

File No. 5722 Continued.

OPINION.

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on the City Engineer's part, not only over the tracks themselves, but also as an incident thereto over the foundations upon which the tracks are laid, and that the City Engineer could, before the tracks are laid, compel the Railway Company to lay them upon a concrete foundation, provided, of course, this is a proper and reasonable requirement. Having the right, however, to supervise the laying of tracks, and having the power to require a concrete foundation in the first instance and not

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having required such a concrete foundation, but having allowed the company to lay the tracks without it, I do not think the City Engineer can afterwards require this foundation to be inserted. All that the ordinance says is, that the tracks shall be built under the supervision of the City Engineer. The tracks were built under the City Engineer's supervision, and no concrete foundation was required.

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In my opinion, therefore, the structural formation of the tracks has been approved and I do not think that the City Engineer can now require a concrete foundation under the tracks already laid, when the sole purpose of such foundation is, that it will keep the streets in better repair. The City must now look to that portion of the ordinance which requires the company to keep the streets in repair at its own expense.

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So far as tracks hereafter to be laid are concerned, a different question is presented; if a concrete foundation is the proper kind of a foundation to be laid, then, in my opinion, the requirement should be contained in ordinances granting future franchises. In the absence of such a specific requirement in future ordinances, then as already stated, I think that the usual provision authorizing the City Engineer to super-

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viser the laying of tracks is broad enough to give the City Engineer supervision over the manner of laying the tracks, and this I think would include the right to designate the kind of foundation which is the best for the city's interests. Even without a provision specifically requiring concrete foundations, I, therefore, think that such foundation could be required as to all tracks hereafter to be laid, by virtue of the City Engineer's authority to supervise the laying of tracks. This, however, is not free from doubt, and to make the matter clear, I think that future franchise ordinances should definitely require the concrete foundation, if this is desirable.

Yours very truly,

(Signed) Albert C. Ritchie,
Assistant City Collector.