

File No. 25126 Continued.

Postal Telegraph Cable Co. vs. Mayor and City  
Council of Baltimore,  
79th Md. 487,  
156th U. S. 210.

In the 156th U. S. case the Court referred to the following language in St. Louis vs. Western Union Telegraph Company, 148 U. S. 97:-

"And, first, with reference to the ruling that this charge was a privilege or license tax. To determine this question, we must refer to the language of the ordinance itself, and by that we find that the charge is imposed for the privilege of using the streets, alleys and public places, and is graduated by the amount of such use. Clearly, this is no privilege or license tax. The amount to be paid is not graduated, by the amount of the business, nor is it a sum fixed for the privilege of doing business. It is more in the nature of a charge for the use of property belonging to the city - that which may properly be called rental. 'A tax is a demand of sovereignty; a toll is a demand of proprietorship'. State Freight Tax Case, 15 Wall, 232, 278. If, instead of occupying the streets and public places with its telegraph poles, the company should do what it may rightfully do, purchase ground in the various blocks from private individuals, and to such ground remove its poles, the section would no longer have any application to it."

\* \* \* page 98:

"The ordinary traveller, whether on foot or in a vehicle, passes to and fro along the streets, and his use and occupation thereof are temporary and shifting. The space he occupies one moment he abandons the next to be occupied by any other traveller. This use in common to all members of the public, and it is a use open equally to citizens of other states with those of the State in which the street is situate. But the use made by the telegraph company is, in respect to so much of the space as it occupies with its poles, permanent and exclusive. It as effectually and permanently dispossesses the general public as if it had destroyed that amount of ground. Whatever benefit the public may receive in the way of transportation of messages, that space is, so far as respects its actual use for purposes of a highway and personal travel, wholly lost to the public. By sufficient multiplication of telegraph and telephone companies the whole space of the highway might be occupied, and that which was designed for general use for purposes of travel entirely appropriated to the separate use of companies and for the transportation of messages."

See also the following language in C. & P. Telephone Co. vs. Mackenzie:

"But in respect to streets in populous places the public convenience requires more than the mere right-of-way over and upon them. They may need to be graded and therefore the municipal authorities may not only change the surface, but cut down trees, dig up the earth and may use it in improving the street, and may make culverts, drains and sewers upon or under the surface. Pipes may also be laid, etc., such as water, gas electricity, steam and other