

creed, that each party pay his and their own costs, to be taxed by the register.

From this decree both parties appealed. After which the General Assembly, reciting that a legal dispute existed as to the right to collect wharfage for the use of a portion of Dugan's wharf and McElderry's wharf, in the City of Baltimore, and that it was desirable, without prejudice to the right of any of the parties, so claiming, to provide for the collection of such wharfage, pending the said dispute, enacted, that on application as therein prescribed, the Chancellor should appoint a person to collect wharfage for the use of the said wharves, &c.; 1831, ch. 328. Thus, evidently, assuming the fact and the law to be, contrary to the decision of the Chancellor, that one or the other of these litigating parties must be entitled to demand and collect wharfage. Upon what constitutional principles can such a legislative enactment be sustained? The Chancellor submitted and executed this law; because, although it might not be regarded as a legislative declaration of a rule, but as a judicial interference by the legislative department with an act and a subject properly falling within the scope of the powers of the judicial department, yet, under the circumstances, it might be deemed most correct in him to leave the matter to be disposed of by the Court of Appeals. For the final decision of which tribunal see *Dugan v. The City of Baltimore*, 5 G. & J. 357.

386 * COMPTON v. SUSQUEHANNA RAILROAD.

CONDEMNATION OF LAND.—DELAY.

At common law an inquisition under a writ of *ad quod damnum* must be taken before the property of a citizen can be entered upon and taken from him for a public use.

Under the Acts incorporating road and canal companies, unless otherwise provided, the damages may be assessed either before or after the property has been taken: except where, by an admixture, the value would be so obscured as to prevent the jury from making a fair valuation from their own view.

But no unreasonable delay or fraud in taking the inquisition will be suffered.

(a)

THIS bill was filed on the 17th of May, 1831, by Thomas Compton against The Baltimore and Susquehanna Railroad Company, George Winchester, William Gibbs McNeill, Charles Cheesborough, and William Stall. The bill states that this body politic, by their

(a) Cited in *Graff v. Baltimore*, 10 Md. 553; *R. R. v. Nesbit*, 10 Howard, 399.