File No. 5284 Continued.

OPINION.

fore, think that the company cannot be compelled to replace the old cobble stone pavement, which still remains between the tracks, with Belgian blocks; if, however, the city choca to pave the said portion of the street between the tracks with Belgian blocks, then the company could be compelled to keep the space between the tracks as so paved, in repair.

3813

The general ordinances, Code 1893, Article 48, Sections 34 and 35, and Ordinance No. 101, approved June 30th 1898, do not help the situation, as these ordinances only require the Street Railway Companies to repair. Nor is any obligation placed upon the Company in the present case by Ordinance No. 9, approved December 9, 1897, which requires the Company, as a condition to the acceptance of any new franchises, to pay the cost of paving, as well as of repairing, because that ordinance by its terms is not retroactive; moreover, the preamble of this ordinance recites the fact, that the obligation to repair does not include the obligation to repair to repair to repair

3814

The Acting City Engineer also refers to Ordinance No. 74, approved June 28th 1878; Ordinance No. 77, approved July 5th 1879; Ordinance No. 16, approved March 8th 1880; Ordinance No. 47, approved April 5th 1880; Ordinance No. 115, approved May 25, 1880 and Ordinance No. 23, approved April 8th 1891.

I have examined all of these ordinances and find that each of them requires the company, not only to repair, but also to repaye the streets between the tracks whenever the city puts down new and improved payements. I have traced on the map, however, the tracks authorized by these ordinances, and none of them pass Light and Cross streets, therefore, they are not applicable to the present case and simply emphasize the distinction between the obligation to repair and the obligation to repair

The enly other ordinance I have been able to find bearing on the question is Ordinance No. 169, approved March 7th 1899, which provides that,

"No repairs shall be made to the pavements of any street, lane or alley, or other public highway in the City of Baltimore, except when the material, with which it is proposed to repair said pavement, is similar to that with which the high-way is paved".