limit cannot be made a term of the contract, it is a circumstance to be taken into consideration in determining the amount of damages, etc., like any other circumstance surrounding the making of the contract or contemporaneous with it: performance in whole or in part—and it is in this view that the Master finds the fact, in which finding I agree.

The direction from the defendants to "go slow" was in March: the licenses expired on the 30th April, and the Government had given notice that they would not be renewed: but on and after the 10th June licenses could have been obtained without any trouble.

The defendants did not procure licenses. From the conduct of the defendants in staying the operations of the plaintiffs it would follow as a natural consequence that the term of the contract requiring delivery of 75,000 at a fixed date was impliedly varied and a delivery at a reasonable time would be sufficient. And it being the duty of the defendants to supply the permits to cut, all time lost by the non-furnishing of the permits the plaintiffs could not be held responsible for.

September 14th, 1910, the plaintiffs asked for permits in a letter to the defendants. They replied September 17th, 1910, saying that they had assigned their contract to O'Brien & Co.: September 26th, O'Brien & Co. wrote the plaintiffs saying: "We will arrange to get permits for you between mileage 160 and 175 and 225 and 235 on either side of the railway," the plaintiffs replied October 5th, that they held the defendants on the contract and had not consented to any assignment but "without prejudice to our claims against the Nepigon company," if O'Brien & Co. would send the permits the plaintiffs would at once act on them. O'Brien & Co. answered, placing upon the plaintiffs the responsibility of saying whether there were enough ties on the lands O'Brien & Co. had preferred and that if the plaintiffs said there were, O'Brien & Co. would get the permits, "But," they add, "surely you do not expect us to go into the woods and select your timber limits." "As stated before we wish you would say if this territory is satisfactory to you, for we do not want to ask for permits in a territory where there is no tie timber."

The specific and definite contract of the defendants was to "furnish permits for the cutting of such ties," and I do not think they could cast upon the plaintiffs the duty of