

construction of the contract, it ought to be reformed. As I construe the contract, no reformation is necessary; and as practically the whole evidence upon this alternative branch of the case is documentary, I refrain from expressing any opinion upon it.

The claim put forward by the contractor was, however, I think, very much exaggerated. The entries in the time book, said to have been made contemporaneously by the engineer and timekeeper, are I think entirely discredited by the admittedly genuine entries made contemporaneously in the diary, and weekly report.

When the entries in this diary are compared with the entries made by Mr. Waldron, they are found to substantially agree.

Thus discrediting the claim as put forward by the contractor, I have to arrive at the amount to be allowed to them as best I can. On the whole evidence, I think it would be fair to assume that about half the pipes were moved by the defendants, say one hundred. Mr. Judson R. Nichols, who impressed me as not only competent, but fair, thought that it would cost about three dollars to move each pipe. This would be a total of \$300.

I cannot follow the actual figures given by the defendants, because they have plainly included the cost of re-loading upon the distributing cars, for which I do not think they are entitled to claim. As I understand Mr. Dunsmore, there would not be more than twelve men engaged upon the work for which I think allowance should be made; and, taking an hour as the time for moving each pipe, the time given by Mr. Nichols—not as being necessary, but as the time actually taken, owing to the congested condition of the railway—this would make a total of \$270 for wages, at 22-1/2 cents per hour; to which would have to be added \$120 for board; a total of \$390.

I am impressed with the difficulty of making an allowance of this kind on the basis of theoretical calculations, as against the test of actual work; but if the defendants suffer, it is as the result of the misconduct of those for whom they are responsible, and of the exaggerated claim put forward.

Bearing all this in mind, I think I am doing them no injustice in allowing them, five hundred dollars, plus the fifteen per cent. profit, which it was admitted was properly allowable. This is a total of \$575. Deducting this from