

File No. 9787 Continued.

OPINION.

Engineer to make the necessary grade change.

7367

I understand that in view of some agreement between the United Railways and the Baltimore and Ohio, the cost of this work will fall upon the United. Mr. Fendall is quite willing that the change should be made, but, he says, however, that the only reason for making the change is because of the construction of the new Baltimore and Ohio tracks, and, therefore, Mr. Fendall desires to know whether it can properly be said that the public interests justify the change. The change will damage at least one piece of property to some extent, but Mr. Fendall says that he can make it a condition of the work that, not only will the United Railways pay for the total cost, but that they will take care of any damage to property also.

7368

City Code 1906, Article 35, Section 39, etc., authorizes the City Engineer to cause grades to be changed upon the application of property holders whenever "in his judgment the public interests require" it. I assume that this would be the rule in the absence of any such express provision. I think, however, that in the present case it may fairly be said that the public interests do require the change. It might be assumed that the public interests require the construction of the new Baltimore and Ohio track, which the City has authorized, and I should think that these same public interests would justify any grade changes in intersecting streets, which might be necessary in order to render the construction and operation of the new track at such intersecting streets safe and practicable, and which may also be necessary to enable the United Railways to so adjust its own tracks as to safely and properly cross the new Baltimore and Ohio track, and thus to safely and properly continue to discharge its duties as a common carrier.

7369

The only difficulty I see is that I find no authority for changes in grade, except-(1) Where an Ordinance directs the change. (2) Where the change is necessary to abate a nuisance, and (3) upon application of "the owner of property binding upon any street", (Code Article 35, Section 39). In the present case, Mr. House tells me that the United Railways only operates on Ridgely street under the usual form of Ordinance, and I hardly think this would constitute the railways an owner of property binding upon Ridgely street, within the meaning of Section 39.