

File No. 11194 Continued.

OPINION.

taken upon any work of the Sewerage Commission hereafter. This action does not fall within the literal language of paragraph 32, above quoted. It would seem to me, however, to be justified in the following manner:

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It appears that Kelly was discharged, in March 1910, not on account of the charge of extortion but for an entirely different reason, which, however, indicated Kelly's irresponsibility. (See memoranda, April 1, 1910. Statement of Mr. Cowie). Clearly, Mr. Hendrick could order Kelly's discharge and, from the information which we have in hand, such order would be entirely reasonable and justifiable. It would be futile, therefore, for Mr. Hendrick to wait until this man should be taken on successively by each different contractor and then direct his dismissal. The same object is accomplished by his general order. Having the undoubted right to direct Kelly's discharge, I do not see that such right is exceeded by Mr. Hendrick's announcement, in advance, to the effect that he will exercise his right and order Kelly discharged if he be again employed upon the Sewerage Commission's work. This, in effect, is what his general order amounts to.

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In conclusion, under all the circumstances, I am of the opinion that the position taken by Mr. Hendrick is entirely justifiable, so far as the rights and obligations of the parties are concerned under the contracts, and that, while I cannot assure Mr. Hendrick that no damage suit will be brought against him, and cannot give him any absolute assurance that if such damage suit were brought, no verdict could possibly be rendered against him, yet I believe such a result to be so extremely unlikely that I am of the opinion he will, from his personal standpoint, be justified in disregarding such a possibility.

As to what answer Mr. Hendrick should make to Mr. Kelly's letter, my advice is that he make no reply whatever.

Yours truly,

(Signed) W.H.DeC.Wright,

Assistant City Solicitor.