pal case relies on the safeguard of credit information to protect the merchant, but this does not meet the problem. The question is not the financial responsibility of the husband, but the authority of the wife to pledge such credit. Further, in most cases the wife has the authority, and it is not an unreasonable presumption on the part of the merchant that such authority is given in all cases. Since the husband is liable for necessaries, the merchant assumes that he is safe in selling what would be necessaries were it not for the allowance. The rule enunciated in the cases is perhaps indicative of the inability of the courts to keep abreast with economic practice. R. W. B., '31.

LATERAL SUPPORT—DUTY TO PROTECT ADJOINING BUILDINGS.—In *MacMillan Co. v. Massell Realty Improvement Co.* (Ga. 1929) 147 S. E. 38, the court held that where a proprietor desires to make an excavation up to the line of his lot for the purpose of constructing a building, and the adjacent proprietor has an existing building the wall of which extends along the property line, it is the duty of the party desiring to make the excavation to give the adjoining proprietor reasonable notice of his intention and also to take reasonable precautions to sustain the land of the other, so as to avoid injury to the land and the building thereon. In accordance with this ruling the Massell Realty Improvement Co. were enjoined from proceeding with an excavation until they had taken reasonable precautions to secure the building of the MacMillan Co.

The holding in this case is directly in conflict with the common law on this subject, which is still in effect in nearly all jurisdictions. The right to lateral support has always been considered to apply to land in its natural state only, and it was considered the duty of the adjoining owner, upon notice of impending excavations, to shore or prop up his own building. The excavator would be liable for damages to the adjoining building only if he were negligent in excavating. 1 R. C. L. 385; *Transportation Co. v. Chicago* (1878) 99 U. S. 635; *Home Brewing Co. v. Thomas Colliery Co.* (1922) 274 Pa. 56, 117 Atl. 542; *Davis v. Sap* (1926) 20 Ohio App. 180, 152 N. E. 758.

The decision in the principal case was based on a statute which previously had been construed favorably to the owners of buildings by the Georgia court. "The owner of adjoining land has the right, on giving reasonable notice of his intention so to do, to make proper and needful excavations even up to the line for purpose of construction, using ordinary care and taking reasonable precautions to sustain the land of the other." Ga. Code of 1926, sec. 3620. This seems merely to state the common law rule and to overlook completely the possibility of superimposed structures on the land. The Georgia court in *Bass v. West* (1900) 110 Ga. 698, 36 S. E. 244, assumes that "land" means "land and building," as it does in the later case of *Wilkins v. Grant* (1903) 118 Ga. 522, 45 S. E. 442, holding that the judge's instruction "that it was duty of the defendant to use ordinary care to sustain 'the land' of the plaintiff" without instructing in the same connection

as to the duty of the plaintiff to protect the superimposed weight of the building was very favorable to the defendant. Consequently it was held that a decision in favor of the plaintiff was not reversible. California and South Dakota have statutes somewhat similar to the Georgia statute, but they have been construed as *not* changing the common law, and liability of the excavator depends upon whether he uses proper care in his own excavating. *Aston v. Nolan* (1883) 63 Cal. 269; *Hannicker v. Lepper* (1906) 20 S. D. 371, 107 N. W. 202.

Ordinances attempting to change the common law on the subject meet with less approval than statutes. In *Carpenter v. Reliance Realty Co.* (1903) 103 Mo. A. 480, 77 S. W. 1004, it was held that there is no duty on an excavator to safeguard buildings on adjoining land after he has given notice and that an ordinance of the City of St. Louis, requiring an excavator going down more than 15 feet to support adjoining buildings was invalid because "such legislation completely changes the common law, and can only be enacted by law-making body of the State, or by a municipality to whom power to enact it has been granted by its charter or other statute." In the opinion by Goode, J., it is said: "The grant of power to regulate construction and repair of buildings signifies no intention on the part of the legislature of Missouri to authorize the municipal assembly of St. Louis to change the obligations and duties of adjoining proprietors and ought not to be construed as validating such an attempt." A Minneapolis ordinance requiring all adjoining buildings to be supported by excavators has been held void on the ground that it grants one property owner rights and burdens another and therefore cannot be sustained under the police power of the municipality. *Young v. Mall Investment Co.* (1927) 172 Minn. 428, 215 N. W. 840. A similar ordinance was held void by the Tennessee court as applied to party walls. *Carroll Blake Constr. Co. v. Boyle* (1918) 140 Tenn. 166, 203 S. W. 945. The validity of a similar ordinance in New Haven has not been questioned. *Cefarelli v. Landino* (1909) 82 Conn. 126, 72 Atl. 564.

In New York the legislature has conferred upon the cities of New York and Brooklyn the right to legislate for protection of buildings when adjoining owners excavate below a certain depth. *Dorrity v. Rapp* (1878) 72 N. Y. 307; *Jencks v. Kenny* (App. Div. 1892) 19 N. Y. S. 243. Perhaps as an indirect result of this statute, the New York Court of Appeals held a similar Buffalo ordinance valid. *Bergen v. Morton Amusement Co.* (1919) 226 N. Y. 665, 123 N. E. 855. Ohio has a general statute involving liability for excavations more than 12 feet deep. *McMillen & Manks v. Watt* (1875) 27 Ohio St. 306. Statutes relating to Boston and to Philadelphia set a ten-foot limit. *Regan v. Keyes* (1910) 204 Mass. 294, 90 N. E. 847; *Wadasz v. Arcade Real Estate Co.* (1903) 206 Pa. St. 542, 56 Atl. 46. In the State of Washington the common law seems to have been changed without legislative act. See dicta in *Fernandis v. Great Northern Ry. Co.* (1906) 41 Wash. 486, 84 Pac. 18; *Knapp v. Siegley* (Wash. 1922) 208 Pac. 13, in which the excavator was liable by reason of negligence.

G. E. S., '31.