

File No. 11194 Continued.

OPINION.

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and one whose employment will be inimical to the orderly and advantageous progress of the work. He has, therefore, notified his Division Engineers that Kelly should not be employed on the work of the Commission again. Kelly has written a letter, under date of April 11, 1910, inquiring if such is the fact, and Mr. Hendrick desires advice as to whether he has acted within his rights, and what reply, - if any - this Department would suggest that he make to Mr. Kelly's communication.

The general specifications, under which the sewerage work is being carried on, contain the following provision:

(Page 11, paragraph 32) - "The contractor shall employ only competent, skillful men to do the work, and whenever the Engineer shall notify the contractor, in writing, that any man employed on the work is, in his opinion, incompetent, disobedient, unfaithful, disorderly, discourteous, or otherwise unsatisfactory, such man shall be discharged from the work and shall not again be employed on it, except with the consent of the Engineer."

There can be no doubt that, under this provision, the Engineer may require the discharge of any man whom he may consider unsatisfactory, and his orders, in this respect, the contractor will be bound to obey.

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I am of the opinion that the Chief Engineer will not be liable to any employe whose discharge shall be so directed, so long as the Chief Engineer shall act without malice and in a reasonable manner, though there is recognized by the law a right of action against one who shall procure, maliciously, another's discharge from employment.

Chipley vs. Atkinson, 23 Fla. 206.  
11 Am. St. Rep. 367. Note.

Of course, it is always possible for an employe whose discharge has been ordered to construct a case which may be allowed to go to the Jury, and, therefore, it is impossible to say that the Chief Engineer could not, under any circumstances, be held liable for his action. The most definite expression which I can render on this subject is that I consider it extremely unlikely that any verdict would ever stand against the Chief Engineer on account of his honest action in ordering the discharge of an employe.

The action which has been taken in the present case, however, is somewhat broader than the mere ordering of an employe's discharge. The Chief Engineer has issued a general order that Kelly shall not be