

File No. 5358 Continued.

OPINION.

may be required by the Water Board during the year 1906, regardless of approximate quantities given".

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The contract also contains the following provision:

"RIGHT OF WATER ENGINEER TO ABROGATE CONTRACT. It is distinctly understood and agreed by the parties to this contract that if the contractor shall fail to deliver all or any part of such materials as it agrees to furnish and deliver hereunder within a reasonable time after an order has been placed for all or any part of said materials by the Water Engineer, or within such time as it herein agrees to furnish and deliver said materials, then the said Water Engineer shall have the right and authority to abrogate this contract or any part thereof, and purchase all or any part of the materials so ordered in the open market by contract or otherwise, and charge any difference in price which he may have to pay over and above that stated in this contract to the said contractor, and said difference may be deducted from any amount of moneys which may be due to said contractor, under and by virtue of this agreement, or if no moneys are due to said contractor under this agreement, then it, the said contractor, shall pay said difference to the Water Board; and it is further agreed that the Water Engineer shall be the sole judge as to what shall constitute a reasonable time to allow said contractor to furnish and deliver such materials as may be or shall be ordered under this contract".

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The contract also provides that deliveries shall be made "as may be required by the Water Board during the year 1906".

The specifications contain the following provision:

"DELIVERIES. IT is distinctly understood that the Water Board reserves the right in case the deliveries are not made within a reasonable time, and in case it is deemed necessary by the Water Board to properly keep up its work to order the material required from other parties, the successful bidder under this specification is to pay the extra cost of the fittings as ordered above his contract price; and the Water Board also reserves the right to reject, if it so desires, the materials ordered from the successful bidder if delivered subsequent to the time such orders are placed".

In view of the above provisions of the contract and specifications, it is, I think, absolutely clear that the Water Board is in no way bound by the approximate quantities of materials ordered, but is ab-

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tirely free to order as much less, or as much more as it in good faith requires during the year 1906, and the United States Company and its surety are both liable for a failure on the part of the Company to deliver the quantities actually ordered within a reasonable time after the orders have been placed. See National Building Supply Company vs. City, 100 Md., 188. I also think that the failure of the Company to fill the City's orders since April 1906 is, under the circumstances, and in view of the City's great need of the extra pipe, an unreasonable delay.

The City's remedies are as follows:

1. The Water Engineer can abrogate the contract and purchase the supplies needed in the open market by contract or otherwise, and charge