File No. 1294 Continued.

OPINION.

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The duty to keep the streets repaired between the tracks is put upon the Railway Company by the Code of 1893, Article 41, Sections 34 and 35, and by Ordinance 101, approved June 30, 1898, (See also #9 December 9, 1897). This, however, is only an obligation to keep in repair, and cannot, I think, make it the duty of the Railway Company to pay for any part of the repaving of streets which the City itself requires to be done, particularly where an appropriation is made by Ordinance, pursuant to Act of the Legislature, for this very purpose. I, therefore, think that no part of the cost of grading, paving and kerbing of streets should be borne by the Railway Company.

So far as the cost of bringing the tracks to the new grades is concerned, I think the Street Railway Company must pay this expense, under Kirby ve. Citizens Railway Company, 48 Md., 168. You are, I know, very familiar with this case, so I need do no more than refer you to it.

> Very truly yours, (Signed) Albert C. Ritchie, Assistant City Solicitor.

File No. 1294.

Dear Sir:-

LAW DEPARTMENT.

Baltimore, June 27, 1904.

B. T. Pendall, Eeq., City Engineer.

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Referring to your favor of the 22nd inst. with regard to the tracks of the United Railways and Blectric Company on streets in the Burnt District, which are to be regraded, I beg leave to say that in my opinion the expense of bringing these tracks to the new grades must be borne by the Street Railway Company. This I take to be settled by the case of Kirby ws. Citizens Railway Company, 48 Md., 168.

Unless there are provisions in the ordinances, by which the right to lay down tracks was obtained by the Railway Company, I am of the opinion that the whole cost of grading, paving and kerbing is to be borne by the City; by which I mean to include the space between the

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