

tiffs and the plaintiffs at once proceeded to fill the order. No dispute arises before us as between the parties as to the filling of this contract, but it seems that later on defendants required some 24-inch pipe that they had apparently deliberately not asked the plaintiffs to tender for, and under dates of August 1st, 21st and September 9th, simply forwarded orders to plaintiffs for some pipe of such size, and in the latter order some of other sizes, and it is in respect of these orders that the dispute arises, the defendants trying to hold the plaintiffs to the price or quotation named in plaintiffs' letter of July 15th, the plaintiffs contending that the subsequent orders formed no part of the pipe tendered for; that the quotation of the 15th July was simply the beginning of negotiations that ended in a special tender for a specified quantity at special rates, and that as to these subsequent orders they are entitled to the fair rate prevailing at the time of the order.

The whole question turns on the correspondence. The learned trial Judge took the view contended for by the plaintiffs and, in my opinion, it was the sound view. One cannot read the correspondence without coming to the conclusion that the defendants, after receipt of the plaintiffs' quotation of July 15th, decided deliberately and carefully to say to them in effect that they were taking tenders for specified lots; that they did not want quotations for 24-inch pipe from them, but they did want 8-inch quotations, and in great detail asked plaintiffs to tender for specified quantities from 8 to 20-inch, and for caps, bends and junctions. This detailed request of defendants ended in a completed contract, and it does seem to me that it is not open to defendants to pick out a quotation in a letter in the beginning of the correspondence that so obviously was only a part of what was ultimately merged in a definite conclusion, and to say that that letter should be regarded as a standing offer as to prices of all pipe therein mentioned. It is apparent that pipe varies in price, and if defendants saw fit not to include the 24-inch pipe, or any other they might thereafter require in the contract concluded but to order it some time subsequently, I think they are obliged to pay the fair market price at the time of order.

I am quite in accord with the trial Judge's conclusions and I am of opinion the appeal should be dismissed with costs.