

File No. 12659

Baltimore, April 20, 1911.

To the Honorable
the Members of the Second Branch
City Council,
Gentlemen:

I herewith return Ordinance S. B. No. 308, entitled,

9926 "AN ORDINANCE TO AUTHORIZE AND DIRECT THE COMMISSIONERS FOR OPENING STREETS TO ASCERTAIN AND AWARD DAMAGES AND BENEFITS TO THE OWNERS OF PROPERTY IN THE CITY OF BALTIMORE AFFECTED BY THE CHANGES IN GRADE PROVIDED FOR BY SECTION 3, 1/2 OF ORDINANCE NO. 387 OF THE MAYOR AND CITY COUNCIL OF BALTIMORE APPROVED AUGUST 16, 1909."

In my opinion the Ordinance is not a proper one to be passed at this time. It was never intended that the City should compensate abutting property owners for damages sustained by reason of the changes in grade under the Baltimore and Ohio Grade Crossing Ordinance until it should have been judicially declared that such owners were not entitled to compensation from the Baltimore and Ohio Railroad Company.

Sometime ago a committee representing the property owners affected appeared before the Board of Estimates and was informed by the Board that it was necessary that a test case should be first instituted against the Railroad Company for the purpose of determining the liability of the Company, and that in the event it was decided that the Railroad Company was not liable, the Board of Estimates was prepared to incorporate in the Ordinance of Estimates an appropriation sufficient to cover the damages sustained by the property owners. The Committee departed leaving the Board under the impression that a test case would be immediately instituted.

I might add that, in my opinion, there is a much greater likelihood of the Railroad Company being held responsible under a suit instituted by an individual property owner than under a suit instituted by the Mayor and City Council of Baltimore.

The Present Ordinance eliminates the property owner entirely from the litigation.

Very respectfully,

(Signed) Edgar Allan Poe
City Solicitor.