

canal to be eighty feet wide, and the streets on each side the same to be thirty-five feet wide; the said canal, wharf, and streets
363 * to be made public for the use of the inhabitants, under the laws and regulations of your board; and the whole of the same to be relinquished up to the commissioners whenever the same, or any part thereof may be wanted for market-houses.”

The commissioners took this proposition into consideration, and agreed to it upon the following terms and conditions:

“The commissioners of Baltimore Town, having considered the above application, have no objection to Mr. Thomas McElderry and Mr. Cumberland Dugan filling up the space of one hundred and fifty feet wide, on a line with the present Market space, from Water street as far as a line drawn from the south side of Pratt street shall intersect or cross the said space; and, after filling up the said space, the commissioners have no objection to their making a canal from the said line of intersection to the channel of sixty feet wide, with wharves and a street on each side of said canal of forty-five feet wide. But with this express declaration, that the privilege of filling up said canal, and of the whole space of one hundred and fifty feet wide be fully reserved to the said commissioners, and their successors for the use of the said town, as granted by the Act of Assembly, of November Session, 1784, ch. 62, entitled, an Act for establishing new markets, &c. And also on the express condition, that the said canal, wharves and streets on each side of the said canal be a common highway, and free for the public use, and subject to such regulations as the commissioners and their successors shall from time to time establish. And on this further express condition, that the said McElderry and Dugan extend Pratt street through their two lots of ground on each side of Market space, and leave Pratt street of the width of sixty feet through their said lots forever as a street for the use of the public.”

The bill further states, that under this authority these plaintiffs proceeded immediately to fill up the specified space; that they filled up and made fast land of the whole of this ground, called Market space, extending into the water, from Water street to the south side of Pratt street, a distance of three hundred feet; and from Pratt street to the channel, they made a canal and wharves as specified, extending further into the water, a distance of one thousand feet; and fully completed the whole according to the terms of their contract in the years 1795 and 1796; that the expense of the work was borne by each of these plaintiffs to the extent of the grounds held by each, thereby giving to each, as the

364 * result of his separate burthen, a distinct right to all the benefits arising from or incident to his separate estate, as a right, privilege and interest to be held in severalty, and not as joint tenants or tenants in common.