

File No. 25424 Continued.

The City's lot has been left in such a condition that it is liable to slide in time, by the action of the elements, on the adjoining property.

Under the authority of the case of Shafer vs. Wilson, 44 Md. 279, I am of the opinion that the City should bear the expense of building the retaining wall mentioned in Mr. Osborne's letter. In said case the Court said:

"There seems no doubt that the adjacent owner of land has no right to deprive his neighbor of the natural support afforded by his soil."

This would seem to compel the owner of the adjacent property to make some provision to protect the City's lot from sliding but in the next paragraph the Court says:

"The authorities are somewhat conflicting, as to the extent of the right of the owner of any adjacent ground, built upon, to improve his own property, where he is under no disability (from grant of easement, prescriptive right or necessity) to restrict him, although it may operate to injure his neighbor's property. But it is agreed on all sides, that his right, whatever that may be, must be exercised with due care and skill, at his peril, to prevent injury to the adjacent owner."

From the nature of the work done, it looks to me like the adjacent owner did exercise due care and skill. Therefore, I think the City should bear the expense incident to protecting this property.

Very truly yours,
(Signed) Frank Driscoll,
Assistant City Solicitor.

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