

File No. 11,666 Continued.

OPINION.

9300

The facts are that, on July 7th, 1910, a drain in the alley north of Pratt street was opened up to a point about two feet, seven inches (2', 7") east of the east building line of Chester street. The drain was entirely opened up and the pipes laid in the same and, in part, back-filled, before the night of July 9th, 1910, from the point two feet, seven inches (2', 7") east of the east building line of Chester street. A five foot earth brace was left to act as a support for the buildings No. 119 S. Chester street, being on the north side of said alley, and No. 121½ S. Chester street, being on the south side of said alley, and on Friday, July 8th, 1910, the building No. 119 S. Chester street cracked. On July 11th, 1910, the contractor cut out the earth referred to and he discovered a broken City water pipe about four feet west of the east building line of S. Chester street. It is stated in the report that the water must have been leaking out of this pipe before the excavation for the sewer was commenced.

9301

D. V. Ault & Co. were the contractors doing the work under Sanitary Contract No. 53, and they claim that they are not liable for the damage sustained by the owner of No. 119 S. Chester street.

It would seem, from the correspondence and from a talk which I have had with Mr. Connet, that the contractor used ordinary care in the prosecution of the work, and it is difficult to determine to what extent the water from the damaged City water pipe participated in the cracking of the wall of the house. However, I do not think it very material for us to inquire whether the injury to the house was the direct or indirect result of the work of the contractor.

9302

Section 49 of the general specifications provides that, in case any direct or indirect injury is done to public or private property by or because of the work, the contractor, at his own cost and expense, shall restore such property by repairing or re-building, as may be required by the Chief Engineer, or shall make good such damage or injury in a satisfactory manner; should the contractor fail to promptly restore or make good the damage, the Chief Engineer may, upon forty-eight hours' written notice, repair or re-build the property and deduct the cost thereof from moneys due or to become due the contractor, or the City may deduct, from any moneys due or to become due the contractor, a sum sufficient, in the judgment of the Chief Engineer, to reimburse