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how their decision could have been otherwise than favorable to Otis. In this part of the charge, therefore, the court is of opinion, there is error.

Another part of the court's instruction to the jury is also complained of: it is that, in which the chief justice remarks, that the collector had no authority, without the consent of the master, or person having the care of the cargo, to unlade it from the vessel and store it. It is not known what influence this opinion had on the jury; but in the unqualified terms in which the collector's right to unlade the cargo is denied, this court does not concur. We have already decided, that, with the consent of the master, or agent of the owner, the cargo may be landed, but it was not intended to say, that in no other case *could such landing and storing be justifiable. If it appear that the collector, during the detention of the vessel, shall, *[*592* *bonâ fide*, think it will tend to the security and preservation of the property, to unlade it, and will do it, at his own expense, it is not perceived, why he may not do so, but at the peril of such an act being regarded, *per se*, as a conversion of the property. At any rate, this consequence ought not to follow, unless it shall appear, that the property was lost or injured, in consequence of such landing. That not appearing to have been the case here, it is not necessary to say, what effect such a circumstance could have had in this suit. All that it is intended to say here, is, that a landing for the purposes, and under the circumstances which appear on this record, is not of necessity, or in itself, a conversion.

Judgment reversed, and a *venire facias de novo* awarded. (a)

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Power to grade streets.

The power given to the corporation of Georgetown, by the act of Maryland, of November 1797, c. 56, to grade the streets of that city, is a continuing power, and the corporation may, from time to time, alter the grade so made.

The ordinance of May 1799, by which the corporation of Georgetown first exercised the power of grading the streets, is not in the nature of a compact, and may be altered by the corporation.

ERROR to the Circuit Court for the District of Columbia.

March 15th, 1821. This cause was argued by *Key*, for the appellant, and by *Jones*, for the respondent.

March 16th. MARSHALL, Ch. J., delivered the opinion of the court.—This is an appeal from a decree of the circuit court of the United States for the county of Washington, in the district of Columbia, on the following case:

In the year 1797, the legislature of Maryland, among certain additional powers given to the corporation of Georgetown, enacted, that they "shall have full power and authority to make such by-laws and ordinances for the graduation and levelling of the streets, lanes and alleys within the jurisdiction of the same town, as they may judge necessary for the benefit thereof." (Act of November 1797, c. 56, § 6, p. 35.) In pursuance of this authority, the corporation *passed an ordinance, in May 1799, for the graduation of certain streets the first section of which appoints commis- [*594

(a) For a further decision in this cause, see 11 Wheat. 192.

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sioners, and authorizes them "to make the level and graduation of the streets;" and the second is in these words: "And be it ordained, that the said level and graduation, when signed by the said commissioners, or a majority of them, and returned to the clerk of this corporation, shall be for ever thereafter considered as the true graduation of the streets so graduated, and be binding upon this corporation, and all other persons whatever, and be for ever thereafter regarded in making improvements upon said streets."

The plaintiff in error owned lots upon one of these streets, and made improvements thereon, according to the graduation made and returned to the clerk of the corporation, under the directions of this ordinance. In September 1816, the corporation passed another ordinance, directing the level and graduation of this street to be altered; and the commissioners appointed, being about to cut down the street by the plaintiff's house, were enjoined from proceeding, by a bill filed by the plaintiff against them and the corporation. Upon the final hearing of this case, the circuit court dismissed the bill, being of opinion, that the corporation had the power asserted in their answer, of altering the level and graduation of a street, graduated under the former ordinance of May 1799.

The counsel for the appellant contends, that the circuit court erred in dismissing his bill, because, 1st. The power to graduate streets as given by *595] the legislature of Maryland, was not a continuing power, but was completely executed by the ordinance of May 1799, and has never been renewed. 2d. The ordinance of May 1799, is in the nature of a compact, and is unalterable.

1. The language of the act certainly does not imply that the power it confers is exhausted in its first exercise. The power is not "to graduate and level the streets," or "to make a by-law for the graduation and levelling of the streets;" but "to make such by-laws and ordinances for the graduation and levelling of the streets, &c., within the jurisdiction of the same town, as they may judge necessary for the benefit thereof." The act seems to contemplate a continuance of the power, and a repetition of the by-laws and ordinances, as the corporation "may judge necessary for the benefit of the town." It gives a power to legislate on the subject, and to pass more than one by-law and ordinance respecting it. Unless, then, there be, in the nature of the operation, something which forbids its repetition, the words of the act import no such prohibition.

There can be no doubt, that the power of graduating and levelling the streets ought not to be capriciously exercised. Like all power, it is susceptible of abuse. But it is trusted to the inhabitants themselves, who elect the corporate body, and who may, therefore, be expected to consult the interests of the town. Although this power may be oppressively repeated, *596] the possession of it cannot be pronounced so improper *or so dangerous, as to control, essentially, the words which confer it. The graduation and levelling of the streets, is not, necessarily, a single operation. There may be circumstances to produce a general desire to vary the graduation, to bring the streets more nearly on a level, than was contemplated in the first ordinance: and if this may occur, we cannot say, that the legislature could not intend to give this power of varying the graduation, when the words they employ are adapted to the giving of it.

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Two acts of congress for amending the charter of Georgetown have been relied on. That passed in January 1805, empowers the corporation "to open and extend, and regulate streets, within the limits of the said town, provided they make to the person or persons who may be injured by such opening, extension or regulation, just and adequate compensation, to be sustained by the verdict of an impartial jury, summoned," &c., "who shall proceed in like manner, as has been usual in other cases, where private property has been condemned for public use."

For the corporation, it has been contended, that the word "regulate" implies some operation on the streets themselves, or is entirely senseless; and if it implies any such operation, it must comprehend their graduation. The objection made by counsel to this argument, is, the improbability that the word "regulate," would be substituted for "graduate," if it were used in the same sense; and the words directing the duty of the jury. They are to "proceed in like manner, as has been usual in other cases, where private property has *been condemned for public use." The word "regulate," then, it is said, is shown by this expression, to be applicable only to those cases in which private property is condemned to public use, which is not done in graduating a street. [*597

This construction is supposed to be strengthened by the act of 1809, which again empowers the corporation "to lay out, open, extend and regulate streets, lanes and alleys," but confines the use of the jury for assessing damages for those sustained "by reason of opening or extending any street, lane or alley." The opinion that the original power continues, after its first exercise, renders it unnecessary to decide on the extent which may and ought to be given to the word "regulate."

2. The second point presents a question of some difficulty. One object of the ordinance probably was, to give as much validity to the graduation made by the commissioners, as if it had been made under the direct superintendence of the corporate body. But it cannot be disguised, that a promise is held forth to all who should build on the graduated streets, that the graduation should be unalterable. The court, however, feels great difficulty in saying, that this ordinance can operate as a perpetual restraint on the corporation. When a government enters into a contract, there is no doubt of its power to bind itself to any extent not prohibited by its constitution. A corporation can make such contracts only as are allowed by the acts of incorporation. The power of this body to make *a contract, which should so operate as to bind its legislative capacities for ever thereafter, and [*598 disable it from enacting a by-law, which the legislature enables it to enact, may well be questioned. We rather think, that the corporation cannot abridge its own legislative power.

Decree affirmed.