

File No. 10012 Continued.

OPINION.

the City is concerned.

B. & P. R. R. Co. vs. Raeney, 42 Md. 117-132.
 Hitchens vs. Frostburg, 68 Md. 100-108-110.
 Willison vs. Mayor and C.C., 50 Md. 138.
 Guest vs. Church Hill, 90 Md. 689-693.
 City vs. Cowen, 88 Md. 447-456.
 City vs. Cahill, 93 Md. 233-237.
 DeLander vs. Baltimore Co. 94 Md. 2-7.
 Offutt vs. Montgomery Co. 94 Md. 115-123.

(The rule with respect to private corporations is different -
 See Raeney's case and Perkins' Note).

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Assuming, therefore, that the settling of the wall in question was not, in any respect, due to negligence, but was the unavoidable result of the lawful and careful digging of the trench, then I am of opinion that the City is under no liability to the property holder. It will, also, follow from this, that the contractor is under no liability either, unless such liability is placed upon him by the terms of his contract.

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The specifications for this work, Section 52, page 20, provide that in case any damage is done to private property because of the work, the contractor shall, at his own expense, "restore such property to a condition similar, or equal to that existing before such damage or injury was done".

The same specifications, Section 236, page 93, provide that in case of any injury to buildings, walls, etc., the contractor shall, at his own expense, proceed to restore such damage, and to put such buildings, walls, etc., "in a condition the same as, or equal to, that existing previous to his beginning work".

7707

I think that these provisions are inserted for the benefit of the public, and enure to the advantage of the public in the sense that the public can enforce them. The principle is the same as that stated in *Simons Sons Co. vs. Maryland Telephone Co.*, 99 Md., 141, where it was held that a citizen has the right to institute suit against a telephone company to enforce the latter's duty to comply with a contract between it and the City with respect to rates; the theory being that the citizens are the beneficiaries of such a contract.