1534 streets, but that railroad cars propelled by steam do. The later and better doctrine is that a steam railroad is an additional burden on a highway, and its occupation of the street amounts pro tanto to a taking of the property of the owner of the fee. American and English Encyclopaedia of Law, vol. 23, pages 1101 and 1102, title "Street Railways," and the very numerous cases arising outside of the State of Maryland there cited.

1535 Moreover, permit me to call your attention to the case of Phipps vs. the Western Maryland Railroad Co., 66 Md., page 319.

"When," said the Court of Appeals in that case, page 323, "the tracks of the terminal company were laid in the bed of the street (on sidewalk and carriage way) a new burden was imposed upon it, entirely above and beyond the original servitude to which it was subjected at the time the street was opened. The property was put to a use entirely different from that required by the public in the case of a street."

1536 Assuming that the use of steam motors or dummies in the manner proposed by the Northern Central Railway Company will impose a new servitude upon the streets upon which they are desired to be used, then it seems to me that the franchise or right which the Railway Company wishes to obtain in those streets is an essentially different franchise or right from that which it obtained when it was authorized to lay tracks on those streets, to be used by cars moved by horse-power. However, I shall be glad to have a further expression of your views.

Truly yours,

(Signed) W. Cabell Bruce,

City Solicitor.

File No. 1129.

OPINION.

LAW DEPARTMENT.

Baltimore, June 20, 1904.

James Davis, Esq.,

Chairman of the Committee on Railways,

First Branch City Council.

Dear Sir:-

1537 Replying to your favor of the 21st ulto. I return herewith the ordinance permitting the Northern Central Railroad to use covered steam motors or dummies upon its tracks on Monument and other streets.

This ordinance has been the subject of considerable interchange of views between Mr. Bernard Carter, counsel of the Northern Central