

File No. 5357 Continued.

OPINION.

Electric Light Co. vs. Frederick City, —
84 Md., 607
Edison Co. vs. Hooper, 85 Md. 112
Hooper vs. Baltimore City Pass. Ry. Co.,
85 Md., 509
Mealy vs. Hagerstown, 92 Md. 745
Purnell vs. McLane, 98 Md. 589.
Brown vs. Md. Telephone Co., 101 Md. 574.

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The Baltimore Electric Company then built the plant and power-house, raising the money for the same from the issue of a mortgage upon these properties. The plant is thus owned by the Baltimore Company, subject to this mortgage, and is now leased by the Baltimore Company to the Maryland Telephone Company. The electrical business is conducted entirely by the Maryland Company, which, in addition to being lessee of the plant, is also the owner of all the wires, poles and other distributing agencies. The Baltimore Company, therefore, simply holds title to the plant, and it does no electric light, heat or power business whatever. In fact, it has no authority to conduct such business, because, by the express terms of its charter, it cannot do this without a special grant from the Legislature and an ordinance from the City.

It is now desired to consolidate these two companies, and Mr. Bond desires to know whether in the view of this Department such a consolidation will violate either the letter or spirit of Section 5 of the ordinance of 1904 above quoted.

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I am clearly of the opinion that it will not. Section 5 only prohibits a consolidation between the Maryland Company and any corporation engaged in the electric light, heat or power business in Baltimore City. The Baltimore Electric Company is not engaged in such business in Baltimore City, and cannot under its charter be so engaged without an Enabling Act and an Ordinance. Therefore, the letter of Section 5 will not be violated by the proposed consolidation. Nor do I think that the spirit of Section 5 will be violated. The object of this provision was to prevent a consolidation between competing companies, and the Baltimore Electric Company, being formed in the manner and for the purposes and with the powers stated above, cannot in any sense be said to be a competing company with the Maryland Telephone Company.

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I am, therefore, of opinion that the right of these two companies to consolidate is not affected by Ordinance No. 76, approved May 11, 1904. The City's only concern with the proposed consolidation arises from that ordinance, and I have, therefore, only considered the right of the two companies to consolidate with a view to the provisions of the