

File No. 10178 Continued.

OPINION.

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When, however, the specifications that you have asked me to interpret were prepared, the clauses which I have just quoted, as forming part of the first specifications, were omitted therefrom, and in their place we find positive language calling for only five-ply steel in connection with the flat and round bars for the cell fronts. This omission is, of course, most significant, and establishes conclusively the fact that, under the second set of specifications, only five-ply steel was to be used.

It is to be remembered, also, that the same bidders practically bid under the two different sets of specifications, and, therefore, were bound to know of the alterations that had taken place.

Great stress has also been placed upon the following expression appearing in the specifications, on page 2:

"In all cases of doubt as to the true meaning of drawings and specifications, the decision of the Inspector of Buildings shall be final and conclusive."

And it is now urged that, inasmuch as the Inspector of Buildings has decided that, under the drawings and specifications, tool proof steel other than five-ply can be used, his decision is final and conclusive. This contention is without legal force.

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Any such interpretation of the clause would render the clause void, as the effect of it would be to oust the Courts of all jurisdiction as to any matter whatsoever arising under the contract in question.

The Courts have frequently decided that such a result cannot legally be accomplished by any agreement between the parties. The clause, properly interpreted, confers upon the Inspector of Buildings the right and power to decide upon questions of fact arising under the specifications, - such as whether the five-ply steel that may be furnished is actually tool proof, - but does not clothe him with authority to determine the legal rights of the parties growing out of the legal interpretation of the express language of the specifications themselves.

In my opinion, therefore, as already stated, under the proper interpretation of the specifications, only five-ply steel can be used for the cell fronts and for the cell doors.

Truly yours,

(Signed) Edgar Allan Poe,

City Solicitor.