

File No. 8793 Continued.

OPINION.

6607 has been involved. In addition to Scharf's case and to Moale's case, see also the following:

City vs. Johns Hopkins Hospital, 56 Md. 1.
 City vs. Scharf, 56 Md., 50.
 Ulman vs. City, 72 Md., 584.
 City vs. Ulman, 79 Md., 469 (165 U. S. 719).
 City vs. Stewart, 92 Md. 535.
 Hyattsville vs. Smith, 105 Md. 319.

In many of these cases it is recognized that in individual instances the application of the rule may be arbitrary and unjust, but this is held not to affect the legality of the rule.

In the case of J. Leland Hanna vs. City, which was decided on May 9, 1908, Judge Stockbridge upheld the validity of the assessment, and decided that the value and depth of the lot was immaterial.

For similar decisions in other States, see 169 Pa. St. 375; 129 Pa. St. 213; 114 N. Y. 439.

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In view of the dictum in the Moale case, and cases in other States above cited, and the fact that the precise question now involved has never been presented to our Court of Appeals, I do not think that this Department could guarantee what the ultimate decision of the Court of Appeals would be. In view, however, of what has been the universal practice in Maryland with regard to the application of the front foot rule, in view of the Maryland cases upholding it, and especially in view of Judge Stockbridge's decision, I think that the City Engineer should be advised to proceed with the assessment according to the front foot rule, and to disregard the fact that the depth of the Manderson property is not as great as the depth of other property, and that the total assessment may exceed the value of the Manderson property. Indeed, inasmuch

as the ordinances provide for the front foot rule, and make no provision for any departure from it in a case like the present, there is nothing for the City Engineer to do except to proceed as he is doing, unless the whole improvement, under the present ordinance, was abandoned.

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The question raised can be considered and tried on any appeal from the City Engineer's assessment which the Manderson estate may desire to take, and this, it seems to me, is the proper way to have the matter decided.

Very truly yours,

(Signed) Albert C. Ritchie,

Assistant City Solicitor.