

the views which he should express. And if the engineer has not, by virtue of the agreement, authority to arbitrate concerning the value of work covered by the contract, still less could he have any concerning extras—that is, work altogether outside the bargain.

The written agreement shows, not only by this absence of authority in the Chief Engineer, but also by an express provision, that a different tribunal, namely, the Board of Commissioners, was nominated to decide the rights of the parties; for, besides the reference in clause 4 to the right of the Commissioners to decide on any allowance for increased work, due to change of grade and location, the latter part of clause 2 declares as follows:—

“And the Commissioners shall be the sole judges of the work and material, and their decision on all questions in dispute, with regard to the works or materials, or as to the meaning or interpretation of the specification or the plans, or upon points not provided for or not sufficiently explained in the plans or specifications, is to be final and binding on all parties.”

We must also refer to a contention of some of the claimants, that before the completion of the work it became the policy and intention of the Commissioners and their engineers, and through them of the Government, to allow the contractors to reap the full advantage of the diminution of work caused by changes of grade or location, though the contract specially provided that the value of the work saved by such changes should be charged against the contractor, and they also contended that this policy of relief extended to waiving the right to charge contractors with the omission of the wooden superstructure of bridges, which, under an agreement made subsequent to the contract, was to be deducted from their bulk price; in other words, that all reductions should enure to the benefit of the contractors. The Counsel for one of the claimants alleged, “that it was the settled policy of the Commissioners throughout to allow the contractors fair remuneration for any work they actually did in excess of what was anticipated, as it was also their uniform theory and practice that deductions should not be made against the contractors owing to a reduction in quantities due to a change in grade or line.” This puts the case for the claimant more strongly than the facts warrant, though there is no doubt that during the progress of the works some such policy concerning the diminution was foreshadowed by the Commissioners, and by the Chief Engineer, for it had become apparent to them that carrying out the respective contracts at the bulk prices would entail great loss upon many of the contractors. Individual Commissioners spoke of it at different times as a policy which they might adopt or not at their option, reserving to themselves the right of making, or not making, as they saw fit, a charge for these diminutions of work, according to the circumstances of each case, when the final settlement took place. It happened, however, that no more than four out of the twenty-three cases were finally settled by the Commissioners, and we have not attempted to learn whether any of them called for any specially favorable consideration towards the contractor.

At a sitting of the Privy Council, in May, 1871, Sir Hector (then Mr.) Langevin, had a conversation with Mr. Fleming, the Chief Engineer, the result of which was an official letter from the latter to the former on the 26th of May, from which the following is an extract. Of course the whole letter should be referred to, to see the full object and bearing of Mr. Fleming's remarks:

“There are several ways in which contractors may be assisted. I shall enumerate them:—

“1. The contract provides that 15 per cent. of the value of the work is to be retained in the hands of the Commissioners as the security of the performance of the contract. This percentage is altogether too heavy a reduction; it may be made merely nominal or wholly relinquished.

“2. Since the sections were placed under contract, more careful examination of the ground, especially on the rough sections, has enabled us, in many instances, to lessen the quantity of work to be done by changing slightly the location without in any way lowering the engineering features of the line. Wherever this appeared pos-