File No. 1 Continued.

OPINION.

24

make and maintain it along or across parts of certain streets in Baltimore City, including North Avenue. By Section 2 of the same Ordinance
it was required, in constructing its Railroad along or across certain
of the streets named in the Ordinance, including North Avenue, to construct the same in a tunnel, to be carried under the said streets.

21

Section 7 of the same Ordinance provides as follows:

"No opening or holes, for the purpose of ventilation, shall "be made in any of the streets or avenues of said City, "under which said tunnel shall be made, but said Beltimore "& Potomac Railroad Company shall, if any ventilation of "such tunnel, additional to that afforded by the mouths, "is required, supply the same by means of chimneys, shafts "or flues, erected at proper points on property belonging "to said Company, and of such height and construction as "shall wentilate said tunnel without annoyance to persons "or property in proximity thereto",

26

Bearing in mind the well settled principle that, if the exercise of the power granted draws after it some other right necessarily incident, the law may be said to contemplate and sanction the exercise of that right, (Balto. & Havre de Grace Turnpike Company vs. Union Rwy. Co. of Baltimore, 35 Md., 224, 231 & 232) it seems to me clear that these Sections of this Ordinance confer upon the Railway Company the right, without a further resort to legislative authority to establish a subway connection between its tunnel, under the surface of North Avenue, and the ventilating shaft, which it proposes to erect on its lot on the North side of North Avenue opposite the City Truck House. It is not denied, so far as I am informed, that this lot is a "proper point" for the erection of such a ventilating shaft, and it is observable that the Railway Company is left free by the Ordinance to erect such a shaft at any proper point any where along the line of its tunnel.

27

It is a matter too, I believe, of common notoriety that ventilation of the tunnel, "additional to that afforded by the mouths", is still necessary. The Railway Company is authorized by the provisions of the Ordinance to make and maintain its Railroad along North Avenue, opposite to the lot in question, is required by them to construct its Railroad there in a tunnel, to be carried under the bed of North Avenue, is forbidden by them to make any opening or holes, for the purpose of ventilation, in the surface of North Avenue there, for that appears to me to be the scope of the prohibition, and is further positively required by them, if any ventilation of its tunnel, additional to that afforded by the mouths, is necessary, to supply the same by means of chimneys, shafts or flues, erected at proper points on property belonge-