OPINION.

File No. 447 Continued.

657 Howard Street caused by the construction of the Belt Line Tunnel. Subsequently, in 1896, when Mr. Fendall was Chief Engineer of the B. and O., and Mr . Janon Fisher was City Commissioner, Mr. Fisher requested the railroad to make certain further repairs to the street. The railroad contended that the matter had been settled in Mr. Smyrk's time, and that the railroad had then repaired the street, and Mr. Smyrk had accepted the same as fully finished.

658 Mr. Fisher, however, still insisted that further repair work should be done, whereupon the railroad's attorneys concluded that it would not do to engage in a contest with the City about the matter. Mr. Fendall then saw Mr. Fisher, and told him that the B. and O. would do the work required by Mr. Fisher, provided it was understood that the railroad was not to be called upon to do any further work whatever on the street. Mr. Fisher, on behalf of the City, acquiesced in this. The B. and O. thereupon made the repairs asked for, and Mr. Fisher accepted Howard Street as finally finished upon the express understanding that the company should be relieved from any further burden on this account.

659 Mr. Fendall, the City Engineer, now desires to compel the railroad to do further work on Howard Street, rendered necessary, as he states, by the settlement of said street caused by the Belt Line Tunnel. The railroad contends that, under the arrangement with Mr. Fisher, it is relieved from any further responsibility as to said street. There is a question as to whether Mr. Fisher, as City Commissioner, had the legal power to relieve the B. and O. from liability for settlements in Howard Street which might occur in the future; but, whatever his legal powers were, he did, as a matter of fact, reach an express understanding with the company in good faith that, if the company would do certain work, the City would make no future call upon the company, and upon this express understanding the company went ahead and did the work. Under these circumstances, I do not think that the City should repudiate Mr. Fisher's action, and I think that the railroad should not be held for the work in question.

Very truly yours,

(Signed) Albert C. Ritchie.

Third Assistant City Solicitor.