

manded; because toll being a matter of private benefit to the owner of the soil, not necessarily incident to a market, fair, wharf, or road, it cannot be charged in any case unless it be specially allowed, or the owner of the soil, when he dedicates it to the use of the public, then reserves to himself toll from those who pass over it. (n) But in regard to the use of a market, although no

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(n) *Hale de Portibus*, 51, 73, 76, 78; 2 Inst. 220; *Smith v. Shepherd*, Cro. Eliz. 710; *Warrington v. Mosely*, 4 Mod. 320; *Truman v. Walgham*, 2 Wils. 296; *Colton v. Smith*, Cowp. 47; *Northleigh v. Luscombe*, Amb. 612; *Mayor of Yarmouth v. Eaton*, 3 Burr, 1402; *Brett v. Beales*, 22 Com. Law Rep. 349; 1830, ch. 45, s. 3.

*SMITH v. HOLLINGSWORTH*.—This bill was filed on the 13th of October, 1785, by William Smith, George Salmon, Andrew S. Ennells, Peter Hoffman, Aaron Levering, Hans Crevy, John Moale, Andrew Buchanan, Charles Garth, John Merriam, and John McHenry, of Baltimore, in behalf of themselves and others, against Samuel Hollingsworth and Thomas Hollingsworth. The bill stated, that the plaintiffs were the holders of ground and property in the town of Baltimore, contiguous to Calvert street; that the navigable water of Patapsco river flowed to the end of Calvert street, at which place there was and long had been a public wharf free for the use of the plaintiffs and all others trading to and from the town; by reason of which free public wharf all the property in its vicinity had been considered to be, and was, in fact, much more valuable; that to exclude the plaintiffs and to draw to themselves the advantages of those benefits of a good landing place on navigable water, the defendants, under pretence of authority, obtained from the port wardens, under the act of April, 1783, ch. 24, had filled up a space of nine feet wide, in front of this public street and wharf, extending into the water one hundred feet, so as considerably to narrow and obstruct the dimensions of and access to the public wharf; that the defendants are preparing to extend these obstructions two hundred feet further into the harbour; and that the port wardens cannot legally authorize any such filling up, or extension of their fast land as is pretended to have been given to these defendants. Whereupon these plaintiffs prayed, to be quieted in the enjoyment of their ancient rights; that the defendants might be restrained by an injunction; and for general relief, &c. This bill was sworn to by only one of the plaintiffs. And an injunction was granted as prayed.

To this bill the defendants put in their answer, in which they stated, that they were the owners of a lot of ground binding on Calvert street and the navigable water of the river Patapsco, which having a right to improve, according to the provisions of the act of April, 1783, ch. 24, they had accordingly improved and extended into the navigable water; and with the license of the port wardens they had extended the fast land of their lots in front of the street and wharf as alleged in the bill, in all which they were well justified by law, &c.

After the filing of this answer proofs were taken, and the case was brought before the court for final hearing.

5th November, 1787.—*ROGERS, Chancellor*.—The motion of the defendants to dissolve the injunction heretofore issued in this cause, came on to be heard, and argued in the presence of counsel concerned for the parties aforesaid; and the bill, answer, exhibits and proofs, being read, and appearing as hereinbefore set forth; and the said motion being heard and argued by counsel on both sides; and this court being of opinion, upon due consideration, that the wardens of the port of Baltimore town had not authority to grant to the said defendants the permission, in the bill and answer aforesaid mentioned, to extend the public street aforesaid called Calvert