

File No. 5722 Continued.

OPINION.

LAW DEPARTMENT.

Baltimore, January 25, 1907.

Hon. W. Cabell Bruce,
City Solicitor.

Dear Sir:-

As requested by you, I have considered the matter referred to in Mr. Fendall's letter of January 14th, and have also seen Mr. Fendall with regard to it.

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It seems that the movement, etc., of the rails, incident to the running of street cars, causes the paving alongside of the rails to separate therefrom, and water gets in the openings thus formed, causing decay and non-repair; thus the existence of the tracks on the streets causes the paving to get in bad condition, between and alongside of the tracks, sooner than would be the case if no tracks were there.

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Recently a new method of constructing tracks has come into vogue called the "Philadelphia method", whereby the tracks are laid upon a concrete foundation, with the result that the rails are held tightly in place. The effect of this is, that the pavement between and alongside of the tracks does not get in bad repair, as soon as is the case when no concrete foundation is used.

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In Baltimore the tracks are not, and never have been laid upon a concrete foundation, and Mr. Fendall desires to know:

(1) Whether when he relays a pavement, which work generally makes it necessary for the Railway Company to shift or repair its tracks, the Company can be compelled to put in a concrete foundation under the tracks already existing, and

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(2) Whether the Company can be compelled to do this in the case of new tracks to be laid under franchises hereafter to be granted.

Most of the ordinances under which tracks are laid provide that "the tracks shall be built under the supervision of the City Engineer; the rails shall be of the most approved fashion, etc". The ordinances also provide, "that the Company shall pay the cost of keeping the street between the tracks, and for two feet on either side, in thorough repair".

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I am of opinion, that so far as tracks already laid are concerned, the City Engineer has no power in repaving streets to compel the Railway Company to now put in a concrete foundation. I think that the language of the ordinances quoted above is broad enough to include supervision