

File No. 8841 Continued.

OPINION.

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Fell street is a dedicated street to the water front. The City can undoubtedly construct a public wharf at the end of said street, and I see no reason why it should not have the right to extend such wharf to the pier-head line. I also entertain little doubt of the fact that the Legislature can validly authorize the City to construct a Recreation Pier at the end of said street. The question about which I entertain most doubt is whether or not the City can, without additional statutory authority, construct such a pier. In the case of McMurray vs. the Mayor and City Council of Baltimore, 54 Md., 103, the City undertook to construct a wharf at the end of a dedicated street. The Court held that it had the right to construct such a wharf, but rested the conclusion largely upon the provision of the City Charter which authorized the City "to pass such ordinances as they may deem proper respecting wharves and wharfage, and the keeping of wharves in repair". In the course of the opinion in said case, the Court said:

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"By the provisions of the City Charter, now found in Code Public Local Laws, Article 4, Section 265, the Mayor and City Council were authorized 'to pass such ordinances as they may deem proper respecting wharves and wharfage, and the keeping of wharves in repair', etc. Under these provisions the Mayor and City Council have, from time to time, passed ordinances respecting wharves at the ends or sides of public streets. An ordinance approved on the 24th April, 1797, 'to preserve the navigation of the harbor, and to provide for the exercise of powers heretofore vested in the Port Wardens by Act of Assembly'; by its 8th section regulates the rate of wharfage at public wharves. By a supplementary ordinance thereto, approved March 19th, 1798, it was enacted that 'all wharves made out into the basin or harbor in front of any street or part of a street, and which street was heretofore laid out in the plan of the town as extending to the water, are hereby declared to be public wharves, and subject to the wharfage imposed and laid by the ordinance to which this is a supplement'.

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A similar provision was contained in Ordinance No. 9, approved May 22nd, 1838.

The right of the City to pass ordinances of this kind was recognized in Dugan v. Baltimore, 5 G. & J. 375, where Judge Dorsey speaking for the Court, after referring to the rights of private wharf owners, says, 'It is otherwise with wharfage collected at wharves owned by the town or city, or at the ends or sides of the streets, lanes or alleys; all these are called public wharves; are common highways, free for the use of the public; but at which tolls were collected by the town, now city, officers'.

After the exercise by the municipal government of the power of constructing wharves at the ends of the public streets, for so long a period of time without question or dispute, and the sanction of the Court of Appeals, it would seem strange if that power could now be successfully denied.