File No. 5284 Continued.

CORRESPONDENCE.

As to the relative rights of the City and the Railways Company in such a connection as this, I respectfully refer you to the following ordinances, which, I think, may be of service to you, to wit:

Ord. No. 74 of 1878, No. 77 of 1879, Nos. 16, 47 and 115 of 1880 and No. 23 of 1891.

Very truly yours,

(Signed) Geo. M. Boteler,

Acting City Engineer.

File No. 5284.

OPINION.

LAW DEPARTMENT.

Baltimore, ceptember 26,1906.

Hon. W. Cabell Bruce, City Solicitor.

Dear Sir:-

As requested by your favor of September 15th, I have considered the matters referred to by the Acting City Engineer in his letters of September 4th and September 14th. It seems that Light street, at the corner of Cross street, is paved with Belgian blocks, except between the tracks, where the paving is cobble stones, and the Acting City Engineer desires to know whether he can compel the Railway Company to take up the cobble stones between its tracks and repave them with Belgian blocks.

The tracks in question were laid under the original City Passenger Railway Ordinance, being Ordinance No. 44, approved March 25, 1859; this Ordinance imposes no obligation on the company to repave streets, but does provide that the Company shall keep the streets covered by its tracks and for two feet on either side "in thorough repair at stheir own expense". It is decided, however, in Scharf's case, 54 Md. \$99-525, that the obligation to repair does not require the Company "to repave with a new and different material and perhaps more costly". Neither the above ordinance under which the tracks were laid, nor the company's Charter, being the Acts of 1862, Chapter 71, impose any obligation on the Company to repave the streets at the point in question, and I, there-

3811

3812