On behalf of the contractors, who would be naturally desirous of showing the work done at as high a value as possible, it might be suggested that wherever the estimated quantities happened to be exceeded in some particular class for which the schedule rate was too low, then the proper course would be to apply to that class, on both sides of this account, such a higher rate as the evidence shows to be the true value; even that method, we find, would do no more than diminish (and in most cases but slightly) the percentage by which our schedule shows the intended work to have exceeded the executed work.

By whatever method we endeavor to make the comparison, the main result is the same—the executed work is decidedly less than what was originally expected to be done.

Returning now to the contents of the written agreement, clauses 4 and 9 read as if there was no limit to the changes which the engineer could order and still keep the work within the bulk price; but that would not be common sense, and contracts are not interpreted contrary to common sense. However strong the language of the agreement, there would be some difficulty in holding that there was no limit to the bounds within which a contractor could, for a stated price, be required to furnish a property more expensive to himself and more valuable to the country than the Government intended to acquire, and than he intended to supply when that price was agreed upon.

We do not say that a valid contract could not be made, by which the contractor could, at the direction of the engineer, be forced for his bulk price to supply work which, on the whole, would be somewhat more costly to him than that contemplated by the original design, for agreements expressly providing for such a result are not uncommon.

In other countries, contracts for building railways are made, in which it is plainly declared that the engineers are authorized to make such changes as they may deem expedient, the contractor to bear the whole cost, though it should exceed that of the first design. It is usual, however, to limit the loss to a stated percentage beyond the cost of the first design.

"Vose's Manual for Railroad Engineers," a work much used in the United States, gives a form of specification which is stated to be "prepared from the specifications used in the construction of some of our largest railroads." In that form 20 per cent. is given as the limit beyond the cost of the first design, up to which the contractor is to bear the whole cost of any new design.

We have had the opportunity of seeing a form of contract (with specification) recently entered into for the construction of a railway in the State of Michigan (the Jackson, Lansing and Saginaw extension) embodying similar terms, and, in almost the same language as that of "Vose's Manual," and in which 20 per cent. was adopted as the limit, up to which the contractor was to bear all increase of cost over that of the first design. We have also received evidence from experienced engineers that a similar system is practised in Europe; though the percentage of increased work is not, generally, so great there as in the case to which we have just referred.

In the form adopted for the Intercolonial Railway, a limit is not named, probably with the intention of allowing the engineer to go as far, in changing the design, at the expense of the contractor, as common sense and his judgment of what was fair would permit him; but whatever the intention, a question might arise, and in our opinion, especially in view of the language of clause 1, it would be open to argument, whether omitting to state a percentage up to which the contractor should bear the loss would not have the effect of bringing down the limit of his outlay to the cost of the first design as a whole.

Inasmuch, however, as we have, as already stated, found no case where the engineering changes of design have entailed on the contractor an outlay greater than that, it follows that we need not decide whether exceeding that limit would, under the form of these contracts, cast any liability on the Crown.

Where the comparative cost of the first and the later designs is understood to be a material element in the transaction, as it would be under such contracts as those