

all persons may lawfully come for the purpose of lading or unloading their goods, he may be allowed by law to demand and receive certain specified and reasonable tolls for its use; because of his having expressly undertaken to be at all the charge of maintaining and repairing it. But in all cases, where the entire right of soil has been vested in the public, or where the wharf itself, or the place on which it has been built by public authority, has been condemned, or dedicated in any way to the use of the public, there no toll of any kind can be demanded; for, a toll is in the nature of a tax upon the people; and no tax of any description can be levied without the express sanction of the General Assembly. (a) Such a wharf may, however, be so regulated as to be made most generally and equally beneficial to all. (b) And where a wharf, like a road, or a street, has been once laid open and made free to all, no toll of any kind can afterwards be charged for the use of it, by any individual or body politic, who may happen to be the owner of the soil on which the wharf has been erected, or over which the road or street passes. (c) Nor, upon the principles admitted, in regard to the tonnage or port duties imposed by the before mentioned acts of Assembly, for the benefit of the port of Baltimore, and assented to by Congress, can the Legislature of the state, after a wharf or street, along the shore of a port, had been once dedicated to the public, free of all charge, impose any toll so as to infringe upon the rights secured, or the power granted to the federal government; which authorizes the charging of wharfage for the landing of articles other than the productions of this state. (d)

In this case, therefore, it is not only important as regards the interests of these contending parties themselves, that the title to charge wharfage for the use of these wharves should be clearly shewn; but it is also necessary that the right now claimed should be distinctly ascertained for the benefit of the people at large, and to prevent the federal and state governments from being brought into collision, by means of a wharfage duty collected under a state authority, pushing aside, or interfering with those on importations proposed to be collected under the federal government.

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(a) *Warrington v. Mosely*, 4 Mod. 320; *Brett v. Beales*, 22 Com. Law Rep. 349; 1744, ch. 22, s. 15; 1753, ch. 28; 1803, ch. 64, s. 4 and 11; 1813, ch. 48; 1816, ch. 257; 1818, ch. 164; 1819, ch. 108; 1820, ch. 72; 1821, ch. 64 and 200.—(b) 1817, ch. 71, s. 7.—(c) *Hale de Portibus*, 77, 78; *The King v. Winstanley*, 3 Exch. Rep. 344; 1817, ch. 71, s. 7, and ch. 225, s. 7.—(d) 1827, ch. 162, s. 4; *Gibbons v. Ogden*, 9 Wheat. 196; *Brown v. The State of Maryland*, 12 Wheat. 442; *The Steam Boat Company v. Livingston*, 1 Hopkins, 209.