

"3.-The said works shall be completed by the first day of January, one thousand eight hundred and eighty nine."

The contract passed between the contractor and the company, being the contract mentioned in the second section which has just been cited, contains the following stipulations :—

"1. The contractor shall furnish, at his own cost, all the labor and every kind of labor, machines, tools etc. required in the construction of the said railway, and all this conformably to the plans and specification already prepared, and which may be hereafter prepared, for the purpose of the said works.

"2. The materials to be employed in the construction of the works shall be the best of their respective kinds, and the works must be carried out in the manner customary with skilful workmen, and all in a manner strictly in accordance with this contract and with the specifications thereto annexed, and with the plans and drawings which shall be in the future prepared and furnished by the contractor and approved by the engineer of the company, and which shall be executed to the entire satisfaction of the said engineer.

"3. The engineer shall be the sole judge of the quality and quantity of work done, and his decision and his measurement shall be final and conclusive between the railway company and the contractor."

Mr. MacFarlane cannot ignore or repudiate these latter stipulations, which are as binding upon him as upon the principal contractor.

By order of the engineers of the two governments, certain changes were made in the alignment of the railway ; but this did not increase to any sensible degree the cost of the works. There were also some alterations judged necessary by the said engineers in the length of the arch spans on some of the bridges. The company at once accepted all the changes.

Under his contract the contractor was obliged to follow the instructions of the said engineers. But the contractor MacFarlane refused to execute these works. He had no right to any additional guarantee from the company on account of these changes. Besides, the possession of the road to which he had a right under his contract was sufficient guarantee for him. It behoved him to complete the works in accordance with the terms of his contract, and then to produce a full and detailed statement of his expenditure in the construction of the road, accompanied by vouchers, in order to establish whether or not the amount of the subsidies which had been transferred to him was sufficient to satisfy his claim.

Now Mr MacFarlane has not perfected his work, as is established by the reports of the engineers of the governments (D) ; and he has refused to furnish to Mr Armstrong, the principal contractor, a detailed statement of his expenditure, as