

APPENDIX No. 3

referred to a circular letter of instruction issued by his predecessor, Major Hodgins, directing the engineers to allow, under the circumstances mentioned in the circular, for frozen material as loose rock, in order to forward the progress of the work; and Mr. Poulin says that being himself instructed by the Chief Engineer to press forward the work in the autumn of 1907, when he went there, he authorized in several cases the allowance of frozen material as loose rock in the interests of the work, and where it was deemed necessary for that purpose. It is pointed out that the season in district 'F' is very short, that the ground is frozen for many months of the year, and that where rock and earth alternate, it would not be economy to delay the progress of the work of excavation because of the increased cost of removing frozen earth where necessary to enable the contractor to get at and remove rock, even if the frozen earth is paid for at loose rock prices. Whatever view may be entertained as to the propriety of these payments there is no controversy between Mr. Lumsden and the engineers as to allowance of frozen material, and he has not himself in any case complained of it. Nor does it, so far as I am aware, form a subject of any complaint on the part of Mr. Woods, representing the Grand Trunk Pacific.

3. The allowance for frozen muskeg in some instances, objected to by Mr. Lumsden, is somewhat similar, but rests upon a different ground. It is pointed out by Mr. Poulin and Mr. Richan that in two or three cases the material consisting of muskeg was so wet during the summer months that the men could not stand in it and work it, and that the only way of getting over the ground was to excavate it in winter when it was frozen; and that being done as winter work, it was properly the subject of allowance as loose rock under the definition contained in clause 35.

The specification does not contain any special provision with regard to frozen material except that contained in clause 16, which provides that the contractor shall at his own cost remove snow and ice from any portion of the work, whenever deemed necessary by the engineer. If frozen muskeg is not loose rock under clause 35 it would fall within the clause which provides for a price being fixed for undescribed material.

4. The allowance of loose rock price for indurated material in borrow pits near Wabigoon and upon some cuttings near the same locality, is given a good deal of space in the evidence by Mr. Lumsden and by Mr. Poulin. It was reported to Mr. Lumsden by Mr. Poulin at the time, and his reasons for the conclusion at which he arrived were given. In this case the contractor was allowed, for the material removed, one-half the total quantity at loose rock price, and one-half as common excavation.

Whether Mr. Lumsden or Mr. Poulin is right in this matter, the difference is a comparatively small one, and it is really not the one which Mr. Lumsden refers to in his statement as the reason for his having lost confidence in his engineering staff.

The real question was the question of the allowance of rock in masses, and it is apparent from the evidence as a whole that even when Mr. Lumsden gave his evidence he was not prepared unreservedly to give effect to his own interpretation with regard to the meaning of what he called assembled rock, but that his view was that the assembled rock, or rock in masses, should consist almost wholly of fragments of rock, and that boulders cemented together, no matter how closely they might be found in the material, would not constitute masses of rock, in his view. As he expresses it, in more than one place in his evidence, he had in his mind the practice under previous contracts and specifications in which rock meant rock and nothing else; but it is apparent from the interpretation of Mr. Lumsden and his evidence that the term 'solid rock' as used in clause 34 of the specifications, is a mere collective term and means the various things which are included within the definition, just as 'loose rock' under clause 35 includes many things which are not, in the strict sense of the term, loose rock at all. Cemented gravel and indurated clay are not, in the proper sense of the term, loose rock, but they are loose rock within the meaning of the specification; and 'solid rock' includes materials which are not solid rock in the ordinary acceptance of the term.