

File No. 9986 Continued.

OPINION.

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Therefore, the City's right to compel the railroad to shift its tracks, in the present instance, at its own expense, depends, in my judgment, upon whether or not the public interests require it. As far as I can ascertain, the reason for desiring the change at the present time, is this: upon, or coincident with the completion of the new bridge which the City Engineer is building on Edmondson avenue, the Annex Improvement Commission proposes, and is now about to raise the grade of Edmondson avenue, between the bridge and Calverton Road, and also to pave this portion of the avenue. Property in this vicinity, which was practically undeveloped when the tracks were originally laid, is now giving signs of active development, and west of the new bridge a number of houses have already been constructed on the south side of the avenue. The Railways Company's tracks located as at present on the south side of the avenue are so near to the houses, which are also on the south side, west of the bridge, that wagons, etc., cannot have access to these houses, except upon, or across the tracks, and even this would be practically impossible, because of the fact that T rails and the ordinary cross ties are used upon the road.

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Mr. Fendall feels that access to the houses which have already been built west of the bridge, and to the additional houses which undoubtedly will sooner or later be built, both east and west of the bridge, should not be impeded in this way, and he feels that it is necessary to the proper development of this vicinity that the tracks should be in the center of the road. In order that the cost to the railroad of so shifting its tracks may not be more onerous than necessary, Mr. Fendall's plan is that the Railroad be required to shift its tracks simultaneously with the new grading and paving of Edmondson avenue, as the cost to the railroad would, of course, be less if the tracks were shifted upon this plan, than would be the case if the tracks had to be shifted after the road had been already paved and graded.

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I understand, however, that the Annex Commissioners have no present intention of grading and paving Edmondson avenue west of the new bridge; they only propose grading and paving the avenue at present between the bridge and Calverton Road, and, therefore, it is now proposed to require the railroad to shift its tracks only upon this portion of Edmondson avenue which is to be paved and graded as aforesaid.