

File No. 10585 Continued.

OPINION.

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1 - The New York Company claims that it should not be held responsible for the maintenance, repairs or renewals of their work if the other contractor is given acquisition thereto, and allowed to conduct his operations thereon, and the New York Company, therefore, asks that the City should finally accept their work completed at the date the crushed stone contractor begins his operations, paying them all of the retained percentage for the work accepted to that date, and releasing them from any further responsibility in connection therewith.

Paragraph 23, page 16 of the New York Company's contract, for the Sewage Disposal Works, provides, among other things, that "the other contractors of the Commission may also, when authorized in writing, by the Engineer, enter upon the work and the premises used by this contractor for all purposes which may be required by their contracts."

Section 24 provides that "the contractor shall so conduct his operations as not to interfere with or injure the work of other contractors, or workmen employed by the Commission."

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I think it entirely clear that these provisions of the New York Company's Contract contemplate the very situation that has now arisen, viz: that before the completion of the Disposal Works it might be that the Sewerage Commission desired one or more of its other contractors to enter upon the premises and begin their own operations. The New York Company contends that paragraph 23 does not apply to contracts not in existence when their contract was made; but, I think it quite clear that both paragraphs 23 and 24 apply to all contracts of the Sewerage Commission with relation to the Disposal Works, whether made before or after the date of the New York Company's contract.

The New York Company also claims that, in any event, paragraph 23 only contemplates the temporary occupation of their work by other contractors. It is, of course, true that the crushed stone contractor should not be allowed such a degree of access as would interfere with the completion of the New York Company's work, and I take it for granted that this will be the case, and that Mr. Hendrick will see that both contractors will be enabled to conduct their operations without interfering with each other. If this can be done, then I see no reason whatever why the crushed stone contractor should not be given the access for which Mr. Hendrick asks, and I think that under the express terms of the New York Company's contract, that Company is prohibited