

9th, 1909, on the basis of the fair market rate at the time of the order.

The counterclaim of the defendants is that the price should be regulated by a quotation from plaintiffs contained in a letter written by them to defendants dated July 15th, 1909.

A perusal of the correspondence makes it clear that the defendants had determined on enlarging the sewerage system of the city, and in that connection were calling for tenders for a certain quantity of pipe, such tenders to be in on or before August 4th, 1909.

The plaintiff company's attention having no doubt been called to this, correspondence was opened between plaintiffs and defendants, the opening letter being from the plaintiffs dated July 15th, 1909. The one above referred to is simply an offer to supply first class pipe of the sizes of 10, 12, 15, 20 and 24 inches at a named price for each size, coupled with a hope that the contract would be awarded to them. To this the defendants replied by asking that a sample of pipe be submitted, and a correspondence commenced. Ultimately, on July 20th, the defendants in a letter of that date notified plaintiffs of the quantity and various sizes of pipe that they wished prices for, and accompanied the same with a specification in detail as to requirements, as well as notice to the plaintiffs that tenders were to be in by August 4th, 1909. It will be noticed by an examination of defendant's letter just referred to that they were by their specifications asking for 8-inch pipe not quoted in the offer of July 15th, and were not requiring any 24-inch pipe for which a price had been quoted. On August 3rd the plaintiffs offered to supply pipe as per specifications at 2% less than the quotations of July 15th, and on August 4th named a price for the 8-inch pipe mentioned in the specification but not in the quotation of the 15th July. On August 16th, the defendants awarded the contract according to the specifications, and on that day notified plaintiffs of the placing of the order again, giving the specific sizes and quantities and stating prices to be as quoted by letter of 15th with subsequent further statements as to price and to be according to specifications previously forwarded by defendants with their letter of July 20th. By a telegram following this letter defendants also notified plaintiffs that the contract according to defendant's letter of 20th July, had been awarded plain-