

File No. 8793 Continued.

OPINION.

against said property for the paving of Rose street, from Monument street to McElderry street. This protest is made on two grounds:

1. It is alleged that ordinance No. 178, approved July 7, 1908, under which the paving is being done, is illegal. Mr. Weeks, however, examined the proceedings relative to this ordinance for Mr. Bruce, and on July 16, 1908, Mr. Bruce rendered an opinion that the ordinance was legal. (See Office File No. 8054).

2. It is next alleged that the assessment against the property is in excess of the benefit which will enure from the work, and that the plan and method of assessment is not equitable or just, and amounts to a confiscation. I understand from Mr. Fendall's letter that the real point of this objection is that the depth of the Manderson property is not as great as the depth of the other property, and for this reason the assessment falls heavier upon the Manderson property than upon the others. In fact Mr. Fendall states that the application of the front foot rule to the Manderson property will probably make the assessment exceed the value of the whole property. In *City vs. Johns Hopkins Hospital*, 56 Md. 1, it is stated that the front foot rule of assessment is valid, notwithstanding it may be arbitrary, and likely to operate in some cases with great injustice. This rule, the Court states, has been used in this State since the original incorporation of the City.

In *Moale vs. City*, 61 Md. 224, the front foot rule is again held to be valid, but the Court states that if its application results in taxing property beyond its value, and in the destruction of the property, a very grave question arises as to whether the owner would be compelled to pay the assessment in excess of such value, or be compelled to submit to a rule, which, in effect, took the whole property from him, (p. 237). In this case, however, the assessment of a triangular strip of ground, according to the front foot rule, was held valid. In the following cases it is held, or intimated, that the property cannot be assessed for benefits under the front foot rule in excess of the benefits actually received:

91 Fed. Rep. 37; 94 Fed. Rep. 409; 92 Texas 691; 173 Mass. 76, 79; 353, 181 U. S. 324. 67 L. R. A. 408. 172 U. S. 269.

Notwithstanding the above cases, however, and notwithstanding the dictum of our Court in the *Moale* case, the front foot method of assessment has been maintained by our Courts in every case in which it

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