

File No. 10012 Continued.

OPINION.

7717

In my report I reached the conclusion that if the settlement was not due to any negligence, but was the unavoidable result of the lawful and careful digging of the trench, that then the City was under no liability to the Canton Company, and that the contractor was under no liability either, unless some liability was placed upon him by the terms of his contract.

After an examination of the contract, I reached the conclusion that under the terms of the contract, the contractor was under the obligation to restore the wall to its former condition; that this obligation meant, in my opinion, that he must restore the wall in accordance with the proper and lawful requirements of the Inspector of Buildings, and that since this could only be done by building the same upon a pile foundation, it followed, in my opinion, that the cost of restoring the wall and of building the pile foundation must both be borne by the contractor. (See Office File No. 10012).

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I do not know whether the wall now in question is the same wall as that covered by my former report or not. The situation, as disclosed by Mr. Hendrick's letter to General Leary, is that he is unable to say whether the settlement in the wall now in question, was caused by the construction of the sewer or not; it may have been so caused and it may not.

It appears, however, that the building was repaired last June at the expense of the contractor (this was evidently after my report of May 24th), and at that time the Inspector of Buildings approved the repair work.

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As stated in my former report, even assuming that the settlement was due to the construction of the sewers, still, the City would not be responsible provided the settlement was not due to negligence, but was due to the unavoidable result of the lawful and careful digging of the trench, (as for example, if the wall rested upon a too shallow foundation).

Even, however, if the City could be held liable at all, it could only be held liable in case the settlement of the wall can be directly traced to the sewer work, and I understand that this cannot be done.