

finding out where "such ties" could be obtained: but that they undertake that responsibility themselves.

The permits were not furnished, the plaintiffs did not perform their contract accordingly, but were prevented from doing so, and they are entitled to damages.

I cannot say that the Master is wrong in his estimate of damages properly attributable to this head. There are, however, two matters which require consideration.

First the Master has made a mistake in his figures, he has made the remainder found by subtracting 75,000 from 225,000 to be 155,000 instead of 150,000. His figures must then be reduced by \$150 (i.e., 5000 ties @ 3 cts. = \$150). Then he had allowed the plaintiffs \$1,00 for "expenditure upon camp buildings, etc., which became useless by reason of the defendants' breach of . . . contract." What the Master says is this:—

"They (i.e., the plaintiffs), had erected the necessary buildings from which to carry on operations and had cut roads as required. These buildings are valued by Mr. Bliss at \$700, and the roads at \$100 a mile or for 3 miles which was the approximate length, \$300, making together \$1,000. They had also bought and forwarded to their camp over \$2,000 worth of supplies. Mr. Bliss says that Donnell the plaintiffs' foreman was a good competent man. It never could have been contemplated that the plaintiffs would spend \$1,000 in preparation for making 3,600 ties and 800 logs also cut by them on that limit. The work on the roads could be taken away when the tie-making was completed. Something might be saved from the building but the loss on both would be spread over 75,000 ties and would be a mere trifle as compared with the loss if it is to be confined to 3,600 ties."

All this, I think, involves a fallacy, the plaintiffs would require to make all these expenditures to carry out their contract, and their reward would be the amount of their net profits, not the net profits plus what they had spent in earning them. They cannot be in a better position than if their contract had not been broken. This \$1,000 should be disallowed.

We now come to an item \$1,734.24 "for supplies, etc., taken over by the defendants," but the property of the plaintiffs. What the Master says about this item is:—

"I think the defendants are liable to the plaintiffs for all the damages which the plaintiffs suffered from the re-