeals in 37 Md., p. 560, in the case of the New Central Coal Company against the George's Creek Coal and Iron Company, "whenever, therefore, the use is in fact public, or has for its object the public benefit or utility, though coupled with private objects of gain and emolument, the question of the exercise of the power of eminent domain over private property is exclusively one of discretion in the Legislature".

When we bear in mind, therefore, as said in 54 Md., p. 110, *McMurray vs. Baltimore*, that "in a city situated on navigable water, nothing is of more importance than the privilege of constructing wharves or piers for the benefit and promotion of commerce", and that the contemplated use by a city of the property to be acquired is the construction of wharves and piers for the benefit and promotion of commerce, it necessarily follows that the use in question is in fact

public, and has for its object the public benefit or utility, even though coupled incidentally with private objects of gain and emolument, and hence the question of the exercise of the power of eminent domain over private property is exclusively one of discretion in the Legislature.

It has been noted that there is no allegation in the Bill that the City will not retain ample wharf and dock space to accommodate the general commerce coming to the port, or that the individuals or corporations to whom it is proposed to grant special rights or franchises are not engaged in business of a quasi-public character.

In conclusion, we call the Court's attention to the decisions outside of the State. The case in 135 N.Y., p. 253, in re Mayor &c. of New York vs. N.Y. Central & Hudson River R.R. Co., presented absolutely the question raised here, and after a most elaborate and conclusive opinion by Judge Peckam, now of the Supreme Court of the United States, the contention of the complainants here was overruled and defeated.

In 17 Quebec Superior Court, 275, Taylor vs. Montreal Harbor Commrs., the right to lease part of the public wharves in Montreal was directly involved, and the right to lease upheld.

In 75 Federal Reporter, 309, in re the Clear Water, the right of the City to lease part of the public wharves was not even questioned.

We respectfully insist, therefore, that the demurrer should  
be sustained and the Bill dismissed.

Sidney Turner Dyer et al. )

vs. )

Mayor & City Council )  
of Baltimore et al. )

IN THE CIRCUIT COURT  
OF THE  
UNITED STATES  
FOR THE  
DISTRICT OF MARYLAND.

Brief for Plaintiffs in Reply to Brief presented on Behalf  
of Mayor & City Council of Baltimore Since Argument.

I.

In answer to the defendants' contention that the words "additions and extensions to the public wharves and docks" in Section 2 of the Burnt District Act mean additions and extensions to "the public wharf and docks system" to be made by the construction of new wharves and docks, we submit:

1. The construction contended for is not warranted by the words of Section 2, and, as the City Solicitor admitted in argument, is quite irreconcilable with other parts of the Act.

2. There is no system of public wharves and docks in Baltimore City, but merely a number of scattered, disconnected public wharves and docks.

3. The claim set up on behalf of the City is founded on the circumstance of the association of the words "of Baltimore City" with "wharves and docks", and "of the City of Baltimore" with "basin or harbor" in the Second Section of the Act; and upon the assumption that this is the necessary

interpretation of Section 2, the Court is asked to disregard the numerous clauses in other sections which are plainly, and admittedly, inconsistent with such a construction. Obviously, the contention has no foundation. The words "of Baltimore City" are correctly descriptive of the "public" wharves intended, declaring the proprietary right of the City in them. The "basin or harbor" is properly described as basin or harbor of Baltimore. Taken in connection with the designation of the Commission as "The Burnt District Commission" (Section 1,) and with the bounds of the Burnt District as carefully defined in Section 30, it is evidently meant in Section 2 to refer to the whole body of water comprehended in such "burnt district". "Basin of Baltimore" alone might have been thought equivocal, the eastern limit of "the Basin", as commonly understood, being somewhat uncertain. Hence the addition of the word harbor, so as to cover that lower portion of the body of water intended to be brought under the scope of the act, whether it were regarded as harbor, or Basin proper. Taking the whole act together, the basin or harbor in question evidently means the whole body of water, whether called basin or harbor, comprehended within the lines of the Burnt District as defined in the Act.

4. To give any color to the contention of the Counsel for the City the form of the expression in the Act should have been in the singular; the authority should have been to make an addition or extension -- to the unit "system". Instead, what is provided for is, to lay out "additions and extensions to be made to the public wharves and docks", importing simply that each public wharf or dock was to be capable of being added to or extended. That this latter is the true interpretation is shown conclusively (independently

of the canons of statutory construction referred to in our brief) by many passages -- not less than nine in number, to be found in sections 8, 9, 10 and 20 of the act, indicating that any wharves and docks and any extensions or additions thereto are to be severally dealt with.

5. Even upon the construction contended for on behalf of the City the new public wharves and docks should be of the same kind as the existing public wharves and docks. Instead of this, the City Solicitor repudiates the idea that the new wharves and docks are to bear any resemblance to the existing "antiquated" public wharves and docks. Moreover, the new wharves and docks are vastly to exceed in size and importance the old public wharves and docks. In other words, if the City were authorized to construct additions or extensions to the present public wharf and dock system (if any such system there were), still the plan shown on Complainants Exhibit No. 4 contemplates not additions and extensions to the existing system but a substantially new system.

## II.

The City Solicitor in his Brief (p. 7) says:

"The Burnt District Act does not provide that immediately upon the passage of an ordinance the Commission is to negotiate with the property holders, and in case it cannot agree with them, is to proceed to condemnation."

We submit that this statement is incorrect. Section 5 provides that "the Mayor and City Council of Baltimore acting by and through the agency of said Burnt District Commission may acquire by gift, purchase, lease, whatever the duration of the lease, or by condemnation" any property that may be required for any improvement. The next section, Section 6, gives further particulars as to Commission's power of purchase,

and adds "it being the intention of this Act that said Commission shall have the full and absolute authority to agree with the owner or owners upon all the terms of such gift, purchase or other voluntary alienation, including the purchase price or consideration." The following Section, Section 7, then goes to provide for the course of procedure "where resort is had to condemnation." In other words, the Commission is first to act as purchasing agents, and having endeavored to obtain the property on terms considered as favorable to the City, they are then, with all their bias still clinging to them, to act as judges of the value for purposes of condemnation. It is <sup>not</sup> a mere power to accept a surrender after they have impartially appraised the property for purposes of <sup>after</sup> condemnation; but <sub>after</sub> they have sought as agents to purchase the property, -- nay, even while they are seeking as agents to acquire it -- they are to exercise the function of judges.

2669

# Safe Deposit and Trust Company

OF BALTIMORE

Nos. 9, 11 AND 13 SOUTH STREET

MICHAEL JENKINS, PRESIDENT  
H. WALTERS, VICE-PRESIDENT  
JOHN W. MARSHALL, 2d VICE-PRESIDENT  
J. J. NELLIGAN, 3d VICE-PRES-SECTY  
ANDREW P. SPAMER, TREASURER  
GEORGE B. GAMMIE, ASST. TREASURER  
H. H. M. LEE, ASST. SECRETARY  
ARTHUR C. GIBSON, ASST. SECRETARY  
GEORGE R. TUDOR, CASHIER  
ALBERT P. STROBEL, REAL ESTATE OFFICER

BALTIMORE June 16, 1905

ACG/M

Joseph S. Goldsmith, Esq.,  
Asst. City Solicitor,  
Court House, City.

Dear Sir:-

We enclose you herewith the agreements of sale between the Mayor & City Council of Baltimore, through the agency of the Burnt District Commission, and our Company as Trustee under the will of Joshua J. Turner, and we will appreciate it if you will have the same signed by the Burnt District Commission, on behalf of the City, and return to us at the earliest possible moment so that we can have the sale reported and copies of the report served on the Solicitors as provided by the decree in the case.

Very truly yours,

*Arthur C. Gibson*  
Asst. Secretary

Encl:  
2 agreements

2659

T.J.M. #2

Commissioners) which is designated in this instance is a Board of Public Officers created under the general laws of the State, and acting under the obligations of an official oath, and is, therefore, a competent and impartial tribunal.

In 121 Ind., the Court used this significant language:

"If the property of a citizen is demanded by a private corporation, the corporation cannot be invested with the authority to select the Commissioners in a case where there is no right of appeal; but here the corporation invested with the authority to appoint is a governmental one, and its officers are public officers charged with purely public duties. They have no private interests to subserve and no benefit can accrue to them as individuals. Municipal corporations are governmental instrumentalities, and they are invested with delegated governmental powers. It is held that interest as a tax-payer will not disqualify a public officer charged with a sworn public duty, although chosen by the voters of a city, cannot justly be said to have any other private interest than that of tax-payers".

The Court also stated that it would be doubtful if the Act would be unconstitutional, therefore, even if no right of appeal had been given; but, as the Act in question secured the right of appeal, it could not be successfully attacked.

We are sending a copy of this letter to the Messrs. Machen.

Respectfully yours,

*Edgar Allan*   
Deputy City Solicitor.

EAP/IML

2669

June 19, 1905.

Messrs. Arthur W. Machen and Arthur W. Machen, Jr.,  
Central Savings Bank Bldg.,  
City.

Gentlemen:-

I herewith enclose copy of a letter which we are sending  
to Judge Morris in connection with the Dyer case.

Very truly yours,

Deputy City Solicitor.

Enclosure.  
EAP/IML

2669

June 19, 1905.

Hon. Thomas J. Morris,

My dear Judge Morris:-

If not too late, we desire to call your attention to the cases of

Bass vs. Ft. Wayne, 121 Ind., 389;  
Buggerman vs. True, 25 Minn., 124, and  
State vs. Messenger, 27 Minn., 123,

in connection with the objection made to the Burnt District Act in the Dyer case, by reason of the fact that the said Act conferred upon the Burnt District Commission the power to purchase.

In 25 Minn., Section 38 of the Town Charter authorized the Town Supervisors to assess the damages occasioned to any land owner by the laying out or opening of any public road in case the amount of such damage could not be agreed on. Another section of the Charter gave the right of appeal from the action of the Town Supervisors to the County Commissioners. It was urged that Section 38 was unconstitutional, because the Town Supervisors represented the Town, which was the party treating for the right of way, and that, therefore, a hearing was not secured before a properly impartial tribunal. The Court in disposing of the objection said that the Town Supervisors were standing public officers, a part of whose regular duties was to act in matters of that kind, and that, moreover, the County Commissioners, to whom a right of appeal was given, did not in any way represent the Town, and that, therefore, the section assailed was free from objection.

Again, in 27 Minn., the Court said: The tribunal (County

T.J.M. #2

Commissioners) which is designated in this instance is a Board of Public Officers created under the general laws of the State, and acting under the obligations of an official oath, and is, therefore, a competent and impartial tribunal.

In 121 Ind., the Court used this significant language:

"If the property of a citizen is demanded by a private corporation, the corporation cannot be invested with the authority to select the Commissioners in a case where there is no right of appeal; but here the corporation invested with the authority to appoint is a governmental one, and its officers are public officers charged with purely public duties. They have no private interests to subserve and no benefit can accrue to them as individuals. Municipal corporations are governmental instrumentalities, and they are invested with delegated governmental powers. It is held that interest as a tax-payer will not disqualify a public officer charged with a sworn public duty, although chosen by the voters of a city, cannot justly be said to have any other private interest than that of tax-payers".

The Court also stated that it would be doubtful if the Act would be unconstitutional, therefore, even if no right of appeal had been given; but, as the Act in question secured the right of appeal, it could<sup>not</sup> be successfully attacked.

We are sending a copy of this letter to the Messrs. Machen.

Respectfully yours,

Deputy City Solicitor.

EAP/IML

In the Circuit Court of the  
United States for the District  
of Maryland.

---

SYDNEY T. DYER AND HER  
HUSBAND

VS.

THE MAYOR AND CITY COUNCIL OF  
BALTIMORE

---

OPINION OF THE COURT

---

In the Circuit Court of the  
United States for the District  
of Maryland.

(  
)  
( In Equity.  
)  
(

*Sydney* T. Dyer and her husband,  
Vs.

The Mayor and City Council of  
Baltimore and others.

MORRIS, DISTRICT JUDGE.

Mrs. Dyer is the owner of property within the Burnt District, proposed to be taken by the City of Baltimore for the additions and extensions to be made to the public wharves and docks and to the basin and harbor of Baltimore, under and by virtue of the Act of the Legislature of 1904, Chapter 87, approved March 11th 1904, known as the Burnt District Act.

This <sup>is a</sup> bill of complaint filed by Mrs. Dyer and her husband who are citizens of New York, against the Mayor and City Council of Baltimore, E. Clay Timanus Mayor of the City, and against the members of the Burnt District Commission of Baltimore City, asking an injunction to restrain the defendants from proceeding to condemn Mrs. Dyer's property, and from filling up the private docks appurtenant thereto and from taking possession of said property under color of any condemnation proceedings.

The grounds upon which an injunction is prayed are--  
1st. That the scheme of new wharves and docks provided for by the City ordinance No. 149 and the map accompanying it are upon its face beyond the powers of the Burnt District Commission granted to it by the Act of 1904, Chapter 87, because

the proposed wharves and docks are not either additions or extensions to the old wharves and docks.

2nd. That the City is contemplating a fraud upon the Burnt District Act inasmuch as the Act authorizes additions and extensions to public wharves and docks while the City under color of the power so conferred, is really intending to construct wharves which will not be public wharves but will be leased to private individuals and corporations for their exclusive use, and the attempt to condemn is really for a private and not a public use, in violation of the Constitution of the United States and of Maryland.

3rd. That the machinery of condemnation provided in the Act of 1904, Chapter 87 does not afford the land owner due process of law, because the Burnt District Commission which is directed to value the property taken is an agent of the City and not an impartial tribunal, and further that the notices provided by the Act are not reasonable in that they do not give sufficient time to enable the land owner to avail of the right of appeal to a jury, and further that in case of an appeal and jury trial the costs are ~~to~~ to be in the discretion of the trial court.

The City of Baltimore has demurred to the bill of complaint and it is upon the sufficiency of the bill that the Court has now to pass.

The Act of 1904, Chapter 87 is entitled "An Act to create a commission on the Burnt District of Baltimore City, to define its duties and powers; to regulate its methods of procedure; to define the extent of said District; to provide for opening, extending, widening, straightening and closing streets, lanes and alleys; for establishing public squares and markets

places; building lines and the width of sidewalks in said District; for adding to, extending and partly filling the harbor and basin of Baltimore City, and for establishing public wharves and docks; and to provide for appropriating a portion of the general sinking fund of Baltimore City and other money for the purposes of this Act."

By a subsequent Act of the same Legislature (Act of 1904 Chapter 144) it was provided that for the purpose of carrying into execution the plan~~x~~ of the improvements to be adopted under the foregoing act, there should be submitted to the voters of Baltimore, an ordinance authorizing a loan of six million dollars.

The above mentioned Act of 1904, Chapter 87 authorized the Mayor of Baltimore to appoint four capable and upright citizens, who, with the Mayor, ex officio, should constitute "The Burnt District Commission," but that no municipal officer of the City whether holding a paid or unpaid place under the corporation, should be eligible, and that if in any particular case any commissioner should be interested the Mayor should make a temporary appointment to act in his place.

The powers and duties of the Commission are enumerated in Sections 2 and 3 as follows:

"Section 2. And be it enacted That said Commission shall have the following powers and be charged with the following duties:

1. To lay out, open, extend, widen, straighten or close any street, lane or alley, or any part thereof in said Burnt District.
2. To establish and fix the building line and the width of the sidewalks of any street, lane or alley now existing or to be laid out, opened, extended, widened or straightened in said Burnt District.
3. To open public

squares and market spaces in said Burnt District, and to lay out additions and extensions to be made to the public wharves and docks of Baltimore City and to be made to the basin or harbor of the City of Baltimore, and to acquire in the name of the Mayor and City Council of Baltimore the land and the property within said Burnt District which may be requisite to make such additions and extensions and to define the extent to which said harbor or basin is to be filled in in said Burnt District. And said Commission shall have all powers necessary and proper to exercise said powers.

Section 3. And be it enacted, That in executing the powers conferred on said Commission by Section 2 of this Act and in making the changes, additions and improvements set out in any report or reports and map or maps approved as provided in this Act, ~~the~~ said Commission shall have such powers in addition to those herein granted as may be conferred upon it by any lawful ordinance or ordinances of the Mayor and City Council of Baltimore which ordinance or ordinances the Mayor and City Council is hereby fully authorized to adopt; provided no <sup>such</sup> ordinance or ordinances shall deprive said Commission of any powers conferred on it by this Act."

By Section 30 the boundaries of the Burnt District are defined including within its limits all of the wharves, docks, harbor and basin west of the east side of Jones <sup>h</sup>alls, and comprising within its area the property of the complainent.

The Act by other sections provides how the Commission shall proceed. For the purposes of the present case and now reciting only the proceedings which have reference to the wharves

and docks and harbor, it is sufficient to state that the Act directs that the Commission shall prepare maps of the Burnt District and lay down thereon "(4) The additions and extensions which it proposes to make to the public wharves and docks and to the basin or harbor of the City of Baltimore within the territory covered by said map or maps, or any one or more of said changes, additions ~~or~~ improvements."

The Commission is directed to make a detailed report accompanied by said map or maps to the Board of Estimates and Board of Public Improvements, which as a joint body may approve or disapprove and suggest changes and modifications thereof; and the plans and reports and maps when approved are to be submitted to the City Council, and when approved by an ordinance or resolution of the Mayor and City Council, the Commission shall immediately proceed (4) " to provide for such additions ~~or~~ extensions to the basin or harbor of the City of Baltimore and to the public wharves and docks as all of said changes, additions and improvements are shown on or by said report or reports or said map or maps which have been so approved by ordinance or resolution of the Mayor and City Council of Baltimore, and for which appropriations have been made as aforesaid, and said Commission shall promptly lay down or locate all such changes, additions ~~or~~ improvements. And the said Commission, in order to accomplish the work, shall promptly proceed to acquire in the name of the Mayor and City Council of Baltimore and by the methods in this Act provided, such lands, interests, rights, franchises, privileges ~~or~~ easements as may be requisite # # # to make such additions and extensions to the public wharves and docks and to the harbor

of Baltimore."

"Section 5. And be it enacted that the Mayor and City Council of Baltimore, acting by and through the agency of said Burnt District Commission, may acquire by gift, purchase, lease, whatever the duration of the lease, or by other methods of acquisition, or by condemnation, any private property, rights or interests, franchises, privileges or easements that may be required # # # to make any additions to the basin or harbor or to the public wharves or docks, as shown by said report or additional or amended report and map or maps accompanying or which may be required in the execution of the powers and the performance of the duties vested or imposed on said Commission by this Act."

By Section 7 it is enacted that when resort is had to condemnation "in making any additions or extensions to the basin or harbor or public wharves and docks" the proceedings may be such as may be provided for the very purpose by lawful ordinance or ordinances of said Mayor and City Council which it is hereby authorized to adopt," provided that provision is made therein for reasonable notice to the person or persons in whose favor such damages are to be assessed or against whom such benefits are to be assessed, and provided that provision be made for appeals to the Baltimore City Court, including the right to appeal to the Court of Appeals by any person or persons interested, including the Mayor and City Council of Baltimore, from the decision of said Commission in valuing or finding said damages; or such proceedings or course of procedure may at the option of the Commission be that hereinafter by this Act provided.

By Section 8 it is provided that when the plans  
# # # for any additions to the basin or harbor or extension  
to any public wharves or docks in said Burnt District shall have  
been approved by the Mayor and City Council of Baltimore and  
appropriations made, the Commission having given at least two  
weeks notice of the meeting of the Commission by advertisement in  
two daily newspapers published in Baltimore, of the time and place  
of meeting, and of any additions or extensions it proposed to  
make to the harbor or basin or to the public wharves and docks  
of Baltimore, and of the dimensions or extent of the additions or  
extensions it proposes to make, the Commission shall meet at  
the time and place mentioned, and from time to time thereafter,  
and shall ascertain the damage in value which will be caused to  
the owner of any ground for which the owner ought to be compen-  
sated, but no apportionment of benefits shall be made in the  
case of addition to the basin or harbor or to the public wharves  
or docks, but the City shall pay all damages, purchase price  
and expenses assessed for, or agreed upon or arising from such  
additions or extensions.

By Section 10 it is enacted that as soon as the Com-  
mission has completed the valuation of the damages it shall make  
a statement thereof for the inspection of all parties desiring  
information with a map containing a description of each lot and the  
name of the person supposed to have an estate or interest therein  
and the amount of damage as valued by the Commission and shall  
publish a notice for four successive days in two daily news-  
papers of the City, giving notice of the extent of the ground  
covered by the assessments, and that such statements and maps  
are ready for inspection, and that the Commission will meet on  
a day to be named in said notice for the purpose of reviewing

any matters to which persons claiming to be interested shall make objection, and shall hear and consider all representations either verbal or in writing, offered to it on behalf of any person claiming to be interested, and shall make such corrections and alterations in the valuation, assessments and estimates as to a majority of the members shall appear just and proper. They are directed, upon closing such review and having made such corrections as they shall deem proper, to deposit the books and proceedings, statements and maps, as finally corrected, in the office of the City Register, who is directed to give notice to all persons interested, that said assessments and maps have been placed in his office, by a notice published in two daily newspapers in the City twice a week for two successive weeks, and notifying the parties affected thereby that they are entitled to appeal therefrom by petition in writing to the Baltimore City Court.

By section 11 it is made the duty of the Commission to serve written or printed notices upon every one to whom benefits are assessed or damages are awarded, but the service of said notices is not to be construed as a pre-requisite.

By Section 12 it is enacted that every one who is thus affected may within fifteen days after the corrected proceedings are placed in the City Register's office and within fifteen days of the first publication <sup>of notice</sup> thereof, appeal to the Baltimore City Court with the right to a jury trial, with right also of appeal to the Court of Appeals, and the Judge of the Baltimore City Court is empowered to require the costs or any part thereof to be paid, as ~~1~~ part of the damages, to be paid to the City, or to be paid by the appellants, as the circumstances of the appeal may in his opinion justify.

( 1.) The first contention of the complainants is that

the power given by the foregoing act is not a sufficient authority to enable the City to change the old private wharves and docks and to condemn the property appertaining thereto which is required to make the new wharves and docks contemplated by the plans and maps adopted by the City.

It is contended that the words "to lay out additions and alterations to the public wharves and docks of Baltimore City," mean that there must be in existence a public wharf or dock and that all that the Commission is given power to do is to make an addition or extension to the physical structure of that existing public wharf or dock.

Looking to the actual situation to which it was obviously the intention of the Legislature that the Burnt District Act should be applied, this seems too limited a meaning to give to the words. To add to or extend the public wharves and docks of a port does not necessarily import a dealing with existing structures. Power is very frequently given to a municipality by the legislature to enable it to fulfill the public duty of providing sufficient docks and wharves for its commerce. To add to its wharves and docks may well mean in a comprehensive act such as the one in question, to make new ones; to extend its wharves and docks may well mean to carry the system into new areas, and to make additions and extensions to the harbor ~~and~~<sup>or</sup> basin may well mean in such an act the widening of the docks appurtenant to the basin in order to give more room to enable vessels of the size which use the port to more safely navigate.

When it has the legislative grant of the power a public duty devolves upon the municipality to develop the utility of its harbor. To provide docks and wharves is a purpose for

which private property may be taken as for a public use.

It is a well known fact that for years before the great fire of February 7th and 8th, 1904, the old docks and wharves which in former generations had been extended South from Pratt Street between Light Street and Jones Falls had in a great measure ceased to be useful. The warehouses built on the wharves were not in demand and had generally declined in value; numbers of them were at times vacant or could obtain tenants only at greatly reduced rents. The docks were so shallow and so narrow that vessels of modern construction could not enter them. It was a problem often discussed as to what use the property could be put to rescue it from ~~its~~ dilapidation, and how the docks could be improved and the harbor enlarged so as to furnish facilities to the vessels coming to the inner basin of the port.

With the great fire which swept over the whole area, containing some fifty acres, leaving no warehouses standing, the great opportunity to solve the situation was offered, and it was to avail of this opportunity that the Burnt District Act, so far as it relates to the harbor, docks and wharves, was enacted, and that the carefully worked out plans of the Commission were approved by Ordinance 149 of the Mayor and City Council. These matters were of such general notoriety and public discussion that it is fair to say that every one had knowledge of them, and no court interpreting the Burnt District Act should shut its eyes to them. The time and the opportunity had come when the City could, without too great a cost, assume the duty of furnishing reasonable and modern wharves and harbor facilities for the commerce of the port, and it was in the face of this opportunity that the Legislature enacted the Burnt District Act, which by its title recites

that it is intended to provide"for adding to, extending and partly filling the harbors or basins of Baltimore City and for establishing public wharves and docks."

So careful was the Legislature that any plan which might be matured by the Burnt District Commission and approved by the Board of Estimates and the Board of Public Improvements and sanctioned by an ordinance of the Mayor and City Council, should not be defeated by any supposed defect in the authority conferred on the Burnt District Commission, that as hereinbefore recited, it provided by Section 3 that in addition to the powers conferred by Section 2 the Commission should have such powers as might be granted to it by any ordinance of the City and gave to the City the authority to pass such an ordinance.

The Burnt District <sup>Act</sup> was special legislation enacted at a crisis in the history of the City; and looking to the whole situation and to the purposes which the Act outlines, it seems to me that the power to lay out additions and extensions to be made to the public wharves and docks and to the basin and harbor was not restricted to merely adding to some public wharf already existing but covered the adding to and extending the public wharf facilities by such a plan as would make the public wharves and docks more suitable to the City's requirements.

As far as concerns making additions and extensions to the basin or harbor all the increased area of water not covered by the proposed new piers will be open navigable water enlarging the basin or harbor.

I cannot consider the first ground of objection to the power of the Commission well taken.

2. The complainant's second contention is that the City is about to proceed to condemn the complainant's property not really for the purpose of establishing public wharves and docks but is intending to construct piers which it proposes to lease to private individuals and corporations for their exclusive use so that the condemnation will not really be for a public use.

The City can only act through ordinances passed by the Mayor and City Council and no ordinance giving authority to make such a lease has been passed. The complainant relies upon an advertisement signed by the City Comptroller inviting applications from persons, firms or corporations desiring exclusive rights in the proposed new city docks and piers. So far as appears this invitation is without lawful authority and commits the City to nothing. By section 8 of the City Charter it is provided that special rights in any public property can only be granted for a limited time, by an ordinance duly passed, and with safeguards retaining the power of the City to regulate such right or franchise.

It would be strange if the Court could declare the Act of the Legislature unconstitutional and the proceedings of the Burnt District Commission void because of this advertisement.

It is no doubt probable that the requirements for strictly public wharves may not exhaust all the piers and docks which it will be necessary to construct in carrying out the beneficial changes contemplated by the plan of the Burnt District Commission, and that there may be space which the City can only utilize by leasing it, but it would not follow that the improvements as a whole was not for a public use which it was the duty of the City as a municipality to see carried out. Regard must be had to the methods by which the public wharves

of a city are availed of in modern commerce. Public landings on a river bank open to every vessel that chooses to make fast to it are not suitable to every kind of modern transportation by water. In a case in which the Act of the Legislature of New York granted to the City of New York the power to condemn property in order to erect a great number of piers according to a general plan for improving its water front, and by the act gave power to the City to lease certain of the piers for special uses, it was held that the act was a valid exercise of the right of eminent domain. In the City of New York vs. ~~New York~~ Central & Hudson River R. R., 135 N. Y. 253, Mr. Justice Peckam speaking for the Court of Appeals of New York holds that "Land which is thus taken is taken for a public use although some portion of all the land actually used may thereafter, in the discretion of the City be divided off and placed in the exclusive possession of a lessee for the sole purpose of using it in the transaction of the necessary business connected with the loading and unloading of passengers and cargoes of ships and steamers."

It is alleged in the bill of complaint that it is the purpose of the defendants in their plan or scheme that the Mayor and City Council shall farm out much the larger portion of the lands to be acquired, including the complainant's land, and take to itself the rentals to be secured. But the only fact to support this allegation which is mentioned is the advertisement above referred to. It does not seem to me that the apprehension by the complainant that the City might divert the property when acquired from a strictly public use, is sufficient ground to declare the proceeding void. <sup>That</sup> there can be no permanent diversion is settled by the City Charter which pro-

vides that the title of the City to its water front, wharf property, docks # # # shall be inalienable.

3. It is claimed that the procedure for assessment of damages is not valid because the assessment is not made by an impartial commission. I fail to see how the Burnt District Commission differs from any board of public officers charged with the duty of ascertaining the value of property required for a public use. They are public officers charged with public duties, and a special provision is made for a temporary appointment in case any of them in respect to any particular parcel of land shall not be free from interest.

The same question was raised in Bass Vs. Fort Wagner 121 Indiana 389, and it was held by the Supreme Court of Indiana to be a valid exercise of the right of Eminent Domain.

It is further contended that the notices of the several steps of the proceeding are insufficient to afford due process of law. The notices and proceedings of condemnation are substantially the same as have in the case of the Commissioners for opening streets in Baltimore City stood the test of half a century of litigation, and the authority given to the judge with regard to the costs in the case of appeal is the same.

It is provided that after the plans have been approved by an ordinance ~~of~~ two weeks notice in two daily papers shall be given of the meeting of the Commission to ascertain the damages.

When the assessment of damages is made four days notice in two daily papers is to be given of the time when the commission will sit to hear parties making objections. Upon closing this review the report and plats are deposited in the Register's

Office and a notice published in two daily newspapers that the parties dissatisfied are entitled within fifteen days to an appeal with right to a jury trial.

In the case of an ordinary street opening no notice is given of the meeting to ascertain and assess the damages, but after the damages have been assessed the same period of four days notice is given of the sitting to review; the notice from the City Register is four weeks instead of two weeks for the right to appeal.

It seems to me that it cannot be successfully maintained that the notices do not offer sufficient time for a party interested to avail of the opportunities given for review and for appeal..

It is to be considered that these notices do not have reference to an isolated and unexpected condemnation. Every owner of property in the ~~xxxx~~ District must have been aware that the whole area was laid waste by the fire. Every owner or agent competent at all to look after the interest of a property owner in the District must have had knowledge that the plans for acquiring the property for harbor and dock purposes were being proceeded with. The most careless owner could not remain without knowledge that it was necessary to be observant of the published notices and proceedings of the commission, and I fail to see how under the circumstances it can be successfully contended that the notices were so ineffectual as to invalidate the proceedings.

In considering condemnation proceedings it was well said by Mr. Justice Bradley in *Boyd Vs. The United States* 116 U. S. 616-635 "It is the duty of courts to be watchful for the constitutional rights of the citizen and against any stealthy encroachments thereon." But notwithstanding the able

presentation of the case of the complainant by her learned counsel, I have found nothing that calls for interference by injunction. It seems to me that the use for which complainant's property is to be taken is a public use, that the notices, the method of assessment, and of trial by jury on appeal, are such as to insure to her just compensation, and that no constitutional right *to* which she is entitled to the protection of the court has been violated.

The demurrer is sustained.

TRUE COPY.

TEST:

*Jas. W. Chew*  
.....  
Clerk.

2669

June 27, 1905.

Sherlock Swann, Esq.,  
Chairman of the Burnt District Commission.

Dear Sir:-

I beg leave to inform you that Judge Thomas J. Morris rendered an opinion on yesterday sustaining the demurrer of the City to the Bill of Complaint in the case of Dyer vs. the Mayor and City Council of Baltimore, in the Circuit Court of the United States.

The decision of the Court is favorable to the City on all the points involved.

Truly yours,

W. CABELL BRUCE,

WCB/IML

City Solicitor.

ARTHUR W. MACHEN,  
ARTHUR W. MACHEN, JR.  
ATTORNEYS & COUNSELLORS AT LAW.  
CENTRAL SAVINGS BANK BUILDING,  
BALTIMORE, MD.

2669

Baltimore, July 7, 1905.

W. Cabell Bruce, Esq.,  
City Solicitor,  
217 Court House.

Dear Sir:-

I find that no Decree has yet been signed in the case of Dyer vs. The Mayor and City Council of Baltimore et al., in the United States Circuit Court. We should be much obliged if you would have a decree prepared in time to be signed Monday morning. Judge Morris is to be here on Monday but that will be the last day he will be in town. Accordingly, we want to get the decree signed, the appeal entered and allowed, and the penalty of the bond fixed by the Court on Monday.

Very truly yours,

Arthur W. Machen

J. SOUTHGATE LEMMON  
C. BAKER CLOTWORTHY  
W. E. SHERWOOD

LEMMON & CLOTWORTHY,  
ATTORNEYS AND COUNSELLORS AT LAW,  
SUITE 1400, CONTINENTAL BUILDING,  
BALTIMORE, MD.

C. & P. PHONE,  
MT. VERNON 4057

July 11, 1905:

2669

Mr. W. Cabell Bruce, City Solicitor,  
Court House, City:

Dear Sir:-

We beg to thank you for the copy of the brief in behalf of the City in the matter of Dyer vs. the Mayor and City Council of Baltimore in the United States Superior Court and also Judge Morris' opinion in same.

Yours very truly,

*Lemmon & Clotworthy*

2669

Sidney Turner Dyer, et al.,	:	In the Circuit Court of
vs.	:	the United States for the
Mayor and City Council of	:	District of Maryland.
Baltimore.	:	Civil Docket C Folio 190.

Mr. Clerk:

Please enter the above entitled case "dismissed", the Mayor and City Council of Baltimore to pay the costs.

\_\_\_\_\_  
Attorney for plaintiff.

\_\_\_\_\_  
City Solicitor.

Sidney Turner Dyer, et al

vs.

Mayor and City Council of Baltimore

In the Circuit Court of the

United States,

in and for the District of

Maryland.

This case coming on to be heard upon Bill and Demurrer thereto, the arguments of the respective counsel were heard and considered, and it is hereby ADJUDGED, ORDERED AND DECREED by the Circuit Court of the United States in and for the District of Maryland, this day of July 1905, that the demurrer be and it is hereby sustained, and the Bill is accordingly dismissed with costs to the Defendants.

2669

January 26th, 1906.

Michael Jenkins, Esq.,  
c/o the Safe Deposit & Trust Company,  
Baltimore, Md.,

Dear Sir;---

I send you herewith the agreements for sale to you of the property within the area recently condemned by the City for public wharves and docks, which is owned by clients of Messrs. Machen and Machen. You will find the agreements executed by the owners who are in existence. Kindly execute the said agreements and return them to me.

I have agreed with Messrs. Machen and Machen upon the form of equity bill to be filed for conveyance to you of the title to the property described in these agreements. I understand a draft of the bill agreed upon has been forwarded to the persons who executed the within contracts for signature by them.

When you have secured title under the proceeding to be conducted in accordance with the agreement reached with Messrs. Machen and Machen, the City will be prepared to take title from you.

Yours very truly,

Assistant City Solicitor.

G./M.H.B.

(C) It being intended to include in the foregoing descriptions and to convey hereby, all those lots of ground with improvements known as Nos. 401-3-5-7 - Cable Street, 221 Smiths Wharf, 207 South Street, and an undivided moiety or half part in all that lot known as No. 234 Commerce Street; said lots being also known as Nos. 221, 306, 113 & P, and 210 respectively on the Burns District Plan for Public Wharves and Pratt Street.

And all the rights &c from D Agreement,  
(E) (Being the same properties mentioned in the schedule contained in the aforesaid Agreement according to the intent and meaning thereof.) (then fr. F, deed)

line of said lot fifty-four feet nine inches (54' 9") to McClure's Dock; thence northerly on the west side of McClure's Dock thirty feet seven and three-eighths inches (30' 7-3/8") to the lot of ground in this description first mentioned, and thence westerly on the south line of said lot fifty-four feet eight and three-quarters inches (54' 8-3/4") to the place of beginning.

*then fr. Ap. 6 of Agreement down to paragraph 5 p. 8, then fr. (B)*  
(B) ALSO an undivided moiety or half part in all that piece or parcel of ground described as follows; that is to say:

BEGINNING for the fourth on the west side of Commerce street at the distance of five hundred and eleven feet six and one-quarter inches (511' 6-1/4") south from the south-west corner of Pratt street as now in process of widening and Commerce street as now existing and shown by map No.27-A; which place of beginning is at the intersection of the west line of Commerce street with the south line of lot 209 and running thence westerly binding on said south line forty-eight feet two and one-half inches to the east side of McClure's Dock; thence southerly binding on said east line thirty-four feet nine inches to the north line of lot 211; thence easterly binding on said north line forty-nine feet to the west side of Commerce street; thence northerly binding on said west line thirty four feet three inches to the place of beginning.

*by the first second and fourth descriptions*  
IT BEING intended to include in the foregoing descriptions and to convey hereby all those lots of ground with improvements respectively known as 401-3-5-7- Cable Street, 221 Smith's Wharf, 209 South street, and an undivided moiety or half part ~~in~~ 234 Commerce street; *in all that lot known as 1020 lot of ground being also known as Nos. 221 306 (Being the same lots mentioned in the schedule contained in the aforesaid Agreement).* according to the intent and *meanings thereof.*

(H) TOGETHER with the improvements thereupon, and all the rights, ways, waters, easements, privileges, advantages and appur-

tenances thereto belonging or in anywise appertaining; and also all the right, title and interest of said parties to said cause in and to the bed of every street, lane and alley bounding on, adjoining or running through the said property and all riparian and aquatic rights of the parties to said cause, as owners of said property and all right, title and interest of said parties to said cause in and to the land adjacent to the said lots of ground which is covered by the water.

TO HAVE AND TO HOLD the said grounds and premises above described and hereby granted and conveyed, to and unto the use of the said Mayor and City Council of Baltimore, its successors and assigns, in fee-simple forever.

AND the said parties of the first part do hereby jointly and severally covenant that they will warrant specially the property hereby conveyed, ~~that they have done no act to encumber said property~~, and that they will execute such further assurances thereof as may be requisite.

WITNESS the hands and seals of said grantors.

TEST:

\_\_\_\_\_  
(SEAL)

\_\_\_\_\_  
(SEAL)  
Surviving trustee under Will of  
Margaret Turner.

\_\_\_\_\_  
(SEAL)  
Surviving trustee under Will of  
Edward Patterson.

\_\_\_\_\_  
(SEAL)  
Trustee under Will of Sidney Patterson.

\_\_\_\_\_  
(SEAL)

\_\_\_\_\_  
(SEAL)



THIS DEED, Made this \_\_\_\_\_ day of February  
in the year nineteen hundred and six by Michael Jenkins and Mary  
Isabel Jenkins, his wife, parties of the first part, unto the Mayor  
and City Council of Baltimore, a municipal corporation of the State  
of Maryland, duly incorporated, party of the second part.

WHEREAS, By chapter 87 of the Acts of 1904 of the General  
Assembly of Maryland, it was provided that a Commission, to be known  
as the "Burnt District Commission," should be created as therein set  
forth, with power to acquire by gift, purchase, lease, condemnation  
or by any other method for and in the name of the Mayor and City  
Council of Baltimore, the lands, private property, interests, rights,  
franchises, privileges or easements which might be requisite for the  
purposes therein specified; and

WHEREAS, By proper proceedings in accordance with the re-  
quirements of the said Act, it has been determined that the acqui-  
sition of the property hereinafter described is requisite for the pur-  
poses aforesaid; and

WHEREAS, The aforesaid "Burnt District Commission" by vir-  
tue and in pursuance of the powers vested in it by law condemned on  
behalf of the Mayor and City Council of Baltimore, the lots herein-  
after described, and there was awarded therefor the sums of twenty-  
seven thousand four hundred and thirty-one dollars and twenty-five  
cents, three thousand eight hundred and thirty-seven dollars and fif-  
ty cents, ten thousand five hundred dollars and three hundred and six-  
ty three dollars and four thousand four hundred and sixty-two dollars  
and fifty cents respectively, of which last amount one-half thereof  
or two thousand two hundred and thirty-one dollars and twenty-five  
cents, and all the other sums (the whole aggregating forty-four thou-  
sand three hundred and sixty-three dollars (\$44,363.)) have been ful-  
ly paid to said parties of the first part by the said Mayor and City  
Council of Baltimore as is hereby acknowledged.

NOW, THEREFORE, THIS DEED WITNESSETH, That in consideration of the premises and of the sum of one dollar (\$1.00), the said Michael Jenkins and Mary Isabel Jenkins, his wife, do grant and convey unto the said Mayor and City Council of Baltimore, its successors and assigns all those pieces or parcels of land situate, lying and being in the City of Baltimore, in the State of Maryland, and described as follows, that is to say:

BEGINNING for the first thereof at the corner formed by the intersection of the south line of Cable street with the east line of Commerce street as now existing and shown by map No.27-A, and running thence southerly bounding on the east line of Commerce street eighty feet three inches to the north line of lot 222; thence easterly binding on said north line thirty-three feet eight inches to the west line of Patterson's Dock; thence northerly binding on said west line fourteen feet three inches to the north line of Patterson's Dock; thence easterly binding on said north line and still easterly binding on the north line of lots Nos. 226 and 227, in all eighty-one feet three inches to the west line of Patterson street; thence northerly binding on said west line sixty-five feet three and one-half inches to the south line of Cable street; thence westerly binding on said south line one hundred and fourteen feet seven inches to the place of beginning.

BEGINNING for the second thereof on the east line of Smith's Wharf at the distance of one hundred and sixty feet and one and three-quarters inches south from the south-east corner of Pratt street as now in process of widening, and Smith's Wharf as now existing, and shown on map No.27-B, which place of beginning is at the intersection of the east line of Smith's Wharf with the south line

of lot 305, and running thence easterly binding on said south line sixty-six feet to the west side of Allison alley; thence southerly binding on said west line twenty-five feet one inch to the north line of lot 307; thence westerly binding on said north line sixty-five feet ten inches to the east line of Smith's Wharf; thence northerly binding on said east line twenty-five feet to the place of beginning.

BEGINNING for the third thereof on the east side of South street at the distance of sixty feet (60') south from the corner formed by the intersection of the south side of Pratt street as existing on the 7th day of February, 1904, and the east side of South street, which place of beginning is at the south-west corner of a lot of ground there situate, the leasehold interest wherein was formerly owned by William Keyser but is now owned by the Mayor and City Council of Baltimore; running thence southerly on the east side of South street thirty feet seven and three-eighths inches (30' 7-3/8") to a lot of ground there situate, now owned by the Mayor and City Council of Baltimore; thence easterly on the north line of said lot fifty-four feet nine inches (54' 9") to McClure's Dock; thence northerly on the west side of McClure's Dock thirty feet seven and three-eighths inches (30' 7-3/8") to the lot of ground in this description first mentioned, and thence westerly on the south line of said lot fifty-four feet eight and three-quarters inches (54' 8-3/4") to the place of beginning. Being the same piece or parcel of ground described and mentioned to be demised in and by a certain indenture dated the 28th day of June in the year eighteen hundred and fifty-six, made between Edward Patterson of the first part, Edward Patterson, Jr., Samuel Smith Patterson, Rob-

ert Patterson, Laura Patterson, Sidney Patterson, Junior, Charles C. Turner and Margaret Turner (formerly Margaret Patterson) his wife of the second part, and Samuel S. Keyser of the third part, recorded among the Land Records of Baltimore City in Liber E.D. No.107 folio 107 &c.; which said parcel of ground comprehends the piece of ground lying in the bed of Pratt street as now intended to be widened designated by the letter P on the Damage Plat in the pending proceedings for the said widening of Pratt street, and also the parcel of ground designated by the number 113 on the Map marked No. 27 accompanying the return of the Burnt District Commission in the proceedings for making additions and extensions to public wharves and docks aforesaid.

It being intended to include in the foregoing description all that lot of ground with improvements heretofore known as No.207 South street; and the title intended to be conveyed being the same derived by the parties of the first part from or through an indenture between Daniel Bowly of the first part and Henry Messonier of the other part, recorded among the Land Records of Baltimore County in Liber W.G. No. K.K. folio 16 &c.; an indenture between John Stricker and William Patterson dated the fifth day of August A. D. 1819; a codicil to the last Will and testament of William Patterson recorded in Liber D.M.P. No. 15 folio 254 &c., and the said indenture between Edward Patterson of the first part, Edward Patterson, Junior, Samuel Smith Patterson, Robert Patterson, Laura Patterson, Sidney Patterson, Junior, Charles C. Turner and Margaret Turner his wife (formerly Margaret Patterson) of the second part and Samuel S. Keyser of the third part dated the twenty-eighth day of June in the year one thousand eight hundred and fifty-six.

Also an undivided moiety or half part in all that piece or parcel of ground described as follows, that is to say:

BEGINNING for the fourth on the west side of Commerce street at the distance of five hundred and eleven feet six and one-quarter inches (511' 6-1/4") south from the south-west corner of Pratt street as now in process of widening and Commerce street as now existing and shown by map No. 27-A; which place of beginning is at the intersection of the west line of Commerce street with the south line of lot 209 and running thence westerly, binding on said south line forty-eight feet two and one-half inches to the east side of McClure's Dock; thence southerly binding on said east line thirty-four feet nine inches to the north line of lot 211; thence easterly binding on said north line forty-nine feet to the west side of Commerce street; thence northerly binding on said west line thirty-four feet three inches to the place of beginning.

IT BEING intended to include in the foregoing descriptions and to convey hereby all those lots of ground with the improvements known as Nos. 401-3-5-7 Cable street, 221 Smith's Wharf, 207 South street, and an undivided moiety or half part in all that lot known as No. 234 Commerce street; said lots being also known as Nos. 221, 306, 113 & P, and 210 respectively on the Burnt District Plat for Public Wharves and Pratt street.

AND all the right, estate and interest, legal and equitable of said parties of the first part, acquired by the said Michael Jenkins, by the deed from Laura Patterson and others, hereinafter referred to, in and to all the beds of streets and docks and ground covered by the waters of docks contained within the whole area lying between the south line of Pratt street, as existing on the 7th day of February, 1904, and the Waters of the Basin of the City of Baltimore, and sought to be acquired by the Mayor and

City Council of Baltimore in the said proceedings under the said Act of 1904 chapter 87, and shown on Map marked No.27 of the said Burnt District Commission or shown on the Damage Plat of the now pending proceedings of the said Burnt District Commission for the widening of Pratt street.

(Being the same lots of ground and premises which by deed dated the tenth day of February, 1906, and recorded or intended to be recorded among the Land Records of Baltimore City, prior hereto were conveyed by Laura Patterson and others to the said Michael Jenkins, his heirs and assigns forever).

TOGETHER with the improvements thereupon, and all the rights, ways, waters, easements, privileges, advantages and appurtenances thereto belonging or in anywise appertaining; and also all the right, title and interest of the parties of the first part in and to the bed of every street, lane and alley bounding on, adjoining or running through the said property and all riparian and aquatic rights of the parties of the first part, as owners of said property and all right, title and interest of said parties of the first part in and to the land adjacent to the said lots of ground which is covered by the water.

TO HAVE and TO HOLD the said grounds and premises above described and hereby granted and conveyed, to and unto the use of the said Mayor and City Council of Baltimore, its successors and assigns, in fee simple forever.

WITNESS the hands and seals of said grantors.

TEST:

\_\_\_\_\_ (SEAL)

\_\_\_\_\_ (SEAL)

STATE OF MARYLAND,     )  
                                  ) SCT.:  
CITY OF BALTIMORE,    )

I HEREBY CERTIFY, That on this \_\_\_\_\_ day  
of February, in the year nineteen hundred and six, before the sub-  
scriber, a Notary Public of the State of Maryland, in and for the  
City of Baltimore, aforesaid, personally appeared the within named  
Michael Jenkins and Mary Isabel Jenkins, his wife, the grantors in  
the foregoing deed, and each acknowledged the same to be their re-  
spective act.

WITNESS my hand and Notarial Seal on the day and year  
aforesaid.

Legal form and sufficiency  
approved this \_\_\_\_\_  
day of \_\_\_\_\_ 190\_.

\_\_\_\_\_  
City Solicitor.

\_\_\_\_\_  
Assistant City Solicitor.

2669

A G R E E M E N T

AGREEMENT between Laura Patterson in her own right and as surviving trustee under the last will of Margaret Turner deceased and as surviving trustee under the last will of Edward Patterson, deceased, and as Trustee under the Will of Sidney Patterson, deceased, and Sidney Turner Dyer and Elisha Dyer, Jr., her husband, of the first part, and Michael Jenkins of the second part.

Whereas the said parties of the first part are the owners of certain properties desired and sought to be condemned by the Mayor and City Council of Baltimore for additions and extensions to be made to the public wharves and docks of Baltimore City and to be made to the basin or harbor of the City of Baltimore under and by virtue of the Act of the General Assembly of Maryland, 1904, chapter 87, and also own a certain reversionary interest in a parcel of ground lying in the bed of Pratt street as about to be widened, and also claim to own interests in other land lying in said Pratt street as about to be opened;

And whereas in proceedings taken under said Act of Assembly certain awards of damages were made by the Burnt District Commission for the said properties, from which appeals were taken by the parties of the first part to the Baltimore City Court, and thereupon, except the appeal taken from award as to estate and interest of the parties of the first part in Lot No. 113 on Plat No. 27 of the said Burnt District Commission, and in lot P on the Damage Plat in the proceedings for the widening of Pratt street, were removed from the said Court to the Circuit Court of the United States for the District of Maryland;

and in said last mentioned Court proceedings have been had and verdicts or inquisitions of juries taken from which appeals to the Supreme Court of the United States are contemplated by the said parties of the first part upon exceptions taken at said trials; and as to said Lot No. 113 on Plat No. 27 of the Burnt District Commission a trial was had in the Baltimore City Court and appeal proposed to be taken by the said appellants to the Court of Appeals of Maryland upon exceptions taken at said trial; and as to lot P on said Damage Plat in the widening of Pratt street the appeal of said parties of the first part has not been heard;

And whereas a bill in equity of the said Sidney Turner Dyer and Elisha Dyer, Jr., against the Mayor and City Council of Baltimore et al., is at this time pending in the Supreme Court of the United States upon an appeal taken by the said Sidney Turner Dyer and Elisha Dyer, Jr., her husband, from a decree of the said Circuit Court dismissing their bill of complaint in the cause; and a bill of equity seeking to enjoin proceedings for the condemnation of said properties of the said parties of the first part was filed by the said Laura Patterson in her own right and as trustee in the Circuit Court of Baltimore City, and a decree passed by said last mentioned Court dismissing the said bill, from which decree an appeal was entered by the said last mentioned plaintiffs, to the Court of Appeals.

Now this agreement witnesses that the said parties hereto of the first and second parts hereby mutually agree as follows, that is to say, the said parties of the first

part agree to sell and convey to the said party of the second part, and the said party of the second part hereby agrees to purchase from them, the said parties of the first part, the properties hereinafter described at and for the sum of forty-four thousand and three hundred and sixty three dollars to be paid to them the said parties hereto of the first part by the said party of the second part, at and upon the execution and delivery of a good and sufficient deed of conveyance therefor.

The following is a schedule of the properties aforesaid:

1. All that piece or parcel of ground situated in the City of Baltimore and described as follows: Beginning for the same at the corner formed by the intersection of the south line of Cable street with the east line of Commerce street as now existing, and shown by Map No. 27A, and running thence southerly bounding on the east line of Commerce street, eighty feet three inches, to the north line of Lot 222; thence easterly binding on said north line thirty three feet eight inches to the west line of Patterson's Dock; thence northerly binding on said west line fourteen feet three inches to the north line of Patterson's Dock, thence easterly binding on said north line and still easterly binding on the north line of lots Nos. 226 and 227, in all eighty-one feet three inches to the west line of Patterson street; thence northerly binding on said west line sixty-five feet three and one half inches to the south line of Cable street; thence westerly binding on said south line one hundred and fourteen feet seven inches to the place of beginning.

Together with all the rights, privileges, easements and appurtenances of every kind belonging or appertaining to the above described property, and especially all riparian and aquatic rights of every description.

It being in fee simple and designated on the map marked No. 27A of the Burnt District Commission in the proceedings for making additions and extensions to the public wharves and docks of Baltimore City and to the basin or harbor of the City of Baltimore by the number 221.

2. All that piece or parcel of ground lying in the City of Baltimore described as follows: Beginning for the same on the east line of Smith's Wharf at the distance of one hundred and sixty feet and one and three quarters inches south from the southeast corner of Pratt street as now in process of widening and Smith's Wharf as now existing; and shown on Map No. 27B, which place of beginning is at the intersection of the east line of Smith's Wharf with the South line of Lot 305; and running thence easterly, binding on said south line, sixty-six feet to the west side of Allison Alley; thence southerly binding on said west line twenty-five feet one inch, to the north line of Lot 307; thence westerly binding on said north line sixty-five feet ten inches to the east line of Smith's Wharf; thence northerly, binding on said east line twenty-five feet to the place of beginning.

Together with all the rights, privileges, easements and appurtenances of every kind to the above described property, and especially all riparian and aquatic rights of every description; as well as all the right, title and

interest of the said parties in or to that lot of ground lying between the east line of Smith's Wharf and the east line of Smith's Dock.

It being in fee simple; designated on Map marked No. 27B of the Burnt District Commission in the said proceedings for making additions and extensions to the public wharves and docks of Baltimore City and to the basin or harbor of the City of Baltimore by the number 306.

3. One undivided half part of all that piece or parcel of ground and the improvements or debris thereon described as follows: Beginning for the same on the west side of Commerce street at the distance of five hundred and eleven feet, six and one quarter inches (511' 6 $\frac{1}{4}$ " ) south from the southwest corner of Pratt street as now in process of widening and Commerce street as now existing and shown by Map No. 27A, which place of beginning is at the intersection of the west line of Commerce street with the south line of Lot 209; and running thence westerly, binding on said south line, forty-eight feet, two and one half inches to the east side of McClure's Dock; thence southerly binding on said east line ~~xx~~ thirty-four feet, nine inches, to the north line of Lot 211; thence easterly, binding on said north line, forty-nine feet to the west side of Commerce street; thence northerly binding on said west line, thirty-four feet three inches to the place of beginning.

Together, with all the rights, privileges, easements and appurtenances of every kind belonging or appertaining to the said above described property, and especially all riparian and aquatic rights of every description.

It being in fee simple; designated on Map marked 27 A of the Burnt District Commission in the said proceedings for making additions and extensions to the public wharves and docks of Baltimore City and to the basin or harbor of the City of Baltimore by the number 210.

4. All that piece or parcel of ground lying in the City of Baltimore and described as follows: Beginning for the same on the east side of South street at the distance of sixty feet (60') south from the corner formed by the intersection of the south side of Pratt street as existing on the 7th day of February, 1904, and the east side of South street, which place of beginning is at the southwest corner of a lot of ground there situate, a leasehold interest wherein was formerly owned by William Keyser, but is now owned by the Mayor and City Council of Baltimore; running thence southerly on the east side of South street thirty feet seven and three-eighths inches (30' 7-3/8") to a lot of ground there situate now owned by the Mayor and City Council of Baltimore; thence easterly on the north line of said lot fifty-four feet nine inches (54' 9") to McClure's Dock; thence northerly on the west side of McClure's Dock thirty feet seven and three-eighths inches (30' 7-3/8") to the lot of ground in this description first mentioned, and thence westerly on the south line of said lot fifty-four feet eight and three-quarters inches (54' 8-3/4") to the place of Beginning. Being the same piece or parcel of ground described and mentioned to be demised in and by a certain indenture dated the 28th day of June in the year eighteen hundred and fifty-six, made between Edward Patterson

of the first part, Edward Patterson, Jr., Samuel Smith Patterson, Robert Patterson, Laura Patterson, Sidney Patterson, Junior, Charles C. Turner and Margaret Turner (formerly Margaret Patterson) his wife of the second part, and Samuel S. Keyser of the third part, recorded among the Land Records of Baltimore City in Liber E.D. No. 107 folio 107 &c; which said parcel of ground comprehends the piece of ground lying in the bed of Pratt street as now intended to be widened designated by the letter P on the Damage Plat in the pending proceedings for the said widening of Pratt street, and also the parcel of ground designated by the number 113 on the Map marked No. 27 accompanying the return of the Burnt District Commission in the proceedings for making additions and extensions to public wharves and docks aforesaid.

It being intended to include in the foregoing description all that lot of ground with improvements heretofore known as No. 207 South street; and the title intended to be conveyed being the same derived by the parties of the first part from or through an indenture between Daniel Bowly of the first part and Henry Messionier of the other part, recorded among the Land Records of Baltimore County in Liber W.G. No. K.K. folio 16 &c.; an indenture between John Stricker and William Patterson dated the fifth day of August A.D. 1819; a codicil to the last will and testament of William Patterson recorded in Liber D.M.P. No.15 folio 254 &c., and the said indenture between Edward Patterson of the first part, Edward Patterson, Junior, Samuel Smith

Patterson, Robert Patterson, Laura Patterson, Sidney Patterson, Junior, Charles C. Turner and Margaret Turner his wife (formerly Margaret Patterson) of the second part and Samuel S. Keyser of the third part dated the twenty-eighth day of June in the year one thousand eight hundred and fifty-six.

It is understood that it is not the intention hereof that the parties of the first part hereto do or shall assign, part with or surrender any right they may now have to arrears of rent out of said premises, or to the recovery thereof from the lessee or lessees or his or their assigns. *from B. deed*

*D* 5. All the right, estate and interest, legal and equitable, of the said parties hereto of the first part in all beds of streets and docks and ground covered by the waters of docks contained within the whole area lying between the south line of Pratt street as existing on the 7th day of February 1904 and the Waters of the basin of the City of Baltimore, and sought to be acquired by the Mayor and City Council of Baltimore in the said proceedings under the said Act of 1904 chapter 87, and shown on Map marked No. 27 of the said Burnt District Commission or shown on the Damage Plat of the now pending proceedings of the said Burnt District Commission for the widening of Pratt street.

6. And all interest, estate and property of the said parties of the first part in improvements and debris on said above described pieces or parcels of ground on said beds of streets and docks.

*Henry E  
Jed 10/12*

It is further mutually agreed, and is part of the consideration upon which the parties of the first part agree to convey their said properties to the party of the second part, that the Mayor and City Council of Baltimore shall and will upon the execution and delivery of the deed of conveyance hereinabove provided for pay all costs on both sides, incurred or necessarily to be incurred in the various suits between the said parties of the first part or any of them and the Mayor and City Council of Baltimore, in whatever courts had, arising out of the proceedings instituted on the part of the Mayor and City Council of Baltimore for the condemnation of properties of the said parties of the first part or any of them for additions or extensions to the Public Wharves and Docks or Harbor or Basin of the City of Baltimore, and the widening of Pratt street <sup>amongst others,</sup> as aforesaid, including all costs on both sides in the Equity case of Sidney Turner Dyer et al. vs. The Mayor and City Council of Baltimore in the Circuit Court of the United States for the District of Maryland, and in the Supreme Court of the United States, and the Equity case of Laura Patterson in her own right and as trustee vs. The Mayor and City Council of Baltimore in the Circuit Court No. 2 of Baltimore City.

And it is further agreed that the necessary Court costs of the equity suit which it may be necessary to conduct in order to enable fully effective conveyance to be made of the properties hereinabove agreed to be conveyed by the said parties of the first part to the said party of the second part, according to the intent hereof,

shall be paid by the Mayor and City Council of Baltimore; which said suit the parties of the first part hereby agree to institute without delay and press to speedy conclusion upon the bill to be filed in the Circuit Court of Baltimore City, the form whereof has been settled by and between the counsel of the parties of the first part and the City Solicitor simultaneously with the execution of this Agreement.

Witness our hands

this *twenty seventh* day of January in the year Nineteen hundred and six, in duplicate.

*Laura Patterson*

*Laura Patterson*

Surviving Trustee under Will of Margaret Turner.

*Laura Patterson*

Surviving Trustee under Will of Edward Patterson.

*Laura Patterson*

Surviving Trustee under Will of Sidney Patterson.

*Putney Turner Esq.*

*Elisha Esq.*

*Michael J. Smith*

Patterson lts.

2669

February 8th, 1906.

Messrs. Machen & Machen,  
Central Savings Bank Bldg'.,  
Baltimore, Md.

Gentlemen:-

Enclosed herewith, please find deed from Laura Patterson et al. to Michael Jenkins, for conveyance of four lots of ground.

When this deed is executed and ready for delivery please see that tax bills certified for street charges and back taxes are furnished.

Very truly yours,

ACG/MEH.

THIS DEED, Made this \_\_\_\_\_ day of February in the year one thousand nine hundred and six, by Laura Patterson in her own right, Laura Patterson, surviving trustee under the Last Will of Margaret Turner, deceased, Laura Patterson, surviving trustee under the Last Will of Edward Patterson, deceased, Laura Patterson, trustee under the Last Will of Sidney Patterson, deceased, and Sidney Turner Dyer and Elisha Dyer, Jr., her husband, of the first part, to Michael Jenkins of the second part.

WITNESSETH, That whereas in a cause depending in the Circuit Court of Baltimore City (Docket 46-A, folio 34) in which said Sidney Turner Dyer and Elisha Dyer, Jr., her husband, are complainants, and the other parties hereto of the first part, together with Laura Swan are defendants, a decree was passed by the aforesaid Court on the sixth day of February 1906 authorizing, empowering and directing the said Laura Patterson in her own right, Laura Patterson, surviving trustee under the Last Will of Margaret Turner, deceased, Laura Patterson, surviving trustee under the Last Will of Edward Patterson, deceased, Laura Patterson, trustee under the Last Will of Sidney Patterson, deceased, and Sidney Turner Dyer and Elisha Dyer, Jr., her husband, upon receiving from the said Michael Jenkins the sum of forty-four thousand three hundred and sixty-three dollars, the purchase money mentioned in the Agreement, Plaintiff's Exhibit A, filed in said cause, and the performance of the stipulations as to the payment of costs contained in the said Agreement as therein provided, to execute, acknowledge and deliver a good and sufficient deed of conveyance, conveying to the said Michael Jenkins, his heirs and assigns, all the properties provided in the said Agreement to be conveyed and particularly mentioned in the schedule contained in

said Agreement; and

WHEREAS the said Michael Jenkins has paid to the parties hereto of the first part the sum of forty-four thousand three hundred and sixty-three dollars in the proportions and in the several rights to, and in which they are severally entitled to receive the same in accordance with the terms of said decree, as is hereby acknowledged; and the stipulations as to the payment of costs contained in said Agreement have been fully performed.

NOW, THEREFORE, In consideration of the premises and of the sum of one dollar lawful money paid by the said Michael Jenkins to the parties of the first part hereto at the sealing and delivery hereof, the receipt whereof is hereby acknowledged, the parties hereto of the first part by virtue and in pursuance and execution of said decree do hereby grant and convey unto the said Michael Jenkins, his heirs and assigns, all those pieces or parcels of land situate, lying and being in the City of Baltimore, in the State of Maryland, and described as follows, that is to say:

BEGINNING for the first thereof at the corner formed by the intersection of the south line of Cable street with the east line of Commerce street as now existing and shown by map No.27-A, and running thence southerly bounding on the east line of Commerce street eighty feet three inches to the north line of lot 222; thence easterly binding on said north line thirty-three feet eight inches to the west line of Patterson's Dock; thence northerly binding on said west line fourteen feet three inches to the north line of Patterson's Dock; thence easterly binding on said north line and still easterly binding on the north line of lots Nos. 226 and 227, in all eighty-one feet three inches to the west line of Patterson street;

thence northerly binding on said west line sixty-five feet three and one-half inches to the south line of Cable street; thence westerly binding on said south line one hundred and fourteen feet seven inches to the place of beginning.

BEGINNING for the second thereof on the east line of Smith's Wharf at the distance of one hundred and sixty-feet and one and three-quarters inches south from the south-east corner of Pratt street as now in process of widening, and Smith's Wharf as now existing, and shown on map No. 27-B, which place of beginning is at the intersection of the east line of Smith's Wharf with the south line of lot 305, and running thence easterly binding on said south line sixty-six feet to the west side of Allison alley; thence southerly binding on said west line twenty-five feet one inch to the north line of lot 307; thence westerly binding on said north line sixty-five feet ten inches to the east line of Smith's Wharf; thence northerly binding on said east line twenty-five feet to the place of beginning.

BEGINNING for the third thereof on the east side of South street at the distance of sixty feet (60') south from the corner formed by the intersection of the south side of Pratt street as existing on the 7th day of February, 1904, and the east side of South street, which place of beginning is at the south-west corner of a lot of ground there situate, the leasehold interest wherein was formerly owned by William Keyser but is now owned by the Mayor and City Council of Baltimore; running thence southerly on the east side of South street thirty feet seven and three-eighths inches (30' 7-3/8") to a lot of ground there situate, now owned by the Mayor and City Council of Baltimore; thence easterly on the north

line of said lot fifty-four feet nine inches (54' 9") to McClure's Dock; thence northerly on the west side of McClure's Dock thirty feet seven and three-eighths inches (30' 7-3/8") to the lot of ground in this description first mentioned, and thence westerly on the south line of said lot fifty-four feet eight and three-quarters inches (54' 8-3/4") to the place of beginning. Being the same piece or parcel of ground described and mentioned to be demised in and by a certain indenture dated the 28th day of June in the year eighteen hundred and fifty-six, made between Edward Patterson of the first part, Edward Patterson, Jr., Samuel Smith Patterson, Robert Patterson, Laura Patterson, Sidney Patterson, Junior, Charles C. Turner and Margaret Turner (formerly Margaret Patterson) his wife of the second part, and Samuel S. Keyser of the third part, recorded among the Land Records of Baltimore City in Liber E.D. No. 107 folio 107 &c.; which said parcel of ground comprehends the piece of ground lying in the bed of Pratt street as now intended to be widened designated by the letter P on the Damage Plat in the pending proceedings for the said widening of Pratt street, and also the parcel of ground designated by the number 113 on the Map marked No. 27 accompanying the return of the Burnt District Commission in the proceedings for making additions and extensions to public wharves and docks aforesaid.

It being intended to include in the foregoing description all that lot of ground with improvements heretofore known as No. 207 South street; and the title intended to be conveyed being the same derived by the parties of the first part from or through an indenture between Daniel Bowly of the first part and Henry Messionier of the other part, recorded among the Land Records of Baltimore County in Liber W.G. No. K.K. folio 16 &c.; an indenture between John

Stricker and William Patterson dated the fifth day of August A.D. 1819; a codicil to the last will and testament of William Patterson recorded in Liber D.M.P. No.15 folio 254 &c., and the said indenture between Edward Patterson of the first part, Edward Patterson, Junior, Samuel Smith Patterson, Robert Patterson, Laura Patterson, Sidney Patterson, Junior, Charles C. Turner and Margaret Turner his wife (formerly Margaret Patterson) of the second part and Samuel S. Keyser of the third part dated the twenty-eighth day of June in the year one thousand eight hundred and fifty-six.

It is understood that it is not the intention hereof that the parties of the first part hereto do or shall assign, part with or surrender any right they may now have to arrears of rent out of said premises, or to the recovery thereof from the lessee or lessees or his or their assigns.

ALSO an undivided moiety or half part in all that piece or parcel of ground described as follows, that is to say:

BEGINNING for the fourth on the west side of Commerce street at the distance of five hundred and eleven feet six and one-quarter inches (511' 6-1/4") south from the south-west corner of Pratt street as now in process of widening and Commerce street as now existing and shown by map No.27-A; which place of beginning is at the intersection of the west line of Commerce street with the south line of lot 209 and running thence westerly binding on said south line forty-eight feet two and one-half inches to the east side of McClure's Dock; thence southerly binding on said east line thirty-four feet nine inches to the north line of lot 211; thence easterly binding on said north line forty-nine feet to the west side of Commerce street; thence northerly binding on said west line thirty-four feet three inches to the place of beginning.

IT BEING intended to include in the foregoing descriptions and to convey hereby, all those lots of ground with the improvements known as Nos. 401-3-3-7 Cable street, 221 Smith's Wharf, 207 South street and an undivided moiety or half part in all that lot known as No. 234 Commerce street; said lots being also known as Nos. 221, 306, 113 & P, and 210 respectively on the Burnt District Plat for Public Wharves and Pratt street.

And all the right, estate and interest, legal and equitable, of the said parties ~~(of said cause)~~ in and to all the beds of streets and docks and ground covered by the waters of docks contained within the whole area lying between the south line of Pratt street as existing on the 7th day of February 1904 and the Waters of the basin of the City of Baltimore, and sought to be acquired by the Mayor and City Council of Baltimore in the said proceedings under the said Act of 1904 chapter 87, and shown on Map marked No. 27 of the said Burnt District Commission or shown on the Damage Plat of the now pending proceedings of the said Burnt District Commission for the widening of Pratt street.

(Being the same properties mentioned in the schedule contained in the aforesaid Agreement according to the intent and meaning thereof).

TOGETHER with the improvements thereupon, and all the rights, ways, waters, easements, privileges, advantages and appurtenances thereto belonging or in anywise appertaining; and also, all the right, title and interest of said parties to said cause in and to the bed of every street, lane and alley bounding on, adjoining or running through the said property and all riparian and aquatic rights of the parties to said cause, as owners of said property and all right, title and interest of said parties (to the said cause) in and to the land adjacent to the said lots of ground which is



the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore aforesaid, personally appeared the within named Laura Patterson, one of the grantors in the foregoing deed, and acknowledged the same to be her act in her own right and as trustee under the Wills of Margaret Turner, Edward Patterson and Sidney Patterson, respectively as therein named.

WITNESS my hand and Notarial Seal on the day and year aforesaid.

STATE OF NEW YORK, )  
CITY AND COUNTY ) TO WIT:  
OF NEW YORK, )

I HEREBY CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, in the year nineteen hundred and six, before the subscriber, a Notary Public of the State of New York, in and for the City and County of New York aforesaid, personally appeared the within named Sidney Turner Dyer, and Elisha Dyer, Jr., her husband, two of the grantors in the foregoing deed, and each acknowledged the same to be their respective act.

WITNESS my hand and Notarial Seal on the day and year aforesaid.

2669

OFFICE OF THE CLERK,  
Supreme Court of the United States,  
Washington, D.C.

February 10, 1906.

Arthur W. Machen, Esq.,  
Baltimore, Md.

Dear Sir:-

Yours of the 8th inst., in relation to case of Dyer  
etc., et al. v. Mayor and City Council of Baltimore, et al., No.  
377, Oct. Term, 1905, duly received.

If the appeal in above case is dismissed by agreement  
of counsel during the present term without further proceedings  
being taken except the proceedings necessary on the dismissal,  
the clerk's costs incurred will be as follows:

Clerk's costs incurred by appellants-----	\$8.90
"      "      "      "      appellees-----	8.05
<hr/>	
Total-----	\$16.95

I suppose under the terms of the settlement, the usual taxed at-  
torney fee of \$20.00 for the prevailing party will not be included.

The stipulation should be signed for appellees by some  
member of the bar of this court and whoever signs same should en-  
ter an appearance. I enclose an appearance form for that purpose.

Yours truly,  
*James M. Kenney*  
Clerk, Supreme Court, U.S.  
Per *A.C.M.*

SHERLOCK SWANN, CHAIRMAN,  
E. CLAY TIMANUS,  
MAYOR, EX-OFFICIO,  
CHARLES K. LORD,  
JOHN T. GRAHAM,  
JOHN W. SNYDER.

OFFICE OF THE

# BURNT DISTRICT COMMISSION,

ROOM 241 COURT HOUSE, 2ND FLOOR,  
WEST SIDE.

2669  
JAMES R. BREWER, JR.,  
SECRETARY

TELEPHONES:  
C. & P., MT. V. 4770.  
MARYLAND, CITY 3.

BALTIMORE, MD., Feb. 12/06.

W. Cabell Bruce, Esq.,  
City Solicitor,

My dear Sir:-

I am in receipt of a bill, approved by you, for costs in the case of Sydney Turner Dyer et al vs. Laura Patterson et al for \$54.50.

Will you kindly inform us what this is for, whether these cases have been settled, and if so, what the settlements are, as we have no information here beyond the decisions of the Courts?

I am,

Very truly yours,



Chairman.

2669

Feb. 12, 1906.

Sherlock Swann, Esq.,  
Chairman of the Burnt District Commission.

Dear Sir:-

The case of Dyer, et al., vs. Patterson, et al., referred to in your letter of the 12th inst. to myself, was a case instituted by the plaintiffs, through Messrs. Machen & Machen, Attorneys at Law, pursuant to an agreement entered into between the plaintiffs and Mr. Michael Jenkins, acting on behalf of the City, for the purpose of perfecting the titles to the lots with which you are familiar and that the City has long desired to acquire from the plaintiffs.

Under the agreement between the plaintiffs and Mr. Jenkins, pursuant to which the proceedings were instituted, all the court costs incurred by the plaintiffs therein were to be paid by the City; hence the voucher for \$51.50 for complainants' costs in the case handed to the Commission. The costs are the usual clerk's, sheriff's, examiner's and appearance fees payable by complainants in equity cases, and the clerk's bill in this case is as full as such bills ever are, it not being the habit of clerks to itemize their bills.

The proceedings in the case were prosecuted to a final decree, and the lots above mentioned are on the point of being conveyed to the City by titles satisfactory to this office.

When all the terms of the settlement arrived at between the plaintiffs and Mr. Jenkins, acting on behalf of the City, have been consummated, by the execution of the necessary deeds and the completion of the necessary court proceedings, I shall be glad to formally lay before you

S.S. #2

in detail what these terms are, so that, if you choose, you can have a record of them in your office.

Trul. yours,

City Sclicitor.

NCB/IML

2669

February 15, 1906.

Sherlock Swann, Esq.,  
Chairman Burnt District Commission,  
City.

Dear Sir:-

I beg to report that the various appeals growing out of the condemnation of the various lots of ground owned by the Patterson and Dyer interests needed for the widening of Pratt street, and for the New Docks and Piers have been settled, and that the manner of settlement is as follows:

All the interests of every kind of the appellants, including also their claims to street beds have been sold by them to Mr. Michael Jenkins, of this city, for the sum of forty-four thousand three hundred and sixty-three dollars (\$44,363.), and in addition to the said purchase price, Mr. Jenkins is to assume all the court costs of every character growing out of the litigation connected with the condemnation of the property, including the cases in the United States Courts and in the State Courts involving the validity of the Burnt District Act. The city has determined to pay Mr. Jenkins for the various properties thus acquired the same amount the said properties cost him, and in order to accomplish this result the following course has been pursued:

An inquisition has been entered in the Baltimore City Court for \$10,500 for the \$400. ground rent issuing out of 207 South street; in the same Court an inquisition has been entered for \$363. for the \$20. ground rent issuing out of that part of 207 South street needed for the widening of Pratt street; in the Circuit Court of the United States an inquisition for \$27,431.25 has been entered for the Cable street lot. The awards of the juries in the United States Court for the

S.S. #2.

Smith's Wharf property and for the Commerce street property will not be touched; those awards are as follows:

Smith's Wharf property \$3837.50;

Commerce st. " 4462.50; in this latter award Mr.

Reverdy Johnson has a one-half interest; so only one-half of the amount, to wit, \$2231.25 belongs to Mr. Jenkins; these various items foot up \$44,363. the amount that Mr. Jenkins is entitled to receive from the city. No taxes are to<sup>be</sup> charged on the property since the first day of January, 1906, and in addition the city is to pay all the court costs of every character growing out of the condemnation proceedings, and the proceedings attacking the validity of the Burnt District Act, as above stated.

Very truly yours,

Deputy City Solicitor.

EAP/ACM.

2669

February 21st, 1906.

Arthur W. Machen, Jr., Esq.,  
Central Savings Bank Building,  
Baltimore, Md.,

Dear Sir;---

Mr. Spamer has just notified me that in United States practice it is necessary that there should be an express waiver of a jury trial. I, therefore, enclose you such a waiver to be filed among the proceedings, and ask that you sign it and return it.

Very truly yours,

EAP/MHB.

Deputy City Solicitor.

2669

March 3, 1906.

James H. McKenney, Esq.,  
Clerk of the Supreme Court of the United States,  
Washington, D. C.,

Dear Sir;---

I beg to report that the case of Dyer et al. against the Mayor and City council of Baltimore et al., now pending in the Supreme Court of the United States, has been settled, and I herewith return an order for appearance, signed by counsel for the appellees, and a stipulation signed by all counsel of record, dismissing the case, costs to be paid by the appellees.

Will you not kindly file the enclosed papers and send to this office a bill of costs, so that the costs may be promptly paid.

Very truly yours,

EAP/MEB.

Deputy City Solicitor.

2669

OFFICE OF THE CLERK,  
Supreme Court of the United States,  
Washington, D. C.

March 5, 1906.

Edgar Allen Poe, Esq.,  
Deputy City Solicitor,  
Baltimore, Md.

Dear Sir:-

Yours of the 3d inst., enclosing order for the appearance of W. Cabell Bruce of counsel for appellees in case of Dyer et al. v. Mayor etc., of Baltimore, No. 377, Oct. Term, 1905, together with stipulation of counsel in said case to dismiss the appeal at the costs of the appellees, duly received, and I have filed same and have entered the appearance of Mr. Bruce. I today called the Court's attention to the stipulation and a decree dismissing the appeal at the cost of the appellees has been entered. I will tax the costs in the case as soon as possible and send you the bill.

Yours truly,

*James B. McKenney*  
Clerk, Supreme Court, U.S.  
per *J.B.M.*

2669

OFFICE OF THE CLERK,  
Supreme Court of the United States,  
Washington, D. C.

March 8, 1906.

Edgar Allen Poe, Esq.,  
Deputy City Attorney,  
Baltimore, Md.

Dear Sir:-

As heretofore promised, I have taxed costs in case of  
Dyer et al. v. Mayor etc., of Baltimore, et al., No. 377, Oct.  
Term, 1905, and I enclose bill for all clerk's costs incurred in  
said case in this court, amounting to \$16.70, to which I ask your  
attention.

Yours truly,

*Jas. B. McKenney*  
Clerk, Supreme Court, U.S.

per

*J. M.*

2669

OFFICE OF THE CLERK,  
Supreme Court of the United States,  
Washington, D. C.

March 12, 1906.

Edgar Allen Poe, Esq.,  
Deputy City Solicitor,  
Baltimore, Md.

Dear Sir:-

Yours of the 10th inst., returning bill for costs, recently sent you, in case of Dyer et al. v. Mayor etc., of Baltimore et al., No. 377, Oct. Term, 1905, duly received.

As requested, I enclose receipted bill for costs in said case in duplicate to comply with the requirements of the city as to paying out moneys. Please have the amount remitted at an early day, and oblige.

Yours truly,

*Gas. B. McKim*  
Clerk, Supreme Court, U.S.  
per *W. M.*

2669

March 27, 1906.

James H. McKenney, Esq.,  
Clerk of the Supreme Court of the United States,  
Washington, D.C.

Dear Sir:-

I herewith enclose check of the Mayor and City Council of Baltimore, to your order, for sixteen dollars and seventy cents (\$16.70), in payment of the costs in the case of Dyer, et al., vs. Mayor and City Council of Baltimore, et al., No. 377, October Term 1905.

I regret that there was such delay in forwarding you the check.

Very truly yours,

Deputy City Solicitor.

Enclosure.

EAP/IML

2669

March 10, 1906.

James H. McKenney, Esq.,  
Clerk of the Supreme Court  
of the United States,  
Washington, D. C.,

Dear Sir;---

I beg to acknowledge receipt of your favor of the 8, enclosing bill for the taxed costs in the case of Dyer et al. against the Mayor and City Council of Baltimore et al., No. 377, October term, 1905.

Under the system adopted by the city for the paying out of any money, it is necessary that receipted vouchers in duplicate should be delivered to the Comptroller's office, accompanying the warrant calling for the payment. I will have to ask you, therefore, to make out a duplicate bill and to receipt <sup>them</sup> ~~it~~ in advance. You can safely trust the city, and the money will be shortly thereafter forthcoming. I return the bill you sent me.

very truly yours,

EAP/MHB.

Deputy City Solicitor.

2669

March 14, 1906.

Sherlock Swann, Esq.,  
Chairman of the Burnt District Commission.

Dear Sir:-

I herewith enclose a duplicate receipted bill of costs in the Supreme Court of the United States, in the case of Dyer, et al., vs. the Mayor and City Council of Baltimore.

These are costs which, under the agreement of settlement, are to be paid by the City.

Kindly have the proper voucher drawn and approved, so that check can be promptly sent to the Clerk of the Supreme Court.

Very truly yours,

Deputy City Solicitor.

Enclosure.

EAP/IML

OFFICE OF THE CLERK,  
SUPREME COURT OF THE UNITED STATES,  
WASHINGTON, D.C.

2669

March 28, 1906.

Edgar Allen Poe, Esq.,  
Deputy City Solicitor,  
Baltimore, Md.

Dear Sir:-

Yours of the 27th inst., enclosing check for \$16.70,  
in payment of costs in case of Dyer et al. v. Mayor etc., of Bal-  
timore, No. 377, Oct. Term, 1905, duly received and the amount  
of the check credited.

Yours truly,

  
Clerk, Supreme Court, U.S.  
per *W.R.S.*

SHERLOCK SWANN, CHAIRMAN.  
E. CLAY TIMANUS,  
MAYOR, EX-OFFICIO.  
CHARLES K. LORD,  
JOHN T. GRAHAM,  
JOHN W. SNYDER.

OFFICE OF THE  
**BURNT DISTRICT COMMISSION,**

ROOM 241 COURT HOUSE, 2ND FLOOR,  
WEST SIDE.

JAMES R. BREWER, JR.,  
SECRETARY.

TELEPHONES:  
C. & P., Mt. V. 4770.  
MARYLAND, CITY 3.

BALTIMORE, MD., May 24/06.

2669

Henry W. Weekes, Esq.,  
Clerk of the City Solicitor,  
City Solicitor's Office,  
Court House.

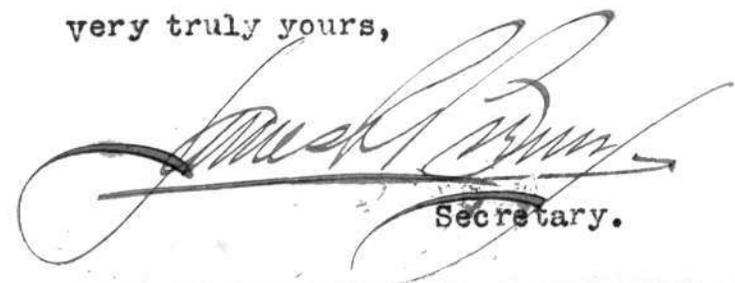
Dear Mr. Weekes:-

I am instructed by the Commission to acknowledge receipt of yours of the 22nd. instant, containing check for \$164.15, the same being the refund of over-paid costs as explained in your letter.

I shall forthwith transmit the same to the City Comptroller.

I am,

very truly yours,



Secretary.

BALTIMORE INN  
CAPE MAY, N. J.

F. B. Story

BALTIMORE INN,

CAPE MAY, N. J.

July 23<sup>rd</sup>

Dear Fred

Will you be so kind  
as to pay to Duncan Harrison  
\$100<sup>00</sup> one hundred dollars <sup>out</sup> of the  
balance that is still <sup>1.</sup> in  
y<sup>r</sup> hands belonging to me  
I oblige  
Yrs Truly

24 July 1903

J. Dacey