

change, alteration or addition made in or to such works, or in the said plans and specification, or by reason of the exercise of any of the powers vested in the Governor in Council by the said Act, intituled: 'An Act respecting the construction of the Intercolonial Railway,' or in the Commissioners or engineer, by this contract or by law, to claim or demand any further or additional sum for extra work or as damages or otherwise, the contractors hereby expressly waiving and abandoning all and any such claim or pretention to all intents and purposes whatsoever, except as provided in the fourth section of this contract."

The language of clauses 4 and 9 seem to put the contractors very much in the power of the engineer, enabling him almost to make or mar their fortune, as he should choose, that is, if, instead of discharging his trust conscientiously, he should permit the work to be slighted for their gain, or direct a needless outlay for their ruin. The danger was, however, not a real one. The practical effect of leaving so much to the discretion of the engineer has not been to contribute to the loss of the contractors.

The existence of such a power has probably given rise to a strong feeling against the nature of the agreement, in the minds, first, of contractors themselves, then of their friends, and so on, of their advocates and others; for this right to make changes, without increasing the bulk price, has, at last, come to be described before us as a downright cruelty to the helpless contractors, and the cause of much loss to them; and it has been frequently argued that, in view of this particular hardship, we should favor their claims for extras.

From the frequency of this complaint and the stringency against contractors which we found to be a striking feature of the written agreement, we expected to find some instances, if not several, where the engineer had insisted upon the contractor following new designs for completing the work, which had made it as a whole, much more expensive than the first design would have been, and we gave much consideration to the question whether an engineer could do that, and if so, to what extent, without giving the contractor a right to additional compensation; but it has become evident that there is really no such question in any of the cases before us. The rigid terms of clause 4 seem to have raised such a cloud of prejudice as to interrupt the view of ordinary observers and conceal the true cause of contractors' losses.

We find that the action of the engineers, the Railway Commissioners, and the Government, has been to diminish the work as a whole, so that in every case where the contractor completed his contract he got his price for less work, in some cases very much less, than, at the beginning, he was expected to do for it; and where the contractors failed to finish the work, the Government finally paid a larger sum than the bulk price for less work than was originally expected to be furnished for that price.

This result of the bulk sum system under which these contracts were let, is so contrary to what is evidently the prevailing opinion, that we felt called upon to scrutinize with more than ordinary care the facts and figures which led to the conclusions just stated.

With the special object of making a comparison between the amount of work originally estimated as requisite and that actually done on each section, we have taken pains to ascertain, as accurately as we found to be now possible, the various circumstances which seemed to us relevant to that subject; and in Schedule A hereto appended we have stated the result in figures.

That statement shows that the Government got for \$6,573,193, the aggregate of the sixteen bulk prices, work worth \$5,619,138, instead of specified work, which was originally expected to be done, and which would have been worth \$6,819,835, thus paying about 22 per cent. more than if the work had been procured at schedule rates, fixed according to the views of the contractors at the time the works were let.

If, therefore, it be, and we think it may fairly be assumed, that at the time of letting these sixteen contracts each contractor would have willingly undertaken the quantities requisite in each class of work on his section at the rates named in his