

File No. 22212 Continued.

of the pipes." Your reference to the City as the second comer probably has reference to my letter of June 11th, 1917 to you, which was not very carefully and accurately phrased. I had in mind, in writing that letter, the decisions of the Court that where the City is the second comer in opening a street across a pre-existing right-of-way of the Railroad Company or constructing a sewer under the railroad and across the railroad's private right-of-way, the City must construct and maintain such crossing at the public expense. You may very properly have construed my letter of June 11th, 1917 as applying this doctrine to the construction of a water pipe in a public street crossing a railroad where the water pipe was originally laid after the street was constructed. On this point, however, I wish to modify my letter of June 11th because I understand the law to be:

1st: Where a public highway exists first and the railroad is constructed across the public highway, then the railroad takes its right-of-way across the public highway subject to all the reasonable uses of that public highway, including not only the uses to which it may then be put but all other uses, such as the construction of water mains, sewers, conduits, etc., to which it may be put at any time in the future.

2nd: Where a street is opened across a pre-existing right-of-way of a railroad, the railroad is entitled to receive damages, and must be supposed to have received compensation for all the detriment to its private right-of-way which may be involved both for the present and the future in the use of the public highway for all of the reasonable purposes for which public highways are used.

It results, therefore, that the obligation upon the City to take care of the sewer pipes and the water pipes and repair leaks in them which may be caused by running heavy trains over them exists only where such water mains, sewer pipes, etc., are constructed across the private right-of-way of the railroad and not in a public highway; but, if such pipes are constructed in a public highway across the railroad's right-of-way, whether the public highway ex-