changes, or if they cannot agree in the changes the dispute between them shall be settled by W. N. Ferguson, and his decision shall be final as to what changes shall be made." There are other provisions not material to be mentioned.

The plaintiff discharged his caution and action; the defendant went on with his option. In July he asked the plaintiff to permit a change in the work, which by the contract between them was to be done in July, but by the "option" could be done in August. The defendant refused unless $2,000 were paid into the bank as security that the work would be done—the plaintiff refused this—Mr. W. N. F. being spoken to said he thought the plaintiff's condition perfectly fair. F. was never applied to, to make or decide any changes in the contract under clause 6, above quoted. It would be difficult, but not at all impossible, for the defendant to have done the work in July, as agreed, the evidence of the plaintiff is to be fully accepted. All parties know that the company rued their bargain, and would get out of it if they could. Accordingly when the defendant failed to do the work in July, the plaintiff made up his mind to do it and took tools on the ground for that purpose —this, of course, under clause 4. He also tried to sell, but failed—and he did not in fact do the work required or any of it. The company cancelled their option, and the plaintiff sues for $5,000 and interest from October 20th, 1911—the writ is issued 29th March, 1912. The statement of defence sets up that it became necessary to make changes in the contract, but the plaintiff refused to submit the matter to Mr. W. N. F.—that the defendant was prevented from doing the work by a conflagration—that the $5,000 is a penalty—that the plaintiff suffered no damage, and that in any case there is nothing payable till June, 1912, and, therefore, the action is premature. The plaintiff joins issue.

I find upon the evidence that there was no refusal or request to submit to Mr. W. N. F.; no prevention of the work by the conflagration, and the questions of law now remain.

In addition to those set up in the defence another was raised at the trial, viz., that the provisions of clauses 3 and 4 are alternative—and the plaintiff has taken that relief given by clause 4.

An examination of the contract shews its purpose—the defendant was to do the work, etc., a month before the time that his option with the company called for, so that in case