

File No. 8846 Continued.

OPINION.

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damages caused by P. Flanigan and Sons, I beg to say that the question seems to be whether the doctrine of recoupment can be applied or not. The damage was caused by P. Flanigan and Sons to the City's subway in the course of paving Marion street under contract. The contractor, under the terms of the contract is clearly liable for any damage so caused and his bond covers the same. I find no case where the doctrine of recoupment has been extended this far and as the amount of damages is unliquidated it could not be withheld under the theory of set-off. Even if there were a chance to justify the City in withholding this amount of damage under the theory of recoupment, it would hardly be wise to take chances in so doing and thereby give the contractor a possible right to claim that the City had not paid him according to the contract.

I therefore beg to advise you, that in my opinion, the amount of damage caused by P. Flanigan and Sons to the subway had best not be deducted from the monthly payment.

Very truly yours,

(Signed) W. H. DeC. Wright,

Assistant City Solicitor.

File No. 8846.

OPINION.

LAW DEPARTMENT.

Baltimore, October 16th, 1908.

B. T. Fendall, Esq.,
City Engineer.

Dear Sir:-

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I herewith enclose copy of a report from Mr. Wright in reply to your letter of October 13th, in reference to the claim against P. Flanigan and Sons, for injury done to one of the City subways. You will see from Mr. Wright's report that the Contractor, under the terms of his contract, is clearly liable for the damage done and that his bond covers the same. I would advise that the amount of the damage be not deducted from the monthly payment but that it be withheld from the final payment.

Very truly yours,

(Signed) Edgar Allan Poe,

City Solicitor.