

File No. 10151 Continued.

OPINION.

well understood that the cost of the work would be in the neighborhood of one hundred and seventy-five dollars, and it was also understood between Mr. France and myself that if the City went ahead and did the work I would have no difficulty in getting the Railway Company to pay the bills, the payment, however, not being treated as a precedent.

7821 I imagine, therefore, that the position which the Railway Company now takes is due to the fact that the bills, instead of aggregating one hundred and seventy-five dollars, aggregate three hundred and sixty-one dollars and ten cents, and I also realize that the understanding reached last summer between Mr. France and myself is, to a certain extent, affected by the unexpected increase in the size of the bills.

Apart from this, however, it seems to me that the Railways Company is responsible for the cost of this work.

If the tracks of the Railways Company were not on the street in question the work would not have been necessary and the City would not have been put to that expense.

The inlets are due solely to the presence on the street of the tracks of the Company.

7822 The original drains constructed by the Company were never accepted by the City Engineer, as far as I know, but were always regarded as private drains of the Railways Company, just as were the drains constructed by the Company in the neighborhood of Charles and Fayette streets, and which the Company recently deeded to the Sewerage Commission.

You will recollect that these drains were constructed originally in order to enable the Railways Company to comply with its obligation to "so construct and lay down its tracks on the street as not to obstruct or impede the free flow of water across the street or down the gutters thereof".

7823 I take it that this obligation is a continuing one and cannot be performed by the Company without the inlets in question.

It seems to me, therefore, that the Railways Company should bear whatever expense is reasonably necessary in the paving of the street, in order to prevent a violation of the obligation assumed by it in the first instance.

Very truly yours,
(Signed) Edgar Allan Poe,
City Solicitor.