

9-10 EDWARD VII., A. 1910

Another security, however, was provided for ensuring the due performance of the contract, in the arrangement referred to in the evidence, by which the construction of the railway is made subject to the supervision of the Chief Engineer of the Grand Trunk Pacific Railway Company. This is provided for in the contract between the government and the company, contained in the schedule to the statute of 1903, chap.71.

Section 7 of the contract is as follows:—

In order to ensure, for the protection of the company as lessees of the eastern division of the said railway, the economical construction thereof in such a manner that it can be operated to the best advantage, it is hereby agreed that the specifications for the construction of the eastern division shall be submitted to, and approved of by, the company before the commencement of the work. And that the said work shall be done according to the said specifications and shall be subject to the joint supervision, inspection and acceptance of the Chief Engineer appointed by the government and the Chief Engineer of the company; and, in the event of differences as to the specifications, or in case the said engineers shall differ as to the work, the questions in dispute shall be determined by the said engineers and a third arbitrator, to be chosen in the manner provided in paragraph four of this agreement.

Before passing from this section it will be observed that in the first place it provided for the submission to and approval by the company of the specifications for the construction of the eastern division before the commencement of the work; according to the evidence this was carried out, and the specifications—some clauses of which are under consideration in this inquiry—were submitted to and approved by the Grand Trunk Pacific Company before the commencement of the work.

The second part of the section—as to joint supervision and inspection—has been carried out, according to the evidence, by the appointment of an engineer on behalf of the Grand Trunk Pacific Railway Company to supervise the work of construction of the eastern division with district engineers, on each of the districts in question here.

It appears from the evidence that there were district engineers representing the Grand Trunk Pacific Railway Company each having special charge of District 'B' and of District 'F,' who were upon the work from the beginning of construction, and who have had submitted to them the plans, measurements and returns for all work during the progress of construction up to the present time.

The evidence of Mr. Gordon Grant, now the Chief Engineer of the Transcontinental Railway Commission, shows the present position of the arrangement between the Commission and the company with regard to the payment of the contractors. So far as the two districts are concerned, he states that the points in dispute are comparatively unimportant in number or amount; that a great many of them have been satisfactorily agreed upon by the engineers representing the two parties; and that those that have not yet been settled are in course of adjustment.

Should an adjustment by the engineers not be arrived at, the sections of the contract which relate to the settlement of any dispute provides for the appointment of a third arbitrator by the Chief Justice of the Supreme Court of Canada.

Before referring to the evidence, it will be convenient to refer to the clauses of the specifications which have been the subject of the discussion in Mr. Lumsden's evidence and that of the other witnesses. The evidence turned upon the clauses as to classification, which are as follows:—

CLASSIFICATION.

33. Grading will be commonly classified under the following heads: 'Solid Rock Excavation,' 'Loose Rock' and 'Common Excavation.'