

File No. 9986 Continued.

OPINION.

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I have no doubt, as already stated, that if the property in this vicinity were at present developed in such manner as to injuriously affect it by continuing the tracks upon the side of the road, that in such event it could fairly be said that the public interests required the change, but I cannot see how the public interests require the change when only one property holder is at present in any way affected.

It is, of course, true that the property in this vicinity will sooner or later develop; this, however, is a matter for the future and the fact that the property will hereafter develop, and that the public interests may hereafter require a change in the location of the tracks, does not show any such present public need as would justify the change.

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It is doubtless also true that the Railways Company could shift its tracks now at less expense to it than it could do after Edmondson avenue is paved and graded. This might well be a consideration to induce the railroad to move its tracks now rather than later. At sometime in the future the tracks will, in all probability, have to be removed, and the Company might well move them now when the expense would be less than will be the case hereafter. This, however, in my judgment, is a matter of policy for the railroad to decide, and it evidently does not desire to take advantage of the present moment for shifting its tracks. This being so, I think that the tracks should be left as they are until the time arrives when the public interests may fairly be said to require the change, and then the railroad should, and I think can, be compelled to make the change at its own expense.

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I do not know that it is proper for this department to say whether or not the public interests require the change at the present time. In holding that the Railways Company be compelled to move its tracks, at its own expense, when the public interests require it, it may be that we go as far as we ought to go, and that we should leave the question of fact as to whether or not the public interests do require the change at the present time to the Mayor, the City Engineer and the Annex Commission to determine. I have expressed my opinion upon this point, however, for whatever it may be worth, because the correspondence has been referred back and forth so many times that I think this the best way to bring it to a head.