File No. 2637 Continued.

OPINION.

LAW DEPARTMENT.

Baltimore, March 3, 1905.

Hon. W. Cabell Bruce, City Solicitor.

Dear Sir:-

Replying to Mr. Pendall's inquiry of March 3d, relating to the drain on Marsh Market Space, which he says is seriously injuring the City's subway, I beg to report as follows:

The drain being in such a condition as to cause injury to the City's subway, is manifestly a nuisance, and Mr. Fendall, as the City Official clothed with full authority by the Charter over all drains and sewers has the right, as the representative of the owner of the property being injured by the nuisance, to abate it. The main difficulty in the case is the right to collect from the owner of the drain the cost of restoring it to a safe condition. If the condition complained of constitutes a menace to the public health, the Health Commissioner, under Article 23, Section 4, upon proper notice to the owner, could abate the nuisance, and charge the cost to the owner. This, however, is by wirtue of an express ordinance authorizing the work to be done at the expense of the owner. I can find no such ordinance relative to the City Engineer, and, therefore, it is doubtful in my mind whether, if the City Engineer does the work merely because the drain is injuring the City's property and is not manacing the public health, the City could recover against the owner the cost of the work. I believe, however, that the City could recover such cost, it being the duty of the party being injured to use all reasonable means to mitigate the damage, and manifestly, therefore, the guilty party should be legally bound to recompense it.

I would suggest that, if it be feasible, the City Engineer, instead of restoring the drain, take it up entirely. Of his right to do this, there can be no doubt. Of course any injury done up to the present time to the City's subway can be recovered against the owner of the drain by an action at law.

Vary bruly yours,

(Signed) Edgar Allan Poe Deputy City Solicitor.

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