but, apparently, that is only because the contractor did not wish to take it until a final settlement could be had.

The dispute, in almost every one of these cases, relates exclusively to work which is claimed to be extra, that is, outside the contract and not covered by the bulk price; and it may be classed as follows, that is to say:—

1. Work entirely outside the contract and which, without infringing the rights of either party, might have been let separately to any other person as well as to the contractor.

2. Work beyond that originally designed and caused by change of grade or location.

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

4. Work beyond that originally designed and caused, not by change of grade or location, nor by any desire on the part of the Government or its officers to depart from the original plan, but because the physical features in the locality (being different from those anticipated) made a change unavoidable, and work was, therefore, done of a kind or a quantity different from that of the first plan.

We take up these classes in the above order:

1. "Work entirely outside the contract and which, without infringing the rights of either party, might have been let separately to any other person as well as to the contractor."

We have, without hesitation, allowed what, from the evidence, appeared to be a fair value for work of this kind. We have treated it as work independent of, rather than an addition to, or an alteration from, that covered by the contract; but we have found that most of the work claimed as being within this class was really within class 3 or 4, to which we refer at length hereafter.

2. "Work beyond that originally designed and caused by change of grade or location."

This is extra work in one sense, because it increases the bulk price; but it is not unprovided for in the contract. It is referred to in clause 4 of that document as work to be done, and for which a reasonable allowance should be made. Clause 4 contains the following:—

"The Engineer shall be at liberty, at any time before the commencement, or during the construction of any portion of the work, to make any changes or alterations which he may deem expedient in the grades, the line of location of the railway, the width of cuttings or fillings, the dimensions or character of structures, or in any other thing connected with the works, whether or not such changes increase or diminish the work to be done, or the expense of doing the same, and the contractors shall not be entitled to any allowance by reason of such changes, unless such changes consist in alterations in the grades or in the line of location, in which case the contractors shall be subject to such deductions for any diminution of work, or entitled to such allowance for increased work (as the case may be), as the Commissioners may deem reasonable, their decision being final in the matter."

This declares that the decision of the Commissioners on the amount to be allowed shall be conclusive; but in most cases there was no attempt to settle it in that way, and we have treated it as an open question, to be dealt with according to the evidence.

In arriving at the amount to be allowed in any case for this work, whether decided by the Commissioners in their day, or by any other tribunal in the present, or in the future, it is manifest that two distinct subjects must be taken into consideration, namely, the quantity of the work and the rate at which it is to be paid for.

First, as to quantity. It is an increase of work caused by a change of grade or location which is to add to the bulk price. Increase over what? It is plain that altering the grade or location on any particular portion of the line might diminish