respective works, unless otherwise agreed to between the parties hereto."

The agreement then provides for the indorsement by plaintiff of defendant's notes to the extent of $5,000, in consideration of his receiving "one-fourth interest in all or any profits arising out of the above mentioned contracts;" gives the plaintiff a lien upon the gravel pit for all moneys which he may have to pay on account of such indorsements; and provides for an accounting of such profits, etc.

After carefully considering all the terms of this agreement, I am of opinion that, upon its true interpretation, defendant did not bind himself absolutely and in any event to obtain and carry out all the contracts mentioned in the paragraphs above quoted. That his being able to procure such contracts was contingent and uncertain, and was so regarded by the parties to this action, is manifest in the provision as to the minimum price of "85 cents a yard delivered upon the respective works, unless otherwise agreed to between the parties hereto. Clear and explicit language should be found expressing such an onerous obligation, when a Court is asked to hold that a party has bound himself in any event to perform that which he can only accomplish, if at all, with the concurrence of third persons, over whom he has no control. Such a bargain can, of course, be made. But I do not find in this agreement enough to warrant a conclusion that defendant bound himself to pay to plaintiff as damages, should he be for any cause unable to procure any of the contemplated contracts, a sum equivalent to the profits which he could have realized by the performance of such contracts if obtained.

The defendant's agreement was, I think, to procure and carry out such of the named contracts as could be obtained, and to account to the plaintiff for the profits to arise therefrom. See Clifford v. Watts, L. R. 5 C. P. 577; Howell v. Coupland, 1 Q. B. D. 258.

The defendant assumed the onus of proving that he could not obtain certain of these contracts. Whether he was bound to prove this negative may be open to question. But the Master, I think, erred in rejecting the evidence which defendant tendered to discharge the burden so assumed.

A number of minor matters were discussed upon the argument as to the quantum of the allowance made by the Master.