

warehouse 1, if plaintiffs had not consented to accept the lower figure fixed by the defendants, \$516.55."

Kelly says that in the office of the defendants' company, in talking to me of their foreman in June, he, Kelly, asked that the defendants taken over these supplies at what they had cost the plaintiffs and "they said they would take over the hay and the oats." I understood them to say they would take it over at what they charged us for it with the freight added." Sometime thereafter he got a "credit slip" from the defendants' bookkeeper, Ex. 3, and said the amount allowed was too low: "I didn't say I wouldn't accept them. I said the prices were low. I don't think we made any price." Nimmo the accountant swears that Kelly refused to take the price the defendants offered, and that McAffray, the foreman, then said: "Well, they can't stay here." McAffray says Kelly "told me they had some hay and oats at South Bay, and he asked me if we would take them off his hands. I told him we would and allow him what it would cost us to replace them. I told Mr. Nimmo the nature of the conversation, who instructed us to see that it was carried out. But the next time I saw Mr. Kelly at Nepigon he refused that altogether and said he wouldn't accept it," and McAffray said he wouldn't take them. The defendants did not, it would seem, ever receive the hay and oats—but O'Brien & Co. took them. I do not think on this evidence there was any sale—nor indeed does the Master find there was, his finding being that the defendants were bailees. What I have said on the large item of \$1,734.24 applies to this in that view.

The Master has allowed to the plaintiffs also, in an indirect way, for other "goods supplied by the defendants to the plaintiffs for the purposes of and in connection with the said contract, which expenditure became wholly useless to the plaintiffs owing to the defendants' breach of contract. These amounts appear to items Nos. 100 to 131 inclusive . . . and instead of adding the amount to the damages assessed," he has "disallowed the items in question in dealing with the defendants' account." this is wrong for reasons I have already stated.

The amount of these, reducing No. 112 to \$57 and deducting No. 116. \$1,500 is \$1,030.36.

The report should be amended by allowing to the plaintiffs the following sums in the first column and disallowing those in the second:—