bationary drawings, all agreements should clearly set out the terms on which they are to be provided. If it is intended that the engineer should make a charge for such preliminary work under any circumstances or in any event for work actually done, a special clause should be inserted to that effect, and it is also advisable that a special provision should be inserted as to the ownership of the plans. Generally, it is laid down that an engineer or architect is to be paid for the use of his plans only, the documents remaining his property. There is really no law on this point, and a prevailing custom, if reasonable, would govern.

No question of the nature or extent of the engineer's authority arises where he is merely employed to prepare and sell his plans for a certain sum. It is where he is engaged to superintend the erection or completion of certain works that he becomes the agent of his employer generally, and a question which very frequently arises in litigation as to the extent of the architect's authority, is answered very unsatisfactorily by the broad statement that he is the general agent of the employer within the contract connected with the erection of the works. The usual contract between employer and contractor, as you are aware, states that the work must be done to the satisfaction of the architect or engineer and provides for his certificates, etc. The authority of the engineer is usually expressly given. Sometimes, however, it can only be inferred from the acts of his employer, and in this case the general rule is that the extent of the engineer's authority is as between the employer and contractor to be measured by the extent of the engineer's usual employment. As a general agent, therefore, the engineer has the apparent authority due to his position, and the employer is bound by his acts within that authority, notwithstanding specific instructions restricting that authority which are not known to the builder. The engineer is only the agent for his employer to see that the work contemplated by the contract is carried out properly. He cannot unless he has authority to do so, bind his employer to pay for additional work. Where therefore extra work is done by order of the engineer, the contractor must show authority in the engineer to give directions for extra work. Where the limits of the engineer's authority are clearly set out by express terms in the agreement between the employer and the contractor, the authority must be strictly followed, as the employer will not be liable for the acts of his engineer unless the authority be duly followed by him. At the same time, the courts are so far liberal in construing the authority given to agents that they held it to include permission to use all necessary, or even usual means of carrying out the main intention of the agreement in the best manner.

It is another general principal of the law of agency, which applies to engineers, that an agent cannot delegate his authority. Delegata potestas non potest delegari. For where a man employs another to do work for him he relies upon his ability, and it is not competent to that person to get another to do his work; but this must not be construed as a prohibition to the engineer to employ necessary people under him. For instance, the engineer might be justified, and ordinarily would be justified, in employing a surveyor to take out quantities. The rule simply means that an employer has a right to rely on the personal qualifications of the engineer and not to have the qualifications of some other persons substituted for them.

It would be well for you to bear in mind that an engineer, who orders materials or does some act professing to act for his employer, impliedly warrants to the other contracting party that he possesses the authority that he presumes to exercise, and he becomes liable to an action for breach of such warranty; so where an engineer represented to a contractor that he had authority to order certain building materials, and he had no such authority from his employer, he was held to be liable to the builder for their value, and it was also held that it did not make any difference whether his representation was fraudulently or bona fide made. To heap up the misery of the engineer, it was held that the builder could recover against him as damages the costs of the action which he had brought against the supposed employer, which action he had lost, it being held in that action that the engineer had no authority to bind the builder, Consequently, the builder had no action against the corporation, but the expense and damages and costs that he had suffered were held to be a proper charge against the warranting engineer.

As a general rule in building contracts it is usually a condition precedent to payment that the work shall be completed to the satisfaction of the engineer. In this case the right of approval must be exercised in a reasonable and not in an arbitrary or capricious manner. Such cases receive reasonable construction, and a jury would in case of dispute be asked to settle whether the employer ought reasonably to be satisfied with the work, and if so, payment would follow. Of course it is possible to provide by the use of proper and specific words that the architect's approval shall be quite arbitrary, and then no matter how unreasonable and oppressive the stipulation may be, the only restriction upon the right is that it must be exercised in good faith and not merely for the purpose of defeating the contract. In one case a clause provided that if the works did not proceed as rapidly as the engineer required, the engineer would have power to enter upon the works, pay off whatever number of men should be left unpaid by the contractor, and set other men to work, the amount so paid to be deducted from any moneys which might be due to the contractor, and it was held that the intention of the parties was to enable the employers, if dissatisfied, whether with or without sufficient reason, but so long as they were acting under a bona fide sense of dissatisfaction, to avail themselves of the terms of this proviso.

It is customary in building agreements to provide for certificates in writing of the engineer. When the agreement contains the usual provisions, these certificates are conditions precedent to the right of the contractor to payment, and the court cannot dispense with them unless there is some conduct on the part of the engineer or employer which would make it inequitable to insist on them. Therefore work which has been done under the supervision of an engineer, but not to his satisfaction, cannot be charged for by the contractor where there is the usual agreement calling for certificates and the engineer sees fit to withhold same. On the other hand, when the engineer has given a certificate, it is conclusive upon the employer, and the engineer cannot vary or repeal it.

There is a distinction between progress certificates and final certificates. Certificates given during the progress of the work merely control payments made by way of advance to the builder. These certificates are simply statements of a matter of fact, such as the weight and the contract price, and the materials actually delivered from time to time upon the ground. The payments made under these certificates are altogether provisional and are subject to adjustment or readjustment at the end of the contract. Final certificates are those which are given when the whole contract has been carried out to the satisfaction of the engineer. By virtue of these certificates the balance of the contract price is ascertained and becomes payable.

The principles governing the duty and authority of an engineer, as to extras, may be broadly stated as follows: First, it should be noted that where a contract provides that no extra work should be charged for, unless it has been previously authorized in a particular manner, such a provision, unless legally waived by the employer, must be strictly followed in order to enable the builder or contractor to maintain an action for extra work. For instance, if it is stipulated that no extra work shall be paid for unless the contractor previously obtains an order in writing, a verbal order will not be sufficient. Again, if the clause stipulated that for all extra work written instructions shall be given by the engineer, mere oral directions of the employer cannot sustain a demand for extra work unless the order amounts to an altogether new contract. And if the contract provides that all extras or additions shall be paid for at such price as may be fixed by the engineer, then the engineer's certificate is conclusive, not only upon the question whether these