File No. 11817 Continued. OPINION.

9478 The Division Engineer states that he does not think the sewerage work did any damage at all to this house, and it appears that the Contractor used a great deal of care in the work of constructing this particular sewer.

I think this whole matter is fully covered by Mr. Ritchie's reports to you, under date of May 24, 1909, and December 6, 1909, where he refers to alleged damage to No. 2225 Boston street.

The first of these letters was forwarded by you to the Sewerage Commission, under date of May 27, 1909, and the second letter was forwarded by you to the Commission on December 9, 1909.

9479 In the matter, about which I am writing you, it seems that the Contractor used much care, and it is uncertain whether the Sewerage work caused the house any injury. Under these circumstances, I think I need do no more than advise of the following conclusions of law reached by Mr. Ritchie and contained in the above letters:

1st - That since the work is being done under legislative authority, if it were prosecuted with proper care, and the settling of the wall was not due to any negligence on the part of the City, or its contractor, then the City is under no liability for the damage.

9480 2nd - That if the sewerage work caused the damage, even though the contractor used proper care, still, under the terms of the contract, he is responsible for the damage done.

So far as the City is concerned, it should take the position that it is in no way responsible for any damage to the wall, because, as I have stated above, it does not appear that the contractor was negligent in prosecuting the work, nor that the wall was even damaged by the sewerage work.

Since the Sewerage Commission entertains doubts whether or not the damage was caused by the sewerage work, I think the contractor should not be required by the Chief Engineer to rebuild, or repair, the wall, but that he should be given an opportunity to defend himself in Court if he so desires.

Truly yours,

(SIGNED) German H.H. Emory,

Assistant City Solicitor.