

File No. 10001 Continued.

OPINION.

LAW DEPARTMENT.

Baltimore. May 24, 1909.

Hon. Edgar Allan Poe,
City Solicitor.

Dear Sir:-

7688 As requested by your favor of May 17th, I have considered the inquiry of Dr. Bosley contained in his letter to you of May 14th.

I understand that a sewer now empties upon a vacant lot some distance South of the 2500 Block West North Avenue; from the mouth of this sewer the contents flow across said open lot by means of a kind of gully to Peck's Branch. The nuisance in question is caused by the existence of this sewage on the lot, and it has, I understand, been much contributed to recently by the building up of the property in the vicinity, which property connects with the sewer and thus, of course, increases the amount of sewage.

7689 The proper manner of abating the nuisance is to construct a drain from the mouth of the sewer, as now located, to Peck's Branch, so that the sewage may be carried directly into the Branch, instead of emptying as now upon the vacant lot. The question is, - who should abate the nuisance in this way; the owner of the lot upon which the nuisance actually exists, or the owners of the houses whose sewage flows into the drain, and who are, therefore, the real contributors to the nuisance.

I have no doubt that, as a general proposition, the actual creator of a nuisance is the party who should be called upon to abate it, rather than the owner of the lot upon which exists a nuisance which has been created by others.

7690 In the present case, however, I have interviewed Mr. Jacobs and Mr. Hurst, who are largely interested in property in the vicinity, and I understand from them that formerly the sewer in question emptied into a culvert of the Western Maryland Railroad, which is located some little distance away from the lot now in question, and thence the sewage was carried by a natural gully to Peck's Branch. So long as this