

The only exception to this understanding being a provision relating to iron cylinders, &c., in some of the schedules, by which it is arranged that in the event of iron cylinders or abordeaux or other specified substitutes being employed instead of masonry for culverts, an account would be taken of the work supplied and of the work omitted, on the basis of the schedule rates, and the difference charged or credited (as the case might be) to the contractor; while in the clause itself (No. 4 of the contract), under which the claim for increased work due to change of grade or location is made, it is provided, as hereinbefore set out, that for that increase the contractor shall be entitled to such allowance as the Commissioners may deem reasonable.

All this seems to us to make it plain that the schedule was intended not to be conclusive evidence of the rate to be paid for any increase or decrease in the work; and in the absence of any prescribed or other governing rate, we think the contractor is entitled to be allowed for the increase and liable to be charged for the diminution in each locality the true value of the work.

If the Commissioners had adjudicated on such value, their decision would have been binding under the terms of the contract; but, as they did not, we have, as before mentioned, considered it our duty to hear evidence on the value and to decide accordingly.

3. "Work beyond that originally designed and caused, not by change in grade or location, but by some other departure from the first plan, voluntarily adopted as an improvement and directed by the Government Engineers."

Concerning this work, the contention of the contractors may be shortly stated as demanding an extra price in each instance where a voluntary change of design increased the cost to them of any portion of the work, though in other places, or in other respects, such changes of design may have saved them more than that increased cost.

This is the class of work upon which most of the claims arise and upon which the widest difference of opinion exists between the Crown and the claimant. Whether a piece of work is outside the contract, that is, not covered by the bulk price, involves, of course, the question whether it is within the contract, and that brings us to the contents of the written agreement.

These contracts are all in substantially the same form. There are cases of slight variation, but they create no exception to the general views which we are endeavoring to explain.

Clauses 1, 4 and 9 of the contract are those which we think necessary to keep in view in deciding whether any particular work is within the contract. The clause which is numbered 9 in some of the contracts is numbered 10 in others.

Clause 1 is as follows:—

"The contractor shall and will well, truly and faithfully make, build, construct and complete that portion of the railway known as section , and more particularly described as follows, &c. : and all bridges, culverts and other works appurtenant thereto, to the entire satisfaction of the Commissioners, and according to the plans and specification thereof, signed by the Commissioners and the contractor, the plans whereof so signed are deposited in the office of the Commissioners, in the City of Ottawa, and the specification whereof so signed is hereunto annexed and marked Schedule A, which specification is to be construed and read as part hereof, and as if embodied in and forming part of this contract. But nothing herein contained shall be construed to require the contractor to provide the right of way for the construction of the railway."

Clause 4 we have already quoted (page 6) while referring to the increases of work due to change of grade or location. Clause 9 is as follows:—

"It is distinctly understood, intended and agreed, that the said price or consideration of \* \* \* \* shall be the price of, and be held to be full compensation for, all the works embraced in, or contemplated by this contract, or which may be required in virtue of any of its provisions, or by law, and that the contractors shall not, upon any pretext whatever, be entitled, by reason of any