

I take up the matters in dispute in the order in which they were argued.

As to the tie contract of February, 1910. This contains a provision that the plaintiffs shall provide all labour, etc., necessary for the cutting and delivering of the ties required for the 75 miles of railway from a point 19½ miles west of the crossing of the river eastward. They were to commence forthwith after the execution of the contract, and cut and deliver before June 15th, 1910—75,000 ties, and unless notified by the company to stop for a time, continue thereafter cutting and delivering ties until the full number should be delivered, and at such a rate as that the work of track laying should at no time be delayed, the company to be the sole judge of this. The ties cut along or near the right of way were to be delivered at points on the right of way properly piled. The said piles were to be distributed so as to provide sufficient ties at each pile to carry the steel from that pile to the next, E. or W., so as to make it unnecessary to haul ties by teams "any of said ties which the company requires to be delivered at its No. 3 warehouse on Ombabika Bay, shall be placed in the water and towed to said warehouse, and there placed in booms or piled on the shore."

The company were to "furnish permits for the cutting of such ties and pay all dues: and the plaintiff to conform to all the regulations of said permits.

The number of ties necessary is as is admitted 3,000 per mile or 225,000 for the 75 miles.

In fact only 3,600 ties were made up to June 15th, 1910, instead of the 75,000 agreed upon, but there can be no complaint on this score as the defendants requested that the plaintiffs should stop and the plaintiffs willingly assented. It seems probable that the plaintiffs could have had the 75,000 ties cut had it been desired.

Much complaint is made by the appellants that the Master found as a fact that the 75,000 ties were to be made off the Ombabika limit, the contract being silent in that regard. No doubt it would not be proper to amend the written contract by introducing this term. *McNeely v. McWilliams* (1886), 13 A. R. 324; *Beth v. Smith* (1888), 15 O. R. 413; *S. C.* (1889), 16 A. R. 421, and similar cases well known. For example the plaintiffs would not be breaking their contract if they delivered these 75,000 ties from some other limit. Yet while the arrangement to cut on the Ombabika