

Baltimore, December 18, 1911.

Hon. James H. Preston,
Mayor of Baltimore.

Dear Sir:

10125

Sometime ago you asked me to look up the question of the obligation of the United Railways to pay the cost of re-paving between their tracks and for two feet on each side thereof, on streets that are to be paved with improved pavement by the Paving Commission.

Until recently I have not found time to look into the matter carefully. I find that the question of the obligation of the Railways Company to re-pave, irrespective of the Act of 1906 creating the Paving Commission, was referred to this Department when Mr. Bruce was City Solicitor, and Mr. Lauchheimer gave a very strong opinion (in which I concur) that, under the obligation to keep in repair, the Railways Company was bound to repave when the City found it necessary or advisable - in the exercise of its judgment - to re-pave the balance of the street.

The policy of the City to put this obligation on the Railways Company is embodied in an Ordinance passed in 1897 and which is to be found in the City Code of 1906, Section 25, page 104. This Ordinance, however, in terms, only applies to franchises thereafter granted.

Along the same line, Ordinance No. 98, approved May 4, 1907, requires the Railways Company to put ballast under their ties "whenever any public street in the City of Baltimore, upon which the tracks of any corporation or individual are now or shall hereafter be maintained, shall be paved or repaved" etc.

This latter Ordinance, of course, applies to all franchises, no matter when granted. Similarly, the Act of 1906, Chapter 401 "being the Act creating the Paving Commission), by Section 8 provides -

"AND BE IT FURTHER ENACTED, That the Mayor and City Council of Baltimore be and it is hereby likewise authorized to impose upon all street railway companies occupying, with their tracks, parts of the beds of streets, avenues, or other highways in the city of Baltimore upon which work shall be done under this Act, of the obligation to pay for said work so far as the same shall be done between the rails of their said tracks, and for a space of two feet on either side thereof, and the Mayor and City Council of Baltimore is further authorized to enforce said obligation to all such appropriate agencies, means, processes, proceedings and remedies as it may ordain for the