

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

The counsel for the plaintiff presented the following points:

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

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

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

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