Upon every or any such reference the costs of and incidental to the reference and award respectively shall be in the discretion of the referee who may determine the amount thereof or direct the same to be taxed as between Solicitor and Client or as between party and party, and shall direct by whom and to whom and in what manner the same shall be borne and paid.

First it is clear that the question, dispute, or difference, which is to be referred to arbitration is one which may be between the employer and the contractor, or between the architect and the contractor. In *Robins* v. *Goddard* where the words used were substantially the same it was held that an employer when sued by the contractor was entitled, because of clause 32, to dispute the finality of the architect's certificate. Secondly under clause 26 of the present contract, the arbitrator is given power to open, review, and revise any certificate, opinion, decision, requisition or notice, save as expressly excepted by clause 25 *as if no certificate etc. have been given.* In this contract as well as in the British contract, this power of the arbitrator has a limitation. In the British contract the limitation was "except as to matters left to the sole discretion of the architect" under certain clauses in the contract. In the present case the arbitration clause extends to all matters or things arising out of the conditions or relating thereto "not otherwise distinctly provided for by any of the foregoing clauses of the conditions." Clauses 25 and 26 are, therefore, fully as wide as Clause 32 of the British conditions.

In the British contract there is an express provision that no certificate of the architect shall be considered conclusive evidence as to the sufficiency of any work or materials to which it relates, or should relieve the contractor from the liability to make good all defects as provided by the agreement.

There is no similar clause in the present conditions but there is no provision in any of the clauses of these conditions which makes the certificates issued by the architect final. Mr. Haddow has submitted that certain of the clauses produce this result and he cites in particular clauses 19 and 20. Clause 19 gives to the contractor a right to sue for the amount of an overdue certificate and entitles him to charge interest on the amount, but it does not state that the certificate is final and conclusive. Clause 20 provides for a certificate of completion, but in neither of these clauses nor in any of the other conditions relating to certificates to be given by the architect, is there any "distinct provision" taking a dispute in reference to such certificates out of the ambit of the arbitration clauses.

The specifications annexed to the conditions in the present case provide that the works are to be executed to the "entire" satisfaction of the architect. These specifications are expressly subject to the conditions of the contract. There is no statement in the specifications which makes a certificate that the work is done to the satisfaction of the architect conclusive. In the British conditions the works had to be executed to the reasonable satisfaction of the architect. Under both the British conditions and the present conditions the employer is, no doubt, bound by many acts of his architect, for instance, when the contract contains, as the present contract does, power to the architect, as agent of the employer, to authorise extra works, or deviations from, or variations of the contract, the employer cannot dispute the agency of the architect, but as regards the price to be paid for extra works or to be allowed for deviations or variations, these matters are within the arbitration clause. The arbitration clauses apply equally to a dispute by the employer where a certificate has been given, and to a dispute by the contractor when a certificate is refused. In my opinion the object and meaning of clauses 25 and 26 is to enable either party to go to arbitration upon any matter which is not otherwise distinctly provided for in the conditions. I am of opinion, therefore, that Robins *v.* Goddard applies to the present case. There the contractor sued the employer for the money due on the architect's certificates including the final certificate. The employer was held to be entitled to dispute his liability upon the certificates and to counterclaim in respect of defective work and materials and for the cost of re-executing work which was thus defective. The substantial ground upon which Mr. Justice Farwell's judgment was reversed, was, as appears from the judgments of the Master of the Rolls, and of Lord Justice Stirling, that the arbitration clause entitled the arbitrator to revise, review, and reopen the matter as if no certificate had been given. The same power is given to the arbitrator here, and I adopt the words of the Master of the Rolls "if something which purports to be conclusive is made subject to revision, it loses its quality of finality, that is the case here, where the decision of the architect is made subject to the decision of an arbitrator."

Council Meeting

A meeting of the Council of the New Zealand Institute of Architects was held on October 3rd, 1916, when the following were present:— Mr. W. A. Cumming (president); Messrs. Wm. C. Chatfield and A. Atkins (past presidents); W. Crichton (vice-president); S. Hurst Seager (Canterbury); E. W. Walden (Otago); J. H. McKay, C. A. Lawrence and J. Charlesworth (Wellington); J. S. Swan (hon. treasurer); W. Gray Young (hon. secretary); and the Secretary.

Proxies were lodged by Messrs. P. J. Wales and B. B. Hooper in favour of Mr. Walden. Apologies for non-attendance were received and accepted on behalf of Messrs. Hooper, Wales, Clarkson, Hart, Wilson, Goldsboro' and Allsop.

On the motion of the president the minutes of the previous meeting which had been mimeographed and circulated, were taken as read and confirmed. The minutes of an extraordinary meeting held on the 4th September last, were reported and adopted.

Correspondence.

Mr. E. E. Gillman wrote asking the Council to advance him to the rank of Fellow. The secretary was instructed to reply pointing out that the application must be made through the District Branch to which the applicant belongs. Mr. Gillman was therefore referred to the Auckland branch.