

So, too, I have a right to erect mills upon a stream passing through my land. If my neighbor's mill on the stream below is injured by the insensible evaporation and decrease occasioned by the collection of water in my dam, or if it is injured by the occasional increase or decrease in the velocity of the stream, which is inevitable, the increase or decrease proceeding from the lawful exercise of my rights and rendering the use thereof by my neighbor somewhat less commodious, but not producing any serious or permanent injury, the principle, it is believed, would be the same.

Had injuries in the present case, then, been inflicted by one individual on the property of another, the right would have been perfect to indemnity.

But the party inflicting the injury in this case is a public corporation, which, it is said, has acted within the *scope of its authority, upon advice, with due care and circumspection*, and is therefore not answerable.

I shall not stop to inquire whether the corporation possesses the power to protect the navigation of the harbor; to preserve the health of the city; to straighten and alter streets with the consent of proprietors on such streets; and to adopt all measures which *are necessary* to carry into effect such powers. It must be conceded that their charter confers such powers. Nor shall I stop to inquire whether there was a wanton exercise of authority, inasmuch as the waters might have been diverted into other channels less injurious; or in fact whether these measures were called for in the just fulfilment of any one of the delegated powers; because as to the question of indemnity to the plaintiff, I deem each and every of these inquiries immaterial to the question in issue.

If the exercise of the power was wanton, or lawless and improvident, every one admits their responsibility.

If it was a measure necessary to be done for the public benefit of the inhabitants of Baltimore, and the natural and necessary consequence of the measure has been the permanent injury and sacrifice of the plaintiff's property, justice seems to demand that he whose property has fallen a victim to the public service should be compensated in some way. And if he do not succeed, it must be admitted that the most striking and apparent justice must yield before some unbending technical principle, or some fancied theory of public policy. It must moreover be admitted that justice would seem to demand