

File No. 9041 Continued.

OPINION.

LAW DEPARTMENT.

Baltimore, February 25, 1909.

Calvin W. Hendrick, Esq.,

Chief Engineer, Sewerage Commission.

Dear Sir:-

I reply as follows to your favor of February 10th, which was accompanied by copies of a letter to you from J. M. Hood, Jr., Chief Engineer of the United Railways, and an opinion to Mr. Hood from Mr. Bernard Carter, on the subject of the settlement of tracks of the United Railways Company when re-laid after the construction of sewers by the Sewerage Commission; also a letter from you to Mr. Hood. You asked me the following question:

Whether or not after the period for which your contractors are responsible for damage to the tracks of the Railway Company, the City is required to bear the expense of any re-adjustment of the tracks due to the work of the contractor. The situation is a rather peculiar one. I have carefully examined the specifications for storm water drains, Contract No. 2, and on page 93, Section 195, under the head of obstructions, find the following, - "The contractor shall be responsible however for any damage or injury to the road-bed due to improper construction or back-filling". The liability of the contractor it seems to me, is to be measured by the language just quoted, and the fact that the liability of the Contractor to the City for repaving is terminated by virtue of Section 56, page 46 of the specifications, title, - "Repaving", would not relieve the contractor from liability for damage or injury to the road-bed, provided such damage or injury was attributable to improper construction or back-filling. In other words, the liability of the contractor for repaving is a different liability from the liability of the contractor for injury to the road-bed, due to improper construction or back-filling. Just what constitutes improper construction or back-filling is, of course, a matter that you will have to pass upon.

Relying more specifically to the points raised in Mr. Carter's opinion, I beg to say as follows:

The Contractor is responsible for any negligent work in