

File No. 10584 Continued.

OPINION.

for a large amount of pipe which has been delivered but which has not yet been laid in the ground.

8331

The contention of the Fire Commissioners is that the contract only provides for the payment, at the end of each month, of so much work as has been completed, and that the mere delivery of the pipe on the ground does not constitute completed work within the meaning of the contract.

At first sight this appears to be an entirely reasonable view, but, upon careful consideration of the contract, I have reached a different conclusion.

I am advised by Mr. Banks, with regard to the pipe which is in question, that the enclosed bill does not include anything like the entire amount of pipe on the ground; that he, as the Engineer in charge of the work, has approved of this pipe; and, further, that it is through his request that the contractor has delivered on the ground a very much greater amount of pipe than has been needed thus far in the progress of the work. This large delivery of pipe has been requested in order that the work may proceed promptly and that there may be no delay, after the streets are torn up, on account of the contractor's inability to procure the pipe.

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The provision of the contract in respect to payment, on page 35, says that "Payments will be made by the Board about the 20th of each month, upon the Engineer's certificate for contract and force account work completed during the preceding month." Therefore, if the delivery of the pipes in question may be considered as completed work, within the meaning of the provision quoted above, the contractor is entitled to be paid in accordance with the enclosed bill.

With regard to the completion of the work, - it is apparent, on a moment's consideration, that none of this work is completed until the entire job is finished. There is no reason for thinking that pipe laid in the ground and covered over with earth constitutes completed work, any more than pipe laid in the ground and only half covered, or not covered at all. No line of pipe is completed work until the entire system is connected and in a condition to operate. Therefore, the expression "completed work" cannot be given a literal construction. If it were, the contractor would get nothing till the whole job is finished. Especially is this true in view of the request of the Engineer that