

File No. 10559 Continued.

OPINION.

LAW DEPARTMENT.

Baltimore, October 9th, 1909.

B. T. Fendall, Esq.,
City Engineer.

Dear Sir:-

8280

I beg to reply as follows to your favor of October 8th, relative to the right of the Railways Company to pave between their tracks and two feet outside thereof on Ostend Street, between Leadenhall and Race Streets.

By the terms of Ordinance No. 284, approved May 20th, 1907, it is expressly provided that, "so often as the street in question shall be paved or repaved by the Mayor and City Council of Baltimore, the United Railways and Electric Company shall, at its own expense, pave and repave the spaces between the said tracks, and extending for a distance of two feet on either side thereof, with the same paving material as that with which the rest of the said street shall be paved by the Mayor and City Council of Baltimore".

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This provision, standing by itself, would seem to confer upon the Company the right to do its own paving within the limits mentioned; but by the terms of Section 25 of Article 30 of the Baltimore City Code (Pielert's Edition), it is provided that "in all cases where rights or privileges are granted to any street railway subsequent to December 9th, 1897, to use or occupy the streets of the City, the Company so using the street shall be obliged, in every case, and shall assume the obligation, whether the same be provided for in the Ordinance granting the right or not, to pay the cost of paving and repaving that portion of the street, in every case where the street may be paved or repaved by Ordinance".

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I think these two provisions just quoted should be read together, and their effect is to confer upon the City the right to pave the street as an entirety, and charge the Railways Company with its proportion of the cost of the paving between the tracks and two feet on either side thereof, or to allow the Railways Company to, itself, pave its proportion of the street.

The City Engineer is the proper officer to determine, on behalf of the City, which method of procedure as to the paving shall