

File No. 13739

familiar, of course, with the case of the Mayor and City Council of Baltimore vs. Smith & Swartz, 80 Md. 458, which deals with the subject of your third inquiry.

Very truly yours,

(Signed) S. S. Field,
City Solicitor.

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File No. 13606

Baltimore, December 18, 1911.

H. K. McCay, Esq.,
City Engineer.

Dear Sir:

10123 Referring to your letter of the 8th inst., inquiring as to an arrangement between counsel of the United Railways and Electric Company and Mr. Poe, former City Solicitor, and the pending suit upon the question of the liability of the Railways Company for tearing out the cobble, grading down to sub-grade and hauling away the materials, I beg to say that I do find such a suit, brought in 1909, which has not yet come to trial, in which these questions are involved. I have taken steps to bring this suit to trial early in the January term, which means, of course, about the middle of January, or, possibly, a little later. In the meantime, I advise you to take the position that the United Railways is liable for the entire cost of taking out the paving, grading down and regrading their tracks so as to bring them to the proper grade of the street.

You will, therefore, until advised to the contrary by this office, notify the Railways Company to do the entire work of removing the old pavement, doing the excavating, hauling the dirt away, and bringing their tracks to grade and doing the re-paving, and, upon their failing to do it, you go ahead and do the work and send the bill to this Department for suit.

This same rule will apply to the Paving Commission whenever the work is being done under their supervision.

I find that this question has been before this Department a number of times and every time it was referred to Mr. Lauchheimer, in whose judgment the Bar generally have a great deal of confidence, he gave an opinion that the Railways Company was liable, and I propose