

File No. 12484

Baltimore, February 25, 1911.

Edgar Allan Poe, Esq.,
City Solicitor.

Dear Sir:

I beg to reply to your communication of the 24th, enclosing correspondence between the Chief Engineer of the Sewerage Commission and Mr. Read A. McCaffray.

The question presented is the liability of the contractor for damages to water pipes while engaged in the construction of sewers in the City streets under a contract with the City.

It appears that the pipes connecting several houses on Pinkney Place with the water mains were broken, not in the excavation being made for the sewer, but were broken at points on private property. The claim is made that the breaks were caused by the work of the contractors. The Chief Engineer desires to be advised whether he shall require the contractor to repair all such injuries to pipes.

The liability of the City to property owners for injuries done to private property by contractors engaged in sewerage construction depends entirely on the question of negligence. The City is not liable for consequential injuries not caused in any way by negligence.

Hanrahan v. Baltimore, October Term 1910, Court of Appeals.

If the injury to the pipes was due to the negligence of the contractor in making his excavation, then the City is liable, otherwise not. There is absolutely no proof presented to us from which to infer negligence. The pipes, it is admitted, were old and weak and it may have been impossible to construct the sewers without necessitating the renewal of the pipes which were broken, owing to the weakness of these pipes.

These facts furnish no basis for the City's liability, nor for that of the contractor.

However, of course, a suit might be brought against the City for this damage and proof might be adduced tending to show negli-