

erect a new public port without the sanction of the government ; nor can he take, out of a port, any certain rates of wharfage for landing merchandise, although he may make particular agreements with every one who comes to his wharf or shore, by his consent, to land goods. And so, too, a man, for his own private advantage, may build a wharf in a public port, and take what rates for the use of it, he and his customers can agree upon, for in that he does no more than is lawful in making the most of his own. (w)

But it is otherwise of those wharves belonging to individuals, which have been legally thrown open to the use of the public, and also with regard to those which are entirely and properly public wharves. As to all such as belong to individuals, or a body politic, which are affected with a public interest, the wharfage must be reasonable ; and, after having been once legally adjusted, cannot be enhanced to an immoderate amount. Such wharves are subject to some statutory regulations in England ; (x) and here they are particularly alluded to in several of our acts of Congress regulating the collection of revenue from goods imported, as places dedicated to the use of that commerce which the federal government alone has a right to regulate ; and, consequently, no wharfage can be demanded for the use of any such wharf in a public port, either to an amount, or in a manner, so as in any way to give a preference prohibited by the federal constitution, or to interfere with the regulation of commerce, or the collection of such revenue by the federal government.

This I take to be the true intention of the provisions of the federal constitution in relation to the regulation of commerce, and the laying of duties on imports as declared by various acts of Congress, and admitted by our own legislative enactments. (y) And therefore, upon these principles I hold the act of Assembly which authorizes *The Mayor and City Council of Baltimore* to charge and collect such wharfage as they may think reasonable, from all vessels lying at or landing articles, *other than the productions of this state*, on any wharf belonging to *The Mayor and City Council*, or any public wharf of the city, to be unconstitutional and void. (z)

Where an individual is the owner of any such wharf to which

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(w) *Hale de Portibus*, 77 ; 1825, ch. 179, s. 8 and 16.—(x) *Hale de Portibus*, 77 ; 1744, ch. 22, s. 2 and 15 ; 1817, ch. 225, s. 7 ; 1822, ch. 57, s. 7.—(y) 1791, ch. 60.—(z) 1827, ch. 162, s. 4 ; *Gibbons v. Ogden*, 9 Wheat. 196 ; *Brown v. The State of Maryland*, 12 Wheat. 442.