

File No. 6535 Continued.

OPINION.

## LAW DEPARTMENT.

Baltimore, July 18, 1907.

Hon. W. Cabell Bruce,  
City Solicitor.

Dear Sir:-

4788

I have carefully considered the report to you of Mr. Lauchheimer under date of July 15th, bearing upon the contention of the United Railways and Electric Company as to whether or not it should bear the cost of taking up and restoring the cobble pavement between the tracks and for two feet outside thereof, on North Avenue from Mount Royal Avenue to Druid Hill Avenue.

4789

My conclusions are as follows: If North Avenue is to be paved with an improved pavement, and if the facts as stated in Mr. Penniman's letter to Mr. Fendall as to the construction of the tracks are correct, then the conclusions reached by Mr. Penniman are correct. The cost of re-adjusting the tracks along the entire route must, of course, be borne by the Railway Company, but the cost of repaving with the new material between the tracks and for two feet on each side thereof, can only be imposed at those points where the present tracks are attributable to Ordinance No. 23, approved April 8th, 1891. If North Avenue is not however to be paved with an improved pavement, but the cobble stones are merely to be put back again, then, irrespective of the question, under which Ordinance the tracks were laid, the Railway Company must bear the expense incurred in taking up and relaying the stones, as all the ordinances in question impose upon the Railway Company the obligation to repair and keep in repair, the street surface which includes, in my opinion, repaving it with the same material with which it was formerly paved, necessitated by a change of grade. The contention of the Railway Company that the present tracks on North Avenue, between John Street and Park Avenue are attributable to one ordinance, and that the present tracks between Park Avenue and Madison Avenues are attributable to another ordinance, and that the present tracks between Mount Royal Avenue and John Street are attributable to another ordinance, seems to me to be very far fetched and thin spun. At one time there were four sets of tracks on North Avenue, laid by different Companies, under different ordinances, and now there are

4790