

whose cases had been presented to him, we did not find a general disposition to call witnesses again or to adduce testimony of any kind. Some were indifferent about it; some gave the expense as a reason for not doing so; and several, on learning that we were authorized to consider the evidence which he had heard, proposed to rest their case on that, and asked us to report without further testimony. We found, however, that what was recorded as having been adduced before Mr. Shanly, did not, in many cases, convey to us the information which we thought necessary to a proper understanding of the matters in question, and we decided to hear more before coming to a conclusion on the rights of the parties. Under these circumstances we offered to pay the expenses of persons who should attend and give material evidence.

We did this the more readily because it seemed to us unfair that any claimant should be asked to bear that outlay without being, and he was not, in a position to recover it back, as a matter of right, should our judgment be in his favor; the expenses to be so paid to be fixed, as nearly as possible, according to the tariff of fees for witnesses in the courts of justice.

We notified each claimant that, before reporting, we would consider the evidence taken before Mr. Shanly as fully as if it had been given before us, attaching such weight to it as it might seem to deserve; that we would hear all such witnesses as he or the Crown might desire to have examined, as well as any others whom we should think necessary; and that we would be ready to hear argument on all the evidence, whether given before us or not.

This was followed, as a rule, by the respective claimants coming themselves, and bringing their witnesses to be examined; and generally, but not always, they were represented by counsel.

As might be expected, we have been met by conflicting evidence. Through this we have made our way as well as we could, leaning always, as we believe, to the side of the contractor. In finding our facts we have not followed the guide recognized in courts of justice. There the maxim is "*Potior est conditio defendentis.*" But we have acted on the opinion that to give the claimants the benefit of every reasonable doubt would serve the object of our commission better than to leave it questionable whether he could not get, before some other tribunal, a more favorable verdict. We think, therefore, that no claimant can, as far as facts are concerned, present a better case than we have assumed for him.

The difference of opinion, however, between the Crown and each claimant was not nearly so great on matters of fact as on the principles by which their respective rights should be determined. The main disputes were on the interpretation of contracts under which the construction of the railway, up to formation level, had been undertaken. This construction had been accomplished by dividing the railway in twenty-three sections, for each of which a separate contract was made. As to four of them, the contractor's claims were settled amicably by the Railway Commissioners; as to two, no claim was made beyond the amount paid to the contractors; as to one, the amount to be paid was decided by arbitration; the remaining sixteen gave rise to demands still unsettled, and which are amongst the cases referred to us.

The claims which relate to matters other than this construction are, comparatively, unimportant; and the principles on which they have been decided, having been sufficiently explained in the special reports relating to them, they require no notice here.

On the contract for construction, however, the claims are so large (in all, nearly \$4,000,000) and the same questions have arisen so repeatedly, that, in addition to what we have said about each claim in its special report, we think it well to state here, in a collected form, the opinions which have governed us through all those cases, and the reasons on which the opinions are founded.

Each of these contracts was based on a bulk price for the work undertaken. It is needless to say that the Crown has not refused to pay the balance due to any contractor, according to the view of the Government on the agreement or agreements made with him. There are instances in which a portion of the price remains unpaid,