

File No. 9703 Continued.

OPINION.

LAW DEPARTMENT.

Baltimore, April 13th, 1909.

Hon. Edgar Allan Poe,
City Solicitor.

Dear Sir:-

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As requested by your favor of March 10th, I have considered the matters referred to in Mr. Fendall's letter to you of March 8th, viz: whether the cost of Mr. Fendall's inspector, who is present to see that the Railway relays its tracks upon the proper grade, should be borne by the Railway or by the Sewerage Commission.

On December 8th, 1908, (Office File 9211) you rendered an opinion to Mr. Fendall that, "since it is your duty to see to it that the grade of the streets be conformed to, and the paving be restored to a proper condition, you are authorized to put such inspectors on the work as are reasonably necessary, and to charge the cost to the parties who necessitate such inspection". I assume that this opinion settles Mr. Fendall's right to appoint inspectors, notwithstanding the opinion of Mr. Carter to the contrary.

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Whether or not the Railway Company can be compelled to pay the cost of the City Engineer's inspector is, I think, an exceedingly close question. It may be strongly contended that while the obligation of the Company is, of course, to relay its tracks at the proper grade, and while if it does not do this, then it can undoubtedly be compelled to correct it, that still it cannot be compelled to pay the fees of an inspector to see that it does, in the first place, the very thing which, if it does not do acceptably, it must, itself, correct.

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On the other hand, if it be conceded, (as the opinion of December 8th, 1908 holds) that Mr. Fendall has the right to appoint inspectors, then it may likewise be forcibly argued that the Railway Company's occupancy of the streets is subordinate to the rights of the public therein, that the only occasion for an Inspector at all is due to the fact that the railway track happened to be there, and may be renewed upon an improper grade, if their renewal is not inspected; and that, therefore, the Railway Company ought to pay the fees of the Inspector, whose services are necessitated solely because of the existence of the Railway tracks.