

File No. 11703. Continued.

OPINION.

1911, and Tornado Insurance premiums from May 5th 1910, to May 5th 1911, the entire bill aggregating \$1848.50.

9371

Assuming the amount of the charges to be correct, it seems to me that the bill is a proper one. The situation is a peculiar one and does not appear to be absolutely provided for by the Specifications.

By the Specifications the contractor was bound to deliver and erect the machinery within seven months after the date of the signing of the contract. As the contract was signed on June 30, 1909, this seven months' period would have expired on February 1, 1910.

I understand that the machinery was ready by December 1, 1909, and if the City had had the foundations erected in order to receive the machinery, the complete erection of the machinery could easily have been finished by the time specified.

9372

On page 22 of the Specifications it is provided that 'if the machinery is ready for erection but the erection is delayed beyond the date specified by reason of a delay in the construction of the foundations, or of the building, the City shall pay a reasonable sum, not exceeding the actual cost for storage for said machinery.'

But the Specifications are silent upon the question of interest. It is clear, therefore, that the City is bound to pay a reasonable price not exceeding the actual cost for the storage of said machinery. In my opinion, as a matter of fairness and justice, it should also pay interest on the third payment.

9373

Under the contract the contractor was entitled to this third payment of twenty five per cent upon the completion of the erection of all the main engines. But for the fault of the City the engines would have been completely erected before February 1st and upon that date, therefore, the contractor would have been entitled to his money. It never was contemplated that the City could, by its action, indefinitely postpone the times of payment under the contract and that the contractor would be remediless.

The contractor, no doubt, took the chance of some slight delay on the part of the City in the erection of the foundations, but here, the delay has been most unreasonable, six months having elapsed from the time when, under the contract, the engines should have been