

*Baltimore Morning Herald*  
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***Telephone Wires Must Be Buried Immediately***

***Court of Appeals Settles Long Litigation by a Decision Against the Chesapeake and Potomac Company—Case Had Been Vigorously Contested***

After nine years of more or less vigorous battling the city of Baltimore yesterday gained a decisive victory over the Chesapeake and Potomac Telephone Company. It was the Court of Appeals at Annapolis that made the city the winner, and the particular subject of the opinion it handed down was the meaning of the ordinance known as No. 41.

This measure, which is included in the new charter, empowers the company to lay independent conduits in the city streets. The bone of contention was the question as to whether or not the company could maintain overhead wires along streets upon which it had constructed conduit lines. This problem the court decided in favor of the city. A secondary question, as to whether house connections from conduits should be underground or overhead, was settled similarly.

“The evidence in the case,” said the court, in its opinion. “Convinces us that poles on the streets where conduits are laid are no longer necessary to make connections with houses on the line of such streets, nor with overhead wires on the adjoining streets, as both connections may be made by underground connections and poles standing elsewhere than on the streets where conduits are laid. Our conclusions are that Ordinance No. 41:

“First – Does not impose upon the companies any obligation to construct underground conduits in every or any street along which it desires to furnish telephone service.

“Second – That they are bound to remove all poles along the streets where the conduits are constructed and cables laid.

“Third – Except such poles as are necessary for distribution.

“Fourth – That there is a new system of distribution not calling for the use of poles feasible as to cost and mechanical construction where many telephones are in use.

“Fifth – That in the ‘congested parts’ of Baltimore City the new system is practicable and reasonable, and all poles therein along the streets containing the conduits should be removed before the court will interfere to secure the right to the companies to make further extensions of their privileges under the ordinance.”

News of the decision came to Mayor Hayes in a telegram from the clerk of the court to the law department, and he at once dispatched Subway Engineer Charles E. Phelps, Jr., to Annapolis to secure a copy of the opinion in full.

“It is a great victory,” he said delightedly to a *Herald* reporter; “a great victory for the city. I had held from the beginning that the company had no right to maintain overhead wires where there were conduits and also that it could not make overhead house connections. The decision of the court will compel it to bury all of its wires along those streets in the bed of which

it has subway lines. We cannot, however, compel it to extend its conduits until the law giving it authority to construct them at its discretion is repealed. But where they have no conduits I think we may order them to use the city subways.”

At the last session of the Legislature an effort was made to secure the repeal of the law mentioned by the mayor, but, with the aid of Mr. Bernard Carter, who resigned from the city solicitorship in order to be free to fight the case, the company defeated the attempt.

Ordinance No. 41 was included in Chapter 200 of the acts of 1892 by the General Assembly, and subsequently became one of the miscellaneous laws attached to the city charter. Sometime later the council attempted to repeal the ordinance, but was restrained from doing so by a decision of the Court of Appeals. In 1899 the city renewed the attack by refusing to grant the company a permit to build conduits in North Baltimore. After Judge Wickes had decided the lawsuit that followed in favor of the city the Court of Appeals reversed his decision. The case was ordered to be reopened, however, in order that the city’s side of it might be more fully presented. But this rehearing was of little avail for in the end the company won.

Again in June, 1900, the battle reopened. This time the city refused permits for conduit extensions in South Baltimore on the ground that the company had violated Ordinance 41 by maintaining poles along streets upon which it had constructed subways. Judge Wickes decided against the city, and yesterday’s opinion of the Court of Appeals was a reveal of his decision.

The opinion was handed down by Judge Page. Mr. Bernard Carter, the company’s attorney, refused to discuss it yesterday.