

File No. 9041 Continued.

OPINION.

refilling trenches and if the tracks of the Railway Company settle by reason of such negligence, the Contractor probably makes itself liable for the damages resulting to the Railway Company by reason of such negligence and perhaps the liability of the City in this connection is co-extensive with the liability of the contractor, but if the work be done in a proper manner and the settling of the tracks cannot be reasonably avoided because of the fact that no matter how carefully the re-filling be done, a certain amount of settling cannot be avoided, then the contractor is not liable to the Railway Company for any expense that the Company may be put to in realigning its tracks and, of course, if the contractor is not liable the City would not be liable. Inasmuch as it may be that no matter how carefully the work is done, settling is bound to take place, it is the duty of the contractor and of the City to see to it, from time to time, that these settlements are taken care of, but, in my opinion, a distinction is to be drawn between repairing from time to time, settlements which are bound to occur, no matter how carefully the work is done, and realigning the tracks of the Railway Company, made necessary by such settlements.

The cost of the realignments, where no negligence can be imputed to the contractor or to the City must, undoubtedly, be borne by the Railway Company. The Railway Company when it determines to replace its tracks upon soil which, no matter how carefully the work is done, is liable to settle, takes the chance of having to re-adjust at its own expense, its tracks so relocated where the necessity of such relocation and readjustment is not brought about by the negligence of anyone but by conditions which cannot be reasonably avoided.

Very truly yours,

(Signed) Edgar Allan Poe,  
City Solicitor.