

contracts in question. It was argued on behalf of plaintiffs that defendant had by his conduct forfeited all right to commission. I cannot take that view. If plaintiffs can be placed in practically the same position they would have occupied had no breach of contract taken place, and I think they can, then it would be manifestly unfair to further penalize defendant by depriving him of the remuneration to which, by the terms of the contract, he is entitled. I therefore allow the item.

The disbursements proper naturally divide themselves into two classes; first, those like labour employed in putting up and taking down decorations, evergreens, etc., which were exhausted in the using; and, second, those like flags, shields, etc., which were capable of being put to further use. The items falling within the former class are properly chargeable in full to plaintiffs, provided that no more is charged for them than it would have cost plaintiffs to supply them. For instance, the evergreen festooning, though it actually cost defendant six cents a yard, can be allowed at only five cents a yard, the figure at which plaintiffs had contracted for it.

The items of the latter class stand in a somewhat different position. With comparatively few exceptions plaintiffs supplied from their own stock, brought here for the purpose, all similar articles used in connection with the contracts carried out by them. According to the evidence of their agent Dyson, they had in the city at the time surplus material amply sufficient for what was required on the contracts carried out by defendant. There was some question as to whether or not this surplus material was in the city in time, but that does not, I think, affect the matter. Had the contracts taken in his own name by defendant been reported to Dyson at the proper time, doubtless the latter would have made proper provision for carrying them out. Had he failed to do so, it would have been no concern of defendant's. The latter would have done his whole duty by taking and reporting the orders and carrying out whatever instructions were given him, and the responsibility for any default would have rested solely on plaintiffs. The defendant, excepting in certain specific instances, had no authority to purchase or supply goods for the carrying out of plaintiffs' contracts.