

File No. 11817 Continued.

CORRESPONDENCE.

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Mr. Emory's conclusions are summed up in two paragraphs, marked 1st and 2nd, on page two of his letter, as follows:-

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."

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."

While the contractor may have used due care in this work, and the house was old and cracked before the work was started, is it not best for us to take the broad view that if no sewer had been constructed at the front and side of this house the damage would not have increased to the extent that it is now? I would not be able to say that the house had not been damaged by the work of the contractor, even though he used a great deal of care, because the ground is wet and he could not have constructed the sewer without pumping the trench dry, and in doing so necessarily some material would be sucked out from the ground adjacent to the sheeting, and possibly the ground drained for some distance back from the sheeting, both of which would tend to cause an old building, with shallow foundations, to settle. After carefully considering this matter, this seems to have been the case.

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Under Clause 49, page 16, of the General Specifications for Sanitary Sewers, a copy of which I enclose, it says:-

"In case any direct or indirect damage or injury is done to public or private property by or because of the work or in consequence of any act or omission on the part of the Contractor, his employees or agents, the Contractor shall, at his own cost and expense, restore such property to a condition similar or equal to that existing before such damage or injury was done," etc.

and giving us the right to repair the same after duly notifying the Contractor. Could we not proceed and have the repairs made promptly, and allow the matter to be settled, in Court or otherwise, later? Otherwise, I am afraid that having to wait for the matter to be settled in Court will cause a hardship to the property holder through no fault of the Sewerage Commission.

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If you can see your way clear to give me instructions whereby I can make these repairs promptly, allowing the final adjustment to be made later, it will prevent hardships on the citizens caused by the matter being left as this case now stands.