

File No. 10012 Continued

OPINION.

LAW DEPARTMENT.

Baltimore, May 24, 1909.

Hon. Edgar Allan Poe,
City Solicitor.

Dear Sir:-

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As requested by your favor of May 19th, I have considered the inquiry of Mr. Hendrick, contained in his letter to you of May 17th.

It appears that in building the sewer along Boston Street, the front wall of No. 2225 Boston Street, owned by the Canton Company, settled on account of the digging of the trench.

I understand from Mr. Hendrick's letter that this settling was, in no way, due to any negligence upon the part of the City, or its contractor, but was entirely due to the fact that the wall rested upon a very shallow foundation, and that the adjacent earth was of a treacherous character.

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The contractor is ready to restore the wall to its former condition, but the Building Inspector refuses to permit this to be done, and insists that the wall, when rebuilt, must be placed upon a pile foundation. The expense of rebuilding the wall upon a pile foundation is considerably greater than the expense of restoring the wall to its former condition, and both the contractor and the Canton Company refuse to bear this additional expense.

I understand that the wall would not have settled, except for the digging of the trench, and that if the wall had not settled, then the Inspector of Buildings would not have required the pile foundation. Under these circumstances, I think that the expense incident to the pile foundation, as well as the expense of rebuilding the wall, itself, are both due to the sewerage work.

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But, it does not follow from this that the City is responsible for the damage. The sewerage work was being done under Legislative authority, and if it was being done properly and carefully, and the settling of the wall was not due to any negligence on the part of the City, or its contractor, (as I understand to be the case), then, the injury would, I think, be dammum absque injuria, so far as