do the asphalt work any more than the steel or carpenter work, merely because the work was shewn upon the plan. The defendants' engineer, under the power given him by the contract, assumed to determine that the plaintiff's contract called for this work, though not mentioned, by reason of a clause making the drawings part of the specifications and providing that work shewn by the drawings shall be done even if not called for by the specifications. That is not the effect of the clause. If the contract were to do all the work so that the contractor was bound to deliver a structure in accordance with the plans he would be bound to do all shewn by them. But, where the contract is to do only part of the work shewn by the plans, this clause does not compel the contractor to do more than the concrete work.

The defendants, acting on the engineer's view, had this asphalt work done by the Canada Floors Company, at a cost of $2,450, and deducted this from the price payable.

The contract provided for the determination by the engineer of all questions as to the matters covered by the contract; but he could not, by an erroneous construction of the contract, give himself jurisdiction over matters not covered by it. He could not go beyond the matters as to which the parties agreed to give him jurisdiction, nor could he deprive the Court of the right and duty of determining the limits of his jurisdiction: Faviell v. Eastern Counties R.W. Co. (1848), 2 Ex. 344, 350.

Produce Brokers Co. v. Olympia Oil and Cake Co., [1916] 1 A.C. 314, distinguished.

It was not alleged that there was fraud upon the part of the engineer; but it was obvious that in truth he was called upon to perform a delicate task. The specifications, for which he was responsible, were misleading if the intention was that the plaintiff should do the asphalt work. If there was no separate contract for it, the defendants might well complain, for a serious item of cost had been overlooked. In either case an element was introduced which should disqualify the engineer from making a determination: Eckersley v. Mersey Docks and Harbour Board, [1894] 2 Q.B. 667, 671; Bright v. River Plate Construction Co., [1900] 2 Ch. 835.

Even if the conclusion were reached that the engineer, under the guise of interpreting the contract, had the power to compel the contractor to do something outside the contract, the plaintiff would not be bound by the engineer's decision, for the reason that he was disqualified.

There should be judgment for the plaintiff for $1,500 and $2,450, with interest on the latter sum from the 31st August, 1914, and costs of the action.