

**C**

96 Md. 183, 53 A. 976

Court of Appeals of Maryland.  
 MAYOR, ETC., OF BALTIMORE CITY  
 v.  
 BECK.  
 Jan. 14, 1903.

Appeal from Baltimore city court; George M. Sharp, Judge.

Action by Emma Beck against the mayor and city council of Baltimore city. From a judgment in favor of plaintiff, defendant appeals. Affirmed.

West Headnotes

**Municipal Corporations 268**  **762(1)**  
[268k762\(1\) Most Cited Cases](#)

In an action against a city for injuries from obstructions in a street, a prayer that if at the time of the injuries the city had a contract with an electric company to light the streets, and did not control the lights, and the electric light at the corner of the street in which plaintiff was injured was allowed to go out owing to a strike of the employees of the company, and the city had no means to keep the lights lighted pending the strike, plaintiff could not recover for defendant's negligence in permitting the street to be dark, was properly refused.

**Municipal Corporations 268**  **762(1)**  
[268k762\(1\) Most Cited Cases](#)

A city cannot escape liability for injuries caused by failure to keep its streets lighted, by reason of the failure of an electric light company who had contracted to light the streets; the negligence of the company being imputed to the city.

**Municipal Corporations 268**  **797**  
[268k797 Most Cited Cases](#)

Baltimore City Charter (Act 1898, c. 123, § 6) provides that the mayor and council of the city shall have full power to regulate the use of streets,

erect lamps, and cause the streets to be lighted at the expense of the city. Held that, where the city neglected to keep lights burning in a street where contractors had placed building material, by reason of which plaintiff was injured while lawfully using the street, the city was liable, though the contractors failed to keep a light burning on the obstruction, as required by said Code, art. 48, § 87.

**Municipal Corporations 268**  **797**  
[268k797 Most Cited Cases](#)

In an action against a city for injuries sustained by reason of an obstruction of a street by building material left in the street, which the city permitted to remain dark at night, an instruction that, if defendant negligently failed to properly light a public highway, and therefore the plaintiff was injured while traveling in the nighttime, using such care as persons of ordinary prudence would use under like circumstances, the city was liable, was proper.

**Trial 388**  **253(4)**  
[388k253\(4\) Most Cited Cases](#)

Requested instructions that, if plaintiff's injuries were caused by the contractor's failure to have a light burning on the obstruction at the point where the injuries occurred, the city was not liable, where properly refused, it being contended that the city was also negligent in permitting its streets in the vicinity of the obstruction to remain unlighted.

**\*977** The following are the defendant's prayers referred to in the opinion:

“ (1) It appearing from the testimony in this cause that at the time of the injuries to the plaintiff the mayor and city council of Baltimore had a contract with the United Electric Light & Power Company to light the streets of the city with electricity, and that it did not own or control the street electric lights, and that at the time of said injuries the electric light at the corner of Fulton

avenue and Walbrook avenue, was allowed to go out, owing to a strike of the employes of said company, and that the mayor and city council of Baltimore had no means or power at its disposal to keep said light lighted during the pendency of said strike, the verdict must be for the defendant, as to said mayor and city council of Baltimore.' Refused. '(2) It appearing from the testimony of this cause that the injuries to the plaintiff were caused by the failure of Messrs. Thomas & Morgan to have a light burning upon the obstruction in the street at the corner of Fulton and Walbrook avenues, placed there by them, then there is no liability on the part of the mayor and city council of Baltimore on account of said neglect, and the verdict must be for the defendant, as to said mayor and city council of Baltimore.' Refused. '(3) There is no evidence in this cause legally sufficient to prove any negligence on the part of the mayor and city council of Baltimore, causing the plaintiff's injuries, and the verdict must be for the defendant, as to said corporation.' Refused. '(4) If the jury believe that the injuries to the plaintiff were caused by the failure of the defendants Thomas & Morgan, to keep a light burning on the obstruction placed by them in the street at the point where said injuries occurred, then the mayor and city council of Baltimore is not responsible for such failure, the verdict must be for the defendant.' Refused."

Argued before McSHERRY, C.J., and FOWLER, BRISCOE, and SCHMUCKER, JJ.

Wm. Pinkney Whyte and Charles W. Field, for appellant.

Lee S. Meyer, for appellee.

BRISCOE, J.

The plaintiff, who is a married woman, brought a suit on the 20th day of August, 1900, in the superior court of Baltimore city against the mayor and city council of Baltimore, for personal injuries received by her while driving along one of the public avenues of Baltimore city known as

"Fulton Avenue." The case was tried before a jury in the Baltimore city court, and the plaintiff recovered a judgment for \$1,000. The cause of action is thus stated and set out in the plaintiff's declaration: That Messrs. Thomas & Morgan, of the city of Baltimore, and each of them, placed and allowed to remain for a long time a large quantity of bricks and other building materials in the public highway of Baltimore known as "Fulton Avenue," at or near its intersection with Walbrook avenue; that these bricks and materials were placed so as unnecessarily to obstruct the highway in an improper and negligent manner, and during the nighttime were left without a light or signal to indicate danger, as required by the city ordinance; that on the night of June 26, 1900, the defendant negligently permitted the obstructions to remain on and upon Fulton avenue at or near its intersection, and negligently permitted the avenue to be and remain in bad repair and condition, omitted to have it properly lighted in the nighttime, and permitted it to remain in an unsafe condition for ordinary travel, in consequence whereof a carriage with the plaintiff, passing through the avenue, collided with the obstruction, and was thereby overturned, the plaintiff thrown out, and in consequence thereof was severely and permanently injured; that the injuries to the plaintiff were directly caused by the negligence and want of care of the defendant, and without fault or want of care \*978 on the part of the plaintiff directly thereto contributing.

The questions presented for our consideration arise upon exceptions to the granting of the plaintiff's prayers and to the rejected prayers of the defendant. At the close of the plaintiff's case the defendant offered three prayers to the effect that the plaintiff had offered no evidence of negligence on the part of the city, and that the case be withdrawn from the jury. We find no error in the ruling of the court upon the rejection of the prayers in this exception, and, as they were subsequently offered at the close of the case, we

will consider them on the defendant's second exception.

It appears from the evidence that the plaintiff was in a carriage, with her husband and child, on the night of the accident, and was driving along Fulton avenue, Baltimore, and drove into a pile of bricks lying in the street, and was injured. The bricks had been placed in the street by certain builders and contractors, who were building houses at or near the place of the accident. The evidence further shows that there was no light burning at the time or at the place of the accident, either on the pile of bricks or in the street; that the city electric light was out, and had not been burning at Fulton and Walbrook avenues, for several nights before and after the accident, and there was no light burning to point out the obstruction in the street. There was also testimony that it was a dark night, and the entire avenue was dark; that the bricks were scattered from the curbstone to the car track, so as to obstruct the free passage of vehicles except down the car track. It is contended upon the part of the appellee that, if any liability exists at all in this case, it rests upon Messrs. Thomas & Morgan, the contractors and builders, and not upon the defendant, the mayor and city council of Baltimore, because by ordinance (section 87, art. 48, City Code) it is provided that "whenever any piles of bricks, stones, lumber or other building material shall be left in any of the streets, lanes, or alleys of the city, during the night, they shall be designated by displaying a lighted lamp or lantern at such part of the same, as to be easily observed by persons passing along the street"; and that the injuries to the plaintiff were caused by the failure of the contractors to keep a light burning on the obstruction placed by them in the avenue where the accident happened. The question, then, comes to this: What was the duty of the defendant, under the evidence in the case, in respect to the plaintiff at the time of the accident, and was the injury caused by the failure of the defendant to perform

that duty? By section 6, c. 123, Acts 1898 (City Charter), the mayor and city council of Baltimore shall have full power and authority to regulate the use of streets, highways, roads, public places, and sidewalks by foot passengers, vehicles, etc., and prevent encroachments thereon, and obstructions of the same; to erect lamps in any of the streets, lanes, or alleys of the city, and cause the same to be lighted, at the expense of the city; and to provide for and regulate the construction, inspection, and repairs of all private and public buildings within the city. There can be no question, then, that, as the municipal authorities of Baltimore had the power and authority to regulate and to remove obstructions from its streets, and to cause the streets to be lighted at the expense of the city, it was its plain duty to have kept the avenue lighted, and in a safe condition for public travel, on the night of the accident in question. The law is well settled that, if it negligently fails so to do, and persons acting without negligence on their part are injured while passing along its highways, the city is liable in damages for the injuries caused by the neglect, and the person so injured can recover against the municipality therefor. [City of Baltimore v. Marriott, 9 Md. 160, 66 Am.Dec. 326](#); [City of Baltimore v. Pendleton, 15 Md. 12](#). The court below, we think, properly stated the law of the case in the plaintiff's second prayer, which was to the effect that, if the jury believed that the defendants, in the nighttime of June 26, 1900, negligently failed to properly light Fulton avenue at or about Walbrook avenue, and that it was a public highway in the city, and that in consequence of the failure so to light this highway the plaintiff was injured while traveling in the nighttime in a carriage over the highway, and using such care as persons of ordinary prudence would use under like circumstances, then their verdict must be for the plaintiff.

We find no error in the rejection of the prayers submitted on the part of the defendant. The first prayer was properly rejected, under the doctrine

laid down by this court in [Rowe v. Railroad Co.](#), 82 Md. 493, 33 Atl. 761; [City of Baltimore v. O'Donnell](#), 53 Md. 110, 36 Am.Rep. 395, and [Eyler v. Commissioners](#), 49 Md. 257, 33 Am.Rep. 249. The municipality could not escape liability for its neglect of duty in not having its streets and avenues lighted at night because of the failure of an electric light company who had contracted to light the streets, but had neglected its duty. The neglect of the company would be the neglect of the city. [Hayes v. City of West Bay City](#), 91 Mich. 419, 51 N.W. 1007. The defendant's second and fourth prayers asserted propositions of law not applicable to the case, and are controlled by the decisions of this court in [Bridge Co. v. Hedrick](#), 95 Md. 669, 53 Atl. 430; [City of Baltimore v. O'Donnell](#), 53 Md. 110, 36 Am.Rep. 395; and [Railroad Co. v. Hickey](#), 166 U.S. 522, 17 Sup.Ct. 661, 41 L.Ed. 1101. The vice of these prayers consisted also in the omission to state that the injury was caused solely by the failure of the contractors, Thomas & Morgan, to have a light burning on the obstruction\*979 placed by them in the street, whereas it submitted the proposition that, if the injury was caused by the negligence of the contractors, etc., the city was not responsible for such failure. The evidence shows, however, that, if the city had performed its duty in having the street lighted on the night of the accident, it would have been a sufficient warning of the place of danger, and the accident would not have occurred, notwithstanding the failure and neglect of the contractors to have a light burning on the obstruction as required by the ordinance. The case of [Sinclair v. City of Baltimore](#), 59 Md. 595, relied upon by the appellant, is clearly distinguishable in principle from that involved in this case.

The facts disclosed by the proof here, if found by the jury to be true, were legally sufficient to justify the verdict found for the plaintiff, and, there being no error in the rulings of the court of which the defendant can complain, the judgment

will be affirmed.

Judgment affirmed, with costs.

Md. 1903.  
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