

File No. 9986 Continued.

OPINION.

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It is to be observed that the original ordinance, No. 36, was passed before the new Charter with its provisions as to franchises went into effect, and contains no provision retaining for the City the right of municipal control and regulation over the tracks laid. Therefore, there is nothing in the Railway's franchise which authorizes the City to change the tracks from the side to the middle of the street.

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In *Anne Arundel Company vs. United Railways*, Daily Record, ^{191 Md 385} May 5-6, 1909, the Court of Appeals said that where a Railways' Charter provided that its tracks should be constructed on the side of a City street and the tracks were constructed accordingly, then if the City thereafter desired the Railroad to shift its tracks to the middle of the street, this could only be done upon making proper indemnity to the Company by the City. This proposition was not necessary to the decision in the *Anne Arundel* case, however, and it is opposed, not only to a number of prior rulings by this Department, but, also, so far as I can find to the great weight of authority elsewhere.

See the following citations:

Elliott on Railways, Vol. 3, Sect. 1082, p. 14,
and Sects. 1097-1115.
6 L. R. A. (N. S.) 1026 (Note).
26 L. R. A. 92 (Note).
43 L. R. A. 638 (Note).
70 L. R. A. 850 (Note).
201 U. S. 506.
204 U. S. 364.
48 Md. 168.

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In view of this great weight of authority, I do not think that the City should concede the Company's right to demand compensation when its tracks are to be shifted from the side to the middle of the street, in the absence of an express adjudication of the Court of Appeals upon the very point. The cases do hold, however, that the Railroad cannot be compelled to shift or change its tracks arbitrarily, but that a reasonable necessity must exist for requiring the change, and no change should be demanded unless the public interests can reasonably be said to call for it. This, I think, to be an entirely sound limitation, and I, therefore, think that the ruling of this department should be that wherever the railroad maintains its tracks upon the side of the street, it will be compelled to move them to the middle of the street if the public interests require such change.