

File No. 10585 Continued.

CORRESPONDENCE.

opinion on the matter.

8337

Under date of September 7th I wrote the contractor, the New York Continental Jewell Filtration Co. as follows:-

"As your work has now proceeded to the point where I think it advisable for the contractors who have the delivery of the broken stone, to prepare for the delivery of this broken stone before giving them their six weeks to begin the delivery of such broken stone, as called for in their contract, I write to know if it would be satisfactory to you for them to begin the placing of this stone on or before six weeks from this time."

Under date of September 9th they replied as follows:-

"Replying to your letter of September 7th, we will be pleased to cooperate with the Sewerage Commission in hastening the completion of the entire work at Colgate, and to this end we are willing, under proper conditions, to allow the contractors for placing the crushed stone to have access to our work before its entire completion, although such an arrangement will necessarily be a source of considerable interference to our own construction. There are several matters which we think should be adjusted as affecting our responsibility for the work before possession is given to other parties. We do not feel that we should be held responsible for maintenance of work takeover by the City, either for repairs, or renewals, when another contractor is given access to the site and allowed to conduct his operations thereon. It therefore seems to us that the City should make a final acceptance of the work completed at the date the stone contractor begins his operations, paying us all of our retained percentage for the work accepted to that date, and releasing us from any further responsibility in connection therewith. The amount of our bond should also be reduced by such proportion as the cost of the work accepted bears to the entire work. As additional work is taken over from time to time our retained percentage should also be paid us on this additional work and our bond should be further proportionately reduced."

8338

I replied to this communication by citing paragraph 23, page 16, of their contract, and also paragraph 21, page 10, of the contract for the delivery of broken stone, stating that the latter clause fully covered the N.Y. Continental Jewell Filtration Co.'s question regarding repairs and renewals. They state in reply to this that they do not consider that paragraph 23 of their contract applies to contracts not in existence when their contract was made; but, assuming that it does so apply, they do not understand the clause to mean the giving of absolute possession of a portion of their work to another contractor to their own permanent exclusion, but rather understand it to contemplate the temporary occupation of the work by such other contractors from time to time in the performance of their duties.

With regard to the clause 21, of the crushed stone contract, they claim this to be based upon the assumption of the acceptance of the work by the City, claiming that it makes the stone people responsible, not to them, but to the City, for any injuries that may be done. My interpretation of the language of this clause is that it makes the