

File No. 10151 Continued.

OPINION.

## LAW DEPARTMENT.

Baltimore, June 21st, 1909.

Hon. Edgar Allan Poe,  
City Solicitor.

Dear Sir:-

I have your request of June 14th, for a report upon the communication of the Commissioners for Opening Streets of the 10th instant, the question there presented is as follows:

807 The United Railways and Electric Company maintains its tracks at the corner of Twelfth street and Clifton avenue, in the Annex. It is necessary at this point to carry surface water beneath the tracks, and for this purpose the Railroad Company has laid a pipe beneath its tracks, and covered the same with planks. This construction is very crude, and such as is generally used upon country roads by the Railroad Company.

808 The Annex Commissioners now desire to pave the highway at the point referred to, with improved pavement. They insist that the Railroad Company shall reconstruct a culvert or drain at this point beneath its tracks, which culvert shall conform to the improved street. The plan which the Annex Commissioners have designated for this culvert, beneath the tracks is the same as that which has been in vogue for several years, in the older portions of the City,-that is to say, the Annex Commissioners require no more of the United Railways at this point, in the matter of this culvert, than the City Engineer has been accustomed to require under the same circumstances where repaving is done in the older portions of the City.

The Railroad Company declines to do the work, on the grounds set forth in its letter of June 8th.

809 Article 30, Section 20 of the Code of 1906, seems to cover this situation. It provides that in all cases of obstructions of gutters arising from improper construction of railroad tracks, it shall be the duty of the City Engineer to give notice to the owners of said railroad tracks to remedy the evil complained of, and if such notice be not complied with, the City Engineer shall proceed to have the "said railroad reconstructed", at the cost of the owners aforesaid.

It is possible that the above ordinance might be construed