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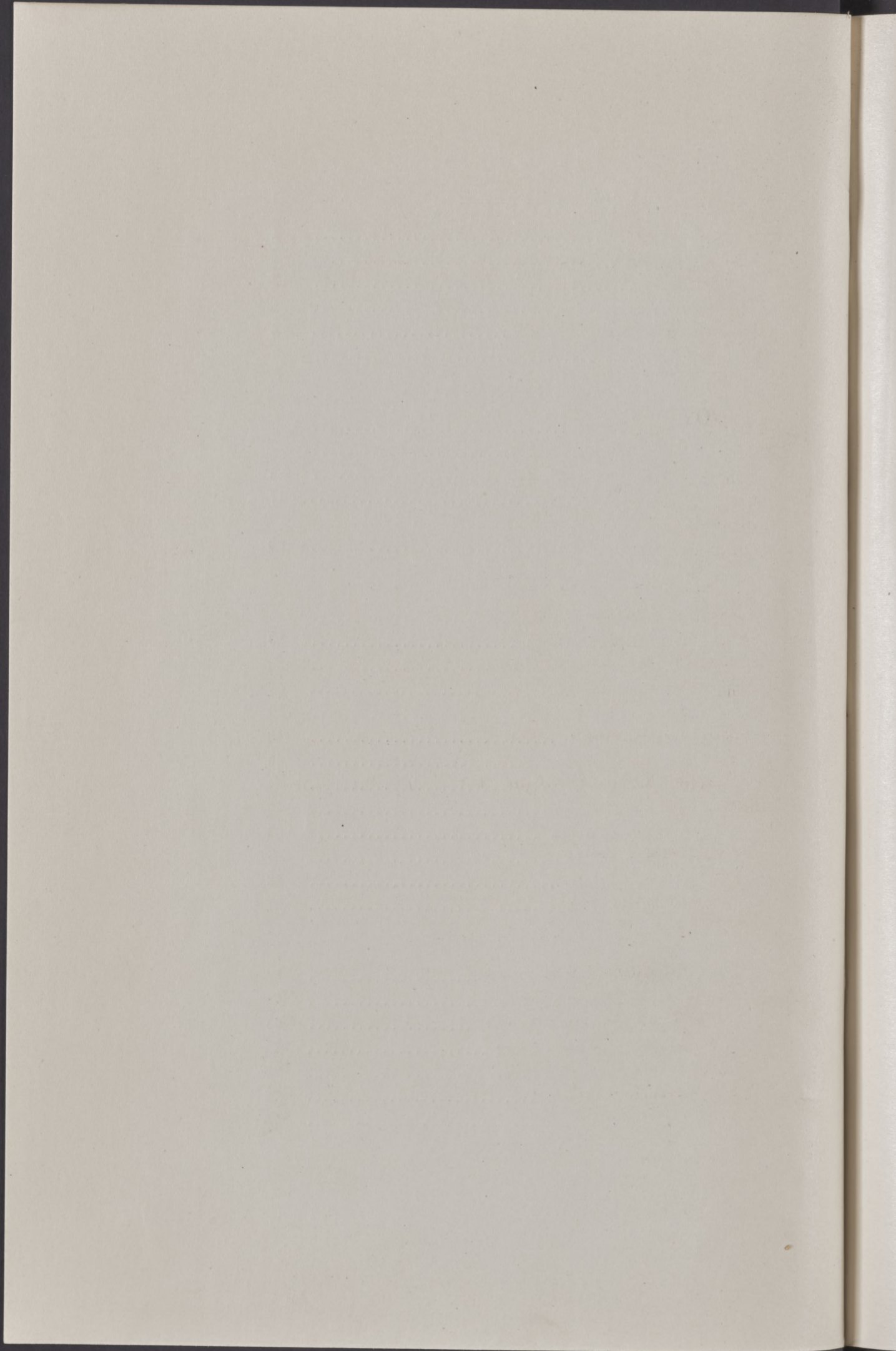
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OPINION OF SUPREME COURT.

NEW JERSEY SUPREME COURT.

June Term, 1919.

_____)
)
LEROY I. PETTIT,)
)
 v.) 10
)
C. W. PRITCHARD CO., Inc.,)
)
_____)

Before Justices Swayze and Parker.

Appeal from Second District Court of Jersey
City. 20

John A. Hartpence, for Plaintiff-Respondent.

Charles E. S. Simpson, for Defendant-Appel-
lant.

Per Curiam.

The question is purely one of fact, and we can-
not disturb the finding of the trial court. 30

The consideration for the contract was the
agreement of the plaintiff to continue in the de-
fendant's employ when he was under no obliga-
tion to do so. Mr. Pritchard told him to go when
he first suggested leaving and there seems to
have been no contract to keep him, except the
new one then made on which plaintiff now relies.

Let judgment be entered for the plaintiff. 40

REMITTITUR.

NEW JERSEY SUPREME COURT.

	_____)	
)	
	LERROY I. PETTIT,)	
	Appellee,)	On Appeal.
10	vs.)	Rule of Affirm-
	)	ance and
	C. W. PRITCHARD CO., Inc.,)	Remittitur.
	Appellant.)	
)	
	_____)	

20 This cause having been argued at the June Term, 1919, of this Court by the attorneys for the respective parties hereto, and the Court having examined the record and proceedings of the District Court removed by appeal in this cause, and being of the opinion that the judgment entered said caused should be affirmed.

30 It is Ordered that the judgment of the District Court removed by appeal in the above entitled cause be and the same is hereby affirmed with costs, and the record remitted to the Court below to be proceeded with according to law and the practice of said Court.

Entered October 4, 1919.

On motion of

WILLIAM E. SEWELL,

Attorney for Plaintiff-Appellee.

NOTICE OF APPEAL.

NEW JERSEY SUPREME COURT.

_____)
)
LEROY I. PETTIT,)
Plaintiff-Appellee,)
)
vs.)
) 10
C. W. PRITCHARD CO., Inc.,)
Defendant-Appellant.)
)
_____)

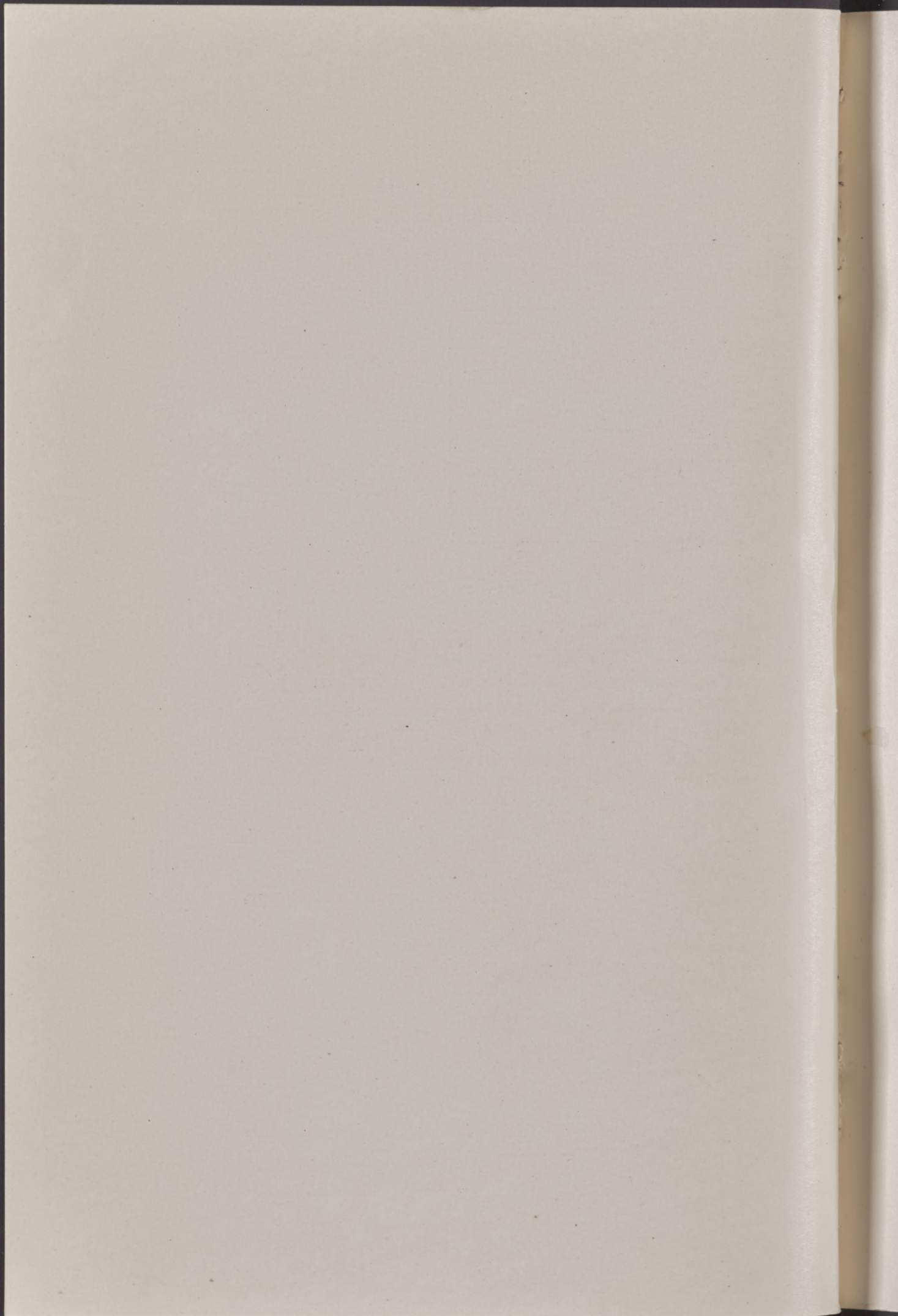
The Defendant-Appellant hereby appeals to the Court of Errors and Appeals in the last resort in all cases in New Jersey from the Judgment of the Supreme Court rendered in affirmance of the judgment of the Second District Court of Jersey City on the fourth day of October, 1919, and from the whole thereof. 20

Dated, October 23rd, 1919.

CHAS. E. S. SIMPSON,
Attorney of Defendant-Appellant.

30

40



Notice of Appeal.

SECOND DISTRICT COURT OF JERSEY CITY

_____)		
LEROY I. PETTIT,)		
)		
	)	Plaintiff)	
	)		On Contract.
vs.	)		Notice of 10
	)		Appeal.
C. W. PRITCHARD CO., Inc.)		
)		
	)	Defendant)	
_____)		

To William E. Sewell, Esq.,
Attorney of Plaintiff.

Sir:

20

Please take notice, that the above-named defendant, C. W. Pritchard Co. Inc., hereby appeals to the New Jersey Supreme Court from the Judgment of the Second District Court of Jersey City, rendered in the above-entitled action on the eight day of February, nineteen hundred and nineteen, and from the whole thereof.

Dated February 8th, 1919.

30

Chas. E. S. Simpson,
Attorney of Defendant

Service of a copy of the foregoing Notice of Appeal is hereby admitted this 10th day of February, 1919.

William E. Sewell,
Attorney of Plaintiff. 40

State of Demand.

SECOND DISTRICT COURT OF JERSEY CITY

)
	LERROY I. PETTIT,)
)
		Plaintiff)
10		) On Contract
	vs.	) State of
		) Demand.
	C. W. PRITCHARD CO., Inc.)
)
		Defendant)
)

1. The plaintiff demands of the defendant the sum of Five Hundred Dollars, for that plaintiff and defendant entered into an oral contract on or about November 12th, 1918, wherein and whereby defendant, a corporation of the State of New Jersey, promised to pay to plaintiff a bonus of Five Hundred Dollars (\$500), in consideration of the plaintiff remaining and continuing in its employ up to and including January 1st, 1919, that plaintiff did remain and continue in the employ of defendant up to and including January 1st, 1919, but said defendant refused and neglected to pay this or any part thereof although frequently requested thereunto by plaintiff.

2. Plaintiff will ask judgment in the sum of Five Hundred Dollars (\$500) together with interest and costs of suit.

William E. Sewell,
Attorney of Plaintiff.

On Contract.

SECOND DISTRICT COURT OF JERSEY CITY

Before

CLYDE D. SOUTER, Esq., Judge

State of New Jersey))
 Hudson County,) ss. 10
 City of Jersey City)

_____))
 No. 50193))
 LEROY PETTIT,))
) In Contract.
 vs.))
))
 C. W. PRITCHARD CO. Inc.) 20
 _____)

Wm. Sewell, Plaintiff's Attorney.

Charles E. S. Simpson, Defendant's Attorney.

A summons was issued tested January 15th, A. D., 1919, returnable January 22nd, A. D. 1919, at ten o'clock in the forenoon.

The Constable returned the summons as follows, viz: I served the within summons and demand January 17th, 1919, on C. W. Pritchard Co., Inc., the defendant by leaving a copy thereof with the manager in charge of the office of defendant corporation whom I informed of the contents thereof. 30

John G. Andes,
 Constable.

40

Transcript.

Plaintiff demand was filed January 15th, A. D., 1919. January 22nd, A. D., 1919, this cause was called for trial at 10 o'clock in the forenoon and continued to February 7th, 1919.

February 7th, A. D., 1919, the plaintiff appeared and the defendant appeared and the trial of the
10 cause was proceeded with as follows: Motion to waive excess of \$500 granted. On the part of the plaintiff Harry Sherman was sworn as stenographer. Leroy Pettit, Emma Pettit and Henry Crontfeld were sworn and testified. On the part of the defendant Charles W. Pritchard, Louis Coler, John Bertollette, Wm. Enson, Wm. J. Linton, Joseph Callahan and Charles Muller were sworn and testified.

20 Case continued to Feb. 8th, 1919, when testimony was concluded.

Whereupon it is on this eighth day of February, A. D., 1919, by this Court considered and adjudged that said Leroy I. Pettit plaintiff recover against said C. W. Pritchard Co. Inc., defendant the sum of Five Hundred Dollars damages and
30 Twenty-eight Dollars and Eighty Cents costs of suit.

February 11th, 1919, Notice of Appeal filed.

February 27th, 1919, order allowing defendant to pay into Court amount of judgement and costs in lieu of bond.

February 27th, 1919, the sum of Five Hundred and Twenty-eight Dollars and Eighty Cents paid
40 into Court in lieu of bond.

Transcript.

Copy of Record delivered to Defendant's Attorney.

I do hereby certify that the foregoing is a true copy of the record in the above stated cause.

Richard McAghon,
Clerk. 10

20

30

40

Specification of Determination

NEW JERSEY SUPREME COURT

)
	LERROY I. PETTIT,)
)
	Plaintiff—Appellee))
10	vs.	) On Contract.
		) Specification of
		) Determination
	C. W. PRITCHARD CO., Inc.	) &c.
)
	Defendant—Appellant.))
)

20 The following is a brief specification of the determinations and directions of the Second District Court of Jersey City, with respect to which the appellant is dissatisfied in point of law:

The said Second District Court of Jersey City did determine that a contract existed between the plaintiff and the defendant as alleged in the State of Demand.

That the plaintiff was entitled to recover the sum of Five Hundred Dollars (\$500) damages, and costs, as for his damages, for an alleged breach of the alleged contract.

30 That judgment was directed in favor of the plaintiff and against the defendant for the sum of Five Hundred Dollars (\$500) and costs of suit.

All of which was erroneous and contrary to the evidence in the case for the following causes:

40 First. The trial Court should have granted the motion made on behalf of the said defendant at the close of the plaintiff's case, to non-suit the plaintiff, said motion having been based on the ground that the plaintiff had failed to make out

Specification of Determination.

a case, and on the further ground that the plaintiff had failed to show any liability on the part of the defendant. On the Court's refusal to non-suit exception was taken to the ruling and allowed.

Second. The trial Court should have given judgment for the defendant, upon motion made at the close of the whole case; said motion having been made on the grounds stated in the motion to non-suit and on further ground that no liability had been shown on the part of the defendant. Upon the Court's refusal to do so exceptions was taken to the ruling and allowed. 10

Third. Because the plaintiff failed to show any privity of contract between the plaintiff and the defendant.

Fourth. Because the preponderance of the evidence was with the defendant showing that the alleged agreement was without consideration and void. 20

Fifth. Because the said judgment was in other respects erroneous and contrary to law.

Dated February 11th, A. D., 1919.

Charles E. S. Simpson, 30
Attorney of Defendant-Appellant.

Testimony

SECOND DISTRICT COURT OF NEW JERSEY

LEROY I. PETTIT,)
)
 Plaintiff)
)
 10 vs.)
)
 C. W. PRITCHARD COMPANY)
 Inc.)
)
 Defendant)
)

Jersey City, February, 7, 1919

20 Before Hon. Clyde D. Souter, Judge.

William E. Sewell, Esq., for the Plaintiff.

Charles E. S. Simpson, Esq. for the Defendant.

30 Mr. Sewell: In this case, Your Honor, we
 will attempt to show how the plaintiff was
 working for the C. W. Pritchard Company
 from February, 1918, up to January 4th,
 1919; that on October 19th last he was about
 to leave the employment of the defendant
 company, but at the solicitation of their
 agent, Mr. Pritchard, he promised that the
 defendant would increase his wages if he
 stayed, and in consideration of his staying
 there until the first of the year that they
 would, in addition, give him a bonus of \$500
 40 The young man stayed there, performed his
 duties evidently to the satisfaction of the

Leroy I. Pettit—Direct.

company, received the increase in pay right along up to the first of the year, and after he worked there, I believe it was two days after the first of the year, and not receiving the bonus, he left.

LERROY I. PETTIT, Sworn.

10

DIRECT EXAMINATION BY MR. SEWELL.

Q. Mr. Pettit, you are the plaintiff in this case? A. Yes, sir.

Q. And did you enter the employ of C. W. Pritchard Company, Inc., in February, 1918? A. Yes, sir.

Q. Who hired you—what individual, I mean? A. Mr. Pritchard.

20

Q. What rate of wages did he fix? A. Why, \$35 a week.

Q. \$35 a week? A. Yes, sir.

Q. How long did you receive that rate of wages? A. About two months.

Q. You were acting in what capacity in the warehouse or factory, whatever it was? A. I had full charge of the warehouse and machine shop.

Q. What was your official designation—superintendent? A. Yes, sir.

30

Q. Was anyone over you, that is, to give you orders what to do? A. No one only Mr. Pritchard.

Q. Well, did he give you orders? A. Yes, sir.

Q. Did Mr. Pritchard have the jurisdiction of hiring men and discharging men?

40

Leroy I. Pettit—Direct.

Mr. Simpson: I object to that; I don't think that this witness has been qualified.

Mr. Sewell: I will withdraw the question.

10 Q. Mr. Pettit, have you ever seen Mr. Pritchard hiring employees for the company? A. Yes sir.

Q. And have you ever seen him discharging men? A. Yes, sir.

Q. Have you ever heard him fix the rate of wages of these men? A. Yes, sir.

Q. Was it your duty, or whose duty was it, to pay these men off? A. Why, sometimes it was my duty, and sometimes it was left to the timekeeper.

20 Q. Where did you, when you paid them off, get the money from? A. It was sent over from the New York office.

Q. What was it sent in,—in envelopes or just loose? A. In envelopes.

Q. Did Mr. Pritchard have a desk down in the office there

Mr. Simpson: I object to that; I don't see the relevancy of that.

30

Mr. Sewell: I will withdraw the question.

Q. Did you hold any conversation with Mr. Pritchard on October 19th, relative to your leaving the employ of the C. W. Pritchard Company?

A. Yes, sir.

40 Q. Will you tell us just what you told Mr. Pritchard? A. Why, I told Mr. Pritchard that I had another position offered to me and I intended to leave.

Leroy I. Pettit—Direct.

Q. You intended to leave the C. W. Pritchard Company? A. Yes, sir.

Q. What did Mr. Pritchard say to you A. Why, he persuaded me not to leave.

Mr. Simpson: I object to that; that is a conclusion.

10

Q. Just what did he say to you?

The Court: That will be stricken out.

Q. Not that he persuaded you; what did he say? A. He asked me not to go; if I would not go he would raise my wages.

Q. To what amount A. To \$50 a week, and at the end of the year he would give me a bonus of \$500.

20

Q. And you stayed there until the end of the year? A. Yes, sir.

Q. That was in 1918, and the end of that year would be practically the first day of January? A. Yes, sir.

Q. Did you receive this increased wage? A. Yes, sir.

Q. From that time on and up to when? A. Up until I left.

30

Q. Did you receive this wage increase up to the time you left? A. Yes, sir.

Q. And did you work there after January 1st A. Two days.

Q. You quit on what day? A. Saturday.

Q. What day was that—that was January what—January 4th? A. Yes, sir.

Q. Did you have any controversy with Mr. Pritchard about anything there at all that day? On the day you were leaving did you have any

40

Leroy I. Pettit—Direct.

trouble with him, or any argument, or anything? A. No, we had no argument or anything; he sent me over a letter and that is what made me quit.

Q. He sent you a letter? A. Yes, sir; and I didn't get what he promised me, I thought—

10 Q. Would you know Mr. Pritchard's signature when you saw it? A. Yes, sir.

Q. (Exhibiting paper to witness) Is that Mr. Pritchard's signature? A. Yes, sir.

Q. Is that the letter you refer to? A. Yes, sir.

Q. What did that letter contain?

Mr. Simpson: I object to that; the letter speaks for itself.

20 Mr. Sewell: I would like to offer the letter in evidence (handing letter to Mr. Simpson.)

Q. Did Mr. Pritchard's brother come to the factory and take charge as he said he was going to do in that letter, and be your boss? A. Why, I quit too quick.

Q. You quit before he did? A. Yes, sir.

30 Q. Has Mr. Pritchard ever paid you this \$500 bonus? A. No, sir.

Q. Or has the company, at least, paid you this \$500 bonus? A. No, sir.

Q. Did you intend to leave, or would you have left, if Mr. Pritchard had not given you this promise of an increase in wages?

Mr. Simpson: I object to that as calling for the operation of the witness' mind at the time and not his acts.

Leroy I Pettit—Cross

Mr. Sewell: I will withdraw the question.

Mr. Simpson: I have no objection to the letter.

(Letter admitted in evidence and marked Exhibit P-1.)

10

Q. Did you stay there in the Pritchard Company's employ on the strength of these promises which were made to you? A. Yes, sir.

Q. The bonus of \$500 I am speaking of particularly? A. Yes, sir.

CROSS EXAMINATION BY MR. SIMPSON.

Q. Mr. Pettit, you say it as the 19th of October when this conversation took place A. Yes, sir. 20

Q. Where did it take place? A. In a little office in the warehouse.

Q. Who was present? A. Mr. Pritchard and I.

Q. Nobody else? A. Nobody else.

Q. Do you know Lutton? A. Lutton

Q. Yes; one of the employees down there? A. I don't know Lutton. 30

Q. Do you know Kohler A. Yes, sir.

Q. Do you know Callahan? A. Yes, sir.

Q. Do you know Ensign? A. Yes, sir.

Q. When I mention the name of Lutton, I meant Linton; A. Yes, sir.

Q. Do you know him? A. Yes, sir.

Q. Were they anywhere near when you had that talk? A. No, sir.

Q. What were the exact words which Mr. Pritchard used when he mentioned about this 40

Leroy I Pettit—Cross

bonus A. Why, he told me that if I would stay there and do the right thing, at the end of the year the company was going to give me \$500.

Q. Let me understand you: If you stayed there and did the right thing? A. Yes, sir.

Q. Until the first of the year, the company would give you a bonus of \$500? A. Yes, sir.

10 Q. Was \$500 mentioned? A. Yes, sir.

Q. Are you sure of that? A. Yes, sir.

Q. Now what work were you doing prior to the 19th of October A. I was foreman; had full charge of the shop and the warehouse.

Q. And what work were you doing after the 19th of October? A. The same thing.

Q. Was there any change whatever in your employment after the 19th of October? A. No, sir.

20 Q. You did the same kind of work? A. The same thing.

Q. And your salary then jumped to \$50 a week A. Yes, sir.

Q. And that kept on up to the first of January? A. Yes, sir.

Q. Now, do you remember receiving a check for \$35? A. Yes, sir.

Q. On the 4th of January? A. Yes, sir.

30 Q. What was that for A. I don't know what it was for; I think it was a bonus; it came in my envelope, my pay envelope.

Q. In your pay envelope? A. Yes, sir.

Q. What did you do with it? A. I cashed it.

Q. What did you do that for? A. Why, it belonged to me.

Q. Didn't you know what it was for A. No, I did not.

40 Q. Was your regular pay in check, or in cash? A. My regular pay was in cash and the

Leroy I Pettit—Cross

check was in with it.

Q. And the check was in with it. Didn't you speak to anybody in connection with the check?

A. No, sir.

Q. Why didn't you? A. Because I just took the check and my pay and I cashed the check and the check was cancelled—stopped payment.

Q. Now, when you obtained that check hadn't you talked with Mr. Pritchard? A. Why, in the morning, yes, about— 10

Q. What was said? A. He said that he was going to give me a check for \$35.

Q. Yes. A. And he said nothing about a letter; I got a letter and he said nothing about that

Q. Weren't you told that you were to receive that \$35 bonus in consideration of you remaining with the company? A. No.

Q. Do you know why payment of it was stopped? A. No, I do not. 20

Q. Who did you cash it with? A. The Claremont Bank.

Q. Had there been any fault found with your work or the way you handled the men, by the company or its officials? A. No, sir.

Q. None whatever? A. No, sir.

Q. What was this bonus to be for, as you understood it? A. I really don't know; I thought it was part payment of the \$500, something coming along toward that. 30

Q. I mean that \$500. Why were you to receive that? A. Why, if I would stay there and turn out the work.

Q. Was anything said by Mr. Pritchard that a bonus was to be paid, and he was to be the judge as to who was entitled to it? A. No, sir.

Q. Now, that offer was made to all the employees there, wasn't it? A. No; this offer was 40

Leroy I. Pettit—Cross—Redirect.

made to me, I was alone with him when he told me.

Q. Didn't you hear a similar offer made to all the men in the establishment? A. Oh, yes; he told me to tell the men there would be bonuses at the first of the year.

10 Q. Yes. A. To the men in the shop, a considerable bonus, that they may buy Christmas presents; it would be given in time for Christmas so that they could buy Christmas presents, and it would be a good fat one.

Q. It would be a good fat one? A. Yes, sir; and I told all the men.

Q. What was said about Mr. Pritchard being the judge as to whether the men were to receive the bonus or not? A. Why, he said that he
20 would figure out the bonuses himself, the ones who deserved it, why, got it.

RE-DIRECT EXAMINATION BY MR. SEWELL

Q. When you say this check was cashed, do you mean it was cashed, or was it put in the bank?
A. It was put in my account

Q. And what happened to it? A. Why, I got it back in two days, I believe.

30 Q. What happened to it? A. Stopped payment.

Q. Was it protested? A. It was protested and the protest was charged to me.

Q. The protest fees were even charged to you?
A. Yes, sir.

Q. I noticed in your cross-examination—I don't know whether you exactly understood Mr. Simpson's question or not—you said something to the effect that when this bonus offer was made to
40 you—did Mr. Pritchard say anything about that

Leroy I. Pettit—Redirect.

he was to fix the size of that bonus, or did he say your bonus would be \$500 and he will fix the size of the bonuses of the other men? What did he say? A. He told me that my bonus would be \$500 and that he would fix the men in the shop suitable to what he thought that they were worth.

Q. Mr. Simpson went into the question did anyone at all find fault with you. Did Mr. Pritchard ever say that you were not doing the right thing down there, or anything of that kind? 10

A. Mr. Pritchard never said I wasn't doing the right thing; of course there was little things came up, trouble about the men and different little parts of machines might not have been done in a hurry but there was nothing like trouble.

Q. There wasn't anything against you? A. Nothing against my work.

Q. About doing the same kind of work,—you told Mr. Pritchard that regardless of what kind of work you were going to do you were going to quit before he offered you the \$500? A. Yes, sir. 20

Q. Nothing was said about what kind of work you were going to do after that? A. No, sir.

EMMA C. PETTIT, Sworn:

DIRECT EXAMINATION BY MR. SEWELL: 30

Q. Mrs. Pettit, are you the mother of the plaintiff in this case? A. I am.

Q. On Sunday night, October 20th, did you receive a telephone call from Mr. Pritchard? A. Yes, sir.

Q. What did he ask you to do? A. He said he would be in to see me in the morning.

Q. He would be in to see you in the morning? 40

Emma C. Pettit—Direct.

A. Yes.

Q. When did he mean? A. On Monday morning, October 21st.

Q. The next morning? A. Yes; for me to influence Leroy to stay with him.

Q. What is that? A. For me to influence Leroy to stay with him.

10 Q. I am talking about Sunday night, on the phone. A. Yes.

Q. He told you he would be around Monday morning? A. Yes, sir.

Q. And did Mr. Pritchard come on Monday morning? A. Yes, sir.

Q. Did he mention to you anything to the effect that he had offered Leroy a bonus of \$500?

20 Mr. Simpson: I object to that as leading.

The Court: Yes; what was the conversation?

Q. Will you tell us just what conversation you had with Mr. Pritchard relative to Leroy continuing in the employ of his company? A. You mean Sunday evening or Monday morning?

30 The Court: Monday morning. Just tell us what the conversation was; what did Mr. Pritchard say?

A. Mr. Prichard said Leroy had decided to stay with him, everything was going nicely and he raised his wages to \$50 a week and if he sticks with me and gets his work out, by the first of the year I am going to give him a nice \$500 bonus;
40 he told me that on Monday morning, October 21st.

Emma C. Pettit—Direct—Cross

Q. Did he say anything to you about endeavoring to persuade Leroy to stay in his employ? A. Yes.

By the Court: What did he say? A. That was the principal thing he came there for, for me—

10

Q. Tell us what he said, Madam? A. Well, he said that he wanted to keep him there. He had another position offered to him and he said "That man don't need him at all," he said, "I am in an awful hole, I got to get this work out," he said, "and I want Leroy to stay with me. I will make it all right with him if he stays," so he stuck there until the first of the year just for to get this \$500. He turned his work out and he certainly did what was right because Mr. Pritchard told me himself he was doing fine; he said he turned out as much work in a day as he used to get out in a month; he put his shoulder to the wheel and he turned out his work out.

20

CROSS EXAMINATION BY MR. SIMPSON:

Q. Just a moment, Mrs. Pettit, did Mr. Pritchard call you on the phone, or did you call him on the phone? A. On Sunday evening he called me on the phone.

30

Q. That was Sunday night? A. Yes, and he said—

Q. Are you sure of that? A. Yes, and he said he would be in to see me Monday morning.

Mr. Sewell: The plaintiff rests.

40

Motion for Non-Suit.

10 Mr. Simpson: I ask Your Honor to non-suit the plaintiff, on the ground that if there was any offer made such as testified to by the plaintiff that it was made without consideration. The testimony here is that this man was in the employ of the company; that on the 19th of October somebody by the name of Pritchard—no evidence to indicate what his position was or what his authority was—
told him that if he would remain in the employ of the Pritchard Company he would receive a bonus of \$500. He testifies that there was no difference in his work after this alleged agreement was made—it was exactly the same as it was before.

20 Now, it seems to me that without testimony that he was injured by not quitting some position which he had, or this offer being the means of taking him from some position where he would have made a higher wage or received a higher salary, the particular facts in this transaction give rise to something which is an agreement without consideration.

30 Now, starting with that idea, the Court of Errors and Appeals in the case of Voorhees v. Woodhull's Executors, 33 N. J. L. 497, lays down some rules there, and I will just quote from one part of that opinion. In this case they refer to the case of Hart v. Lauman in Barbour's Reports. It says:

40 "In the case of Hart v. Lauman, Hart agreed to make a certain excavation of earth for a specific price. After he entered on the work, he, unexpectedly to both parties en-

Motion for Non-Suit.

countered hard pan, and gave notice to Lau-
 man that he must abandon the work unless
 Lauman would allow him more than the con-
 tract price. Lauman told Hart to quit the
 work until some arrangement could be made,
 and he did quit it for about two weeks, when
 It was resumed under a new agreement, by
 which he was to have reasonable compensa- 10
 tion for the work. It was held in this case,
 that Hart could not recover under the new ar-
 rangement, unless what took place between
 the parties in effect rescinded the original
 contract as to that portion of the work which
 had been abandoned, and that the parties
 were not in a situation to make a new con-
 tract binding upon them until such rescission.
 In other words, that where work was entered 20
 upon with an express stipulation as to price,
 a subsequent express promise to pay a great-
 er sum on account of unforeseen difficulties
 in the undertaking would be void for want
 of consideration to support it, unless it was
 accompanied by a virtual rescission of the or-
 iginal bargain." In this case the plaintiff was
 the holder of a promissory note which was
 given for the alleged extra work, which was
 produced because of the illness of the testa- 30
 tor.

The Court: It appears from the opinion of
 Justice Van Syckel that there was no proof
 of an express agreement and because of that
 the Justice before whom the cause was tried
 at the Circuit non-suited the plaintiff, and
 that is the alleged error that came before the
 Court of Errors and Appeals.

Motion for Non-Suit.

Mr. Simpson: It was affirmed.

The Court: In view of the fact that there was no proof of an express agreement; we have such proof here, so anything in the case aside from the question which is decided is dictum and not binding upon the Court.

10

Mr. Simpson: The point I speak about is that here the employee was to do nothing further than what he had agreed to do under his contract of employment; he was to have his salary increased, which of course was a proper subject of discussion between the employer and the employee, but as to a consideration for the bonus, I fail to find any in this case, if such an agreement was made, assuming for the purpose of argument that an agreement such as that was made.

20

The Court: Yes, assuming that this plaintiff was about to leave the employ of the Pritchard Company, and assuming for the purpose of this point that Mr. Pritchard was authorized to act for the defendant corporation, I think that there was sufficient consideration for the offer of additional wages and a bonus of \$500 for this man to forgo his right to quit his position and in addition to that, to agree that he would remain in the employ of the defendant corporation up to and including the end of the year.

30

Mr. Simpson: May I have an exception noted on the record?

40

(Exception noted for the purpose of appeal)

Charles W. Pritchard—Direct

CHARLES W. PRITCHARD, Sworn:

DIRECT EXAMINATION BY MR. SIMPSON:

Q. Mr. Pritchard, what office do you hold in the C. W. Pritchard Company? A. President and Treasurer.

Q. Do you know Leroy Pettit, the plaintiff here? A. Yes, sir. 10

Q. Do you remember having any conversation with him around the 19th of October, last year?

A. About the 16th of October there was some question about our being slow in the delivey of certain machines that we were repairing, and I reprimanded Leroy a little bit strongly for his carelessness in the work, and the next morning he reported sick and he was away for two days. On Saturday morning—on Saturday about noon— 20 I usually get to the warehouse about nine o'clock and stay there until about eleven in order to send the automobile for the money to Summit Ave.—he says, "I am going to leave, Mr. Pritchard." I said, "Well, you are leaving me in a bad time now; I have a number of Government orders here that you alone know all about, and it is pretty small business on your part. However, it is all right. You go." It was agreed that he should go, but he agreed to come around Sunday morn- 30 ing and show my present foreman, Mr. Kohler, what he was doing, so that he could take the work up where he dropped out. Prior to this—I am a little ahead of my story—prior to this agreement—this talk—I said to him, "Roy,—” Just wait until I get myself collected, to make sure. Now I am all right. Yes, this is all right now, So Sunday morning he came around. But prior to my going to Jersey City Mrs. Pettit called me up; that was the first time I had heard from her in 40

Charles W. Pritchard—Direct

my life! and she says, "I haven't slept all night, I am so worried, and I want to see you the worst way," she said, "I can't talk to you over the phone, but if you drop in tomorrow morning I could tell you, because of this trouble; he says he has been well treated, he is satisfied" and so on; and after talking to her I came to Jersey City,
10 Mr. Kohler came there—my man who is here in court—and after we talked a few minutes Roy got cold feet and wanted to stay.

By the Court: Where was this? A. Right in our warehouse this Sunday morning. I said, "Roy, if you want to stay I will give you an increase of salary, contingent on you getting some little rush in the work;" we were not getting anywhere with our work; "we
20 are away behind in our deliveries from where we had plenty of time the Government was after us;" as a matter of fact, there wasn't anything, not a single word, said about bonus. But at the time the Fourth Liberty Loan was going around, I was a pretty large subscriber myself and the boys all subscribed, I said, "Boys, if you push this work and give it the best you got—" a lot of them had been lay-
30 ing down, every man—some of them here that are working for me yet weren't doing anything, including Pettit—I said, "You give this thing the best you got and you will have a bonus on Christmas, if you will do right, but it will be up to me to say whether he shall receive anything, and I will be the sole judge of who is entitled to the bonus."

BY MR. SIMPSON:

40 Q. Who was present when you stated that,

Charles W. Pritchard—Direct

Mr. Pritchard? A. The whole shop; several of them are here now; some of the boys here I didn't give them as large a bonus as I intended to because they didn't earn it, they didn't put forth the effort they should have, and Pettit finally got through on Saturday morning, the first Saturday in January, I called him into the office and I told him, I says, "Roy, you laid down rediculous for the past month, you have been robbing me and the whole bunch of you have been, I have been paying out about a thousand dollars a week and getting nothing back," and I said, "If you want to stay with a reduction of ten dollars a week—I will give you something, it is Christmas time, I will give you a \$35 bonus;" he said, "All right, I will be here Monday morning, I will accept the cut." On Monday morning he did not come, and on Tuesday I stopped the check, which I think was thoroughly within my rights, but I never, under any conditions, offered any man in my employ one dollar of bonus except as my judgement would show they were worth that at the end of the year.

By the Court: How about this conversation with Mrs. Pettit? A. I never mentioned those things to Mrs. Pettit, only when I dropped in on Monday morning I told her I had agreed with Roy to stay and increased his wages and I liked the boy but I never mentioned anything else to her because I didn't think it was her business.

Q. She says that you wanted to talk to her and that you were coming up on Monday?
A. No; she sent for me to try to talk to Roy, that she was worried and that he was getting unhappy.

Charles W. Pritchard—Direct

BY MR. SIMPSON:

Q. When you came there on Monday did you talk to her? A. I talked to her, I told her he had agreed to stay on Sunday, I told her the agreement that I made with him and so on, on Sunday—not Saturday, but on Sunday, when I
10 agreed to give him \$50 a week; there was another man I agreed to give \$15 a week more to.

Mr. Sewell: I ask that be stricken out.

Q. Did you have any conversation with Mrs. Pettit other than that over the telephone? A. Yes, on Monday morning.

Q. Where was that? A. In her house.

Q. Who was with you A. Just myself.

20 Q. Now, did you tell her at that time that you would give Leroy Pettit a bonus of \$500? A. I never even thought of it..

Q. On the Sunday previous he had been work to the works, and was that when he said he would return on Monday morning? A. Yes, that was when I made the agreement when he said he would stay; I said, "If you stay and do the best you can," we had a big order for the United States
30 Government for Kansas City and I was tremendously anxious to get it off fearing that the war would be over and I would have thirty or forty thousand dollars worth of work on my hands, which we subsequently got shipped.

BY MR. SIMPSON:

Q. Now, subsequent to the 19th of October did you have occasion to speak to the plaintiff here about his work down there? A. Oh, on many
40 occasions——

Charles W. Pritchard—Direct

Mr. Sewell: I object to that and ask that this be stricken out.

Mr. Simpson: The plaintiff testified that there was no fault found with him.

The Court: The question is allowed.

10

A. On many occasions; and since he has left we found evidence—

The Court: No, that is not responsive; that part will be stricken out.

Q. Before the first of January— A. I want to show his responsibility.

The Court: That will be stricken out. 20

Q. Now, Mr. Pritchard, between the 15th of October and when he quit, on the 4th of January, had you any occasion to find fault with his work?

A. Yes; on many, many occasions; many times I told him—

Q. Just state to the Court what some of them were? A. Well, one particular occasion was the Auto Betterment Company, 55 Lafayette Street, Newark—the name is not material—I sold a 30 machine for \$1300 that Roy overhauled; he said it was in first class shape before it went away; there was trouble with it and I sent him out there; he said there were some little trifling things to do on it to make it all right, but since that time we have spent \$360 on that machine; I got men here that did the work. That was one—

The Court: What sort of machine was that?

40

Charles W. Pritchard—Direct

A. That was a Jones Lampson flat technical lathe for making gear blanks and that kind of things; we could not even turn the machine; that was only one of the many occasions.

Q. Had you any occasion to speak to him about the machine that was sold to Smith & Sons of Kansas City? A. We didn't know that, Mr. Simpson,
10 until after he went away—

Mr. Sewell: Then I ask that that be stricken out.

Q. I mean, Mr. Pritchard, anything that you found fault with between the 19th of October and the 4th of January? A. On the Kansas City business, we got the delivery made and we had trouble afterwards.

20

Mr. Sewell: I ask that that be stricken out.

The Court: That will be stricken out.

Q. You say that this announcement regarding the bonus was made to all the employees at the same time? A. Made to all the boys generally.

Q. Did you at any time especially tell Mr. Pettit that he was to receive a bonus of \$500? A.
30 Absolutely not.

Q. When he received that check for \$35 on the 4th of January, was that handed to him by you, or by whom? A. I told him what he was going to get and I told him the wages he was going to get, and he agreed to it.

CROSS EXAMINATION BY MR. SEWELL:

40 Q. Prior to October 19th, or the 16th, what-

Charles W. Pritchard—Cross

ever the date was that you held the conversation with Mr. Pettit, had you had any fault to find with his work? A. Oh, many, many times.

Q. Many times? A. Yes, sir.

Q. What was his salary for the period from October 1st—for the weeks from October 1st to the 16th? A. On October 18th he got a salary of \$50 I think. 10

Q. I mean prior to that time. A. \$42.

Q. When was his salary raised to \$50? A. For the week ending October 26th.

Q. And that was after the time Leroy said he was going to leave?

Q. Is it customary with you to raise the wages of men whom you found a great deal of dissatisfaction with? A. We done that to try to get our work done in this particular case, and he promised to get himself together and do the right thing. 20

Q. I didn't ask you that; I asked you whether it was customary with you to raise the wages of men with whom you found a great deal of dissatisfaction? A. Tell me what you are trying to get at and then I will answer your question.

Q. I asked you is it customary—

Mr. Simpson: I submit that that question has been answered. 30

A. It is not usual and we were in the hands of the enemy—if that is what you want; these fellows had us right by the neck.

Q. You were very busy at the time, weren't you—the company was very busy A. We had some orders to get out.

Q. You said you were very busy; you were so very busy that you had to get these contracts out very quickly? A. Yes, sir.

Q. And that was one reason why you wanted 40

Charles W. Pritchard—Cross

Leroy to stay there, wasn't it? A. Mr. Simpson didn't bring out something—

Q. I don't care what Mr. Simpson brought out. Please answer my question. A. He was to come back on the regular wages. I gave him this to encourage him, the \$8 extra; he says, "I will come back without any raise," he never asked me for a raise; all the time that he was with me he never asked me for a raise, even when he was working for less than \$30 and I raised it from time to time to encourage him and he has the ability, but he is a boy, he is as fickle as a ten year old girl; the boy isn't a man yet.

Mr. Sewell: I ask that that be stricken out.

20 Q. Mr. Pritchard, will you answer why you raised this boy's wages?

The Court: He has told you that already; he has told us the reason why he raised this man's wages. You have asked him for his reasons and he has given them to us.

Q. Who made the announcement to the boys about this bonus, was it you or Leroy? A. I did it; I always did it.

Q. Did you gather them around and tell them? A. I told the boys right in the shop; I said, "Boys, if you do the right thing, on the first of the year I am going to give you a bonus, but I will be the sole judge as to whether you get ten dollars, fifty dollars, a hundred dollars or nothing."

Q. But that wasn't the occasion on which you had the conversation with Leroy about leaving and raising his wages to \$50 a week, was it?

Charles W. Pritchard—Cross

A. That was on a Sunday.

Q. That was on the same occasion, was it?

A. No, that was on a Sunday.

Q. That was on a different occasion, when you told about the bonus, was it? A. I want you to be sure about it—I made the agreement on a Sunday.

Q. That was not the same occasion, was it? 10

A. Yes, sir.

Q. You said you had thirty or forty thousand dollars worth of orders to get out very hurriedly?

A. That is correct.

Q. Did Leroy do any work on those orders?

A. Some of that was shipped over to Cleveland that we didn't do ourselves; we got it all done there.

Q. And that was the only reason why you employed him, to do work of that kind, so that he could do some work on this thirty or forty thousand dollars worth of orders A. Naturally, that is what I paid him for. 20

Q. That is what you paid him for? A. Yes, sir.

Q. You spoke about a machine that Roy overhauled; in just what way was this machine defectively overhauled? A. It was just covered up, after spending probably \$150 at a time, with one of his men, that he never should have put on. 30

Q. What is that? A. One of the men that he put in there that he should never have put in there as a machinist at big wages; he was only one of several that he put in there that were absolutely no machinists at all; and I have been a very busy man and I did not find these things out very quickly but when I did, why they went; and that is only one of the many machines that my men can testify to later.

Q. I just asked you what was the matter with 40

Charles W. Pritchard—Cross

this one machine. A. It was simply unfit to use for any purpose at all, from a mechanical standpoint, it would not run.

Q. What was broken or what was defective?

A. Do you know anything about Jones & Lampson machines?

Q. No, I don't. A. If you do I will talk to
10 you about it; if you don't I can't tell you.

Mr. Sewell: I ask that he answer my question.

The Court: The answer will be stricken out as not responsive. What was defective about the machine? If you know all about it you wont have any difficulty in telling us.

20 A. The machine bearings, the gears, clutches and other parts of the machine were absolutely useless, they refused to work in unison with the whole machine; this is an operation machine; we had to make new bearings, new shafts, new gears, that ought to have been done, which I paid for having done once before.

Q. When did you discover the fact that this machine was in this condition A. We discovered it about four or five days before Roy left.

30 Q. When was that, in respect to what date?
A. That was, I presume, in the latter part of the year.

Q. You are speaking about a machine that was located permanently located in the factory?

A. No, this was a repair job.

Q. You discovered that before it went out?

A. We didn't discover it until after.

Q. You don't know, as a matter of fact, whether that machine was in that condition when
40 it left your factory? A. Absolutely.

Charles W. Pritchard—Cross

Q. How do you know? A. Because I seen Roy on that job and I seen other men there.

Q. After it went out? A. Yes.

Q. But you don't know, as a matter of fact, that this machine became defective from the time it left your warehouse until the time you received the report of damage? A. Yes.

Q. How do you know? A. We know. 10

Q. How? A. We know how certain machines are; we inspect the machines.

Q. When? A. After Roy went away.

Q. After you got the report? A. Yes.

Q. But I mean before you got the report, could not this machine have been damaged from the time it left your warehouse until the time you got your report? A. That is a possibility.

Q. You are not sure then how it was damaged?

A. Yes, I know it was not damaged. 20

Q. How do you know? A. Because there was nothing broken on it.

Q. How do you know that this condition was not caused between the time it left your warehouse and the time you received the report? A. That is nonsensical, if you know anything about mechanics, you would not talk to me that way.

Mr. Sewell: I ask that that be stricken out as not responsive. 30

The Witness: I am going to answer any sensible questions—

Q. I am asking you if you can tell whether it was in that condition when it left the warehouse.

A. How can I tell?

Q. That I what I say; you can't tell, can you?

A. I certainly can.

Q. A minute ago you said you couldn't tell. 40

Charles W. Pritchard—Cross

A. I didn't say I couldn't tell. If you knew something about machinery I would be glad to talk to you.

Q. Did you take this matter up with Leroy about this machine? A. I seen him at the time when he brought part of the parts back again and he admitted it was wrong, after telling me it
10 was first class when it left; and I spent more than \$300 just to repair on his work.

Q. In spite of that you gave him this extra check for \$35? A. We didn't know that the different machines were in such bad shape then.

Q. You say he came back with some parts? A. After he took these parts, made these little parts, I sent other machinists out and we found that nothing had been done at all.

Q. When did Leroy come back,—whatday?
20 A. I can't tell you these dates.

Q. About what date? A. I would not even guess at it.

Q. But he came back before the first of the year? A. I think he did.

Q. Then you gave him the check, after he came back and told you the machine was defective? A. I am a good-hearted fellow; I did a lot of things that I ought not to have done; lots of times I paid men three or four times for doing the same
30 thing.

The Court: That will be stricken out.

RE-DIRECT EXAMINATION BY MR. SIMPSON:

Q. At the time you made that announcement to the men regarding the bonus which they would receive at the end of the year, where was Mr. Pettit?
40 A. Mr. Pettit was right in the shop along

Charles W. Pritchard—Redirect

with the rest of the boys.

Q. Had you had any other conversation with Mr. Pettit regarding a bonus, other than what you stated at that time? A. Absolutely not. I wish you would ask me a couple of other questions, Mr. Simpson.

Q. What is that? A. Regarding Mr. Pettit's sick leave and that kind of thing. 10

Q. Did you, just prior to his return on October 19th, ever get asked by Mr. Pettit to permit him to leave his work? A. Yes; he reported two days in that week sick—

Mr. Sewell: I object to that; I don't see how that is at all relevant.

The Court: I don't see how it is relevant.

Mr. Simpson: All right; I will withdraw it. 20

LOUIS KOHLER, Sworn:

DIRECT BY MR. SIMPSON:

Q. Where do you live, Mr. Kohler? A. 50 Barbara Street, Newark.

Q. Are you in the employ of the C. W. Pritchard Company? A. Yes, sir. 30

Q. How long have you been with them? A. About three months.

Q. Around the middle of October last year were you with them? A. No I wasn't with them in the middle of October; about the latter part of October, about the last week or a week and a half in October.

Q. Do you know Leroy Pettit? A. I know him. 40

Louis Kohler—Direct

Q. How long have you known him? A. Well since I have been employed by C. W. Pritchard.

Q. Were you in the employ of that company when Mr. Pritchard made the announcement of bonus to be paid to the men? A. No, sir.

Q. You were not with them then? A. No, sir.

10 Q. What position did you occupy when you took employment with the C. W. Pritchard Company? A. Machinist, all around.

Q. Was Mr. Pritchard over you, or how? A. He was over me;; he was my foreman.

Q. In what way did Mr. Pettit do his work there? A. Well, I never saw him do any work; only he gave it out to the men and told them what he wanted done.

Q. How long have you been an all-around machinist, Mr. Kohler? A. About 22 years.

Q. When you took employment with the C. W. Pritchard Company what condition did you find the machine shop in? A. Well, to tell the truth, I found it in pretty—

Mr. Sewell: I object to that unless he can show that it was the duty of the plaintiff to keep the machine shop in proper condition; I don't think the fact that he found it in any particular condition has any bearing on the testimony that has been given thus far.

The Court: I will sustain the objection.

Q. What was Mr. Pettit's position there? A. Foreman.

Q. What was his work as foreman? A. His work was to look after and see that the men done their work right.

40 Q. Did he do any work himself? A. Well,

Louis Kohler—Direct

he did at times, but very little.

Q. Now you are the present foreman there, are you? A. I am.

Q. How long have you been acting as foreman? A. About three weeks.

Q. Who succeeded Mr. Pettit as foreman there? A. Who did?

Q. Yes, A. Well, I did. 10

Q. Now, in what condition did you find the machine shop when you took hold of the job as foreman up there?

Mr. Sewell: I object to that unless it can be shown that Mr. Pettit had the duty of keeping these machines in proper order; their condition, I believe, is altogether immaterial and irrelevant and has no bearing on the fact whether a bonus was promised this 20 man.

The Court: How is it material, Mr. Simpson?

Mr. Simpson: Why, our defense will disclose the conditions that existed when the bonus was offered—not the express bonus of \$500 but a bonus—and I want to show the reason he received only \$35 as a bonus was 30 because of the character of his work there.

Mr. Sewell: Your Honor will notice that we are not suing on this \$35 bonus; we do not claim that was due; but we claim that this man made a contract to pay the bonus of \$500 and the fact that he later cut down the bonus to \$35 as he tell us I do not think has any bearing, and it cannot be linked together with the condition of the machine shop when 40

Louis Kohler—Direct

this man took it over.

The Court: I will admit the question.

Mr. Sewell: I ask an exception.

10 A. Well I found it in such condition that when I looked for parts that were to be assembled they were gone, strewn away and we missed them, we haven't got the parts; several machines, was what we call wrecking, was taken apart and parts was gone and we can't find them.

Q. Whose duty is it to supervise the dissembling of a machine in a shop of this character?

20 Mr. Sewell: I object to that unless they can show it was this man's particular duty, and not the duty of a man in a shop of this character, unless this witness can say it was Mr. Pettit's duty to assemble this machine. This man has already stated, you must remember, that Mr. Pettit performed no duties, or at least very little, and the most he did was to give the work out to other men.

The Court: I will sustain this objection.

30 Mr. Simpson: Cross examine.

The Court: Wasn't this man supposed to have been there on that Sunday referred to by Mr. Pettit?

Mr. Simpson: No, sir; he wasn't there that Sunday?

40 Mr. Simpson: No, sir; he wasn't there that Sunday.

Louis Kohler—Cross

CROSS-EXAMINATION BY MR. SEWELL:

Q. Were you present on Sunday, October 20th, when Mr. Pritchard increased Leroy Pettit's wages to \$50 a week? A. I was there on a Sunday.

Q. On October 20th? A. Yes.

Q. You don't know anything about any agreement that was entered into? A. I didn't hear no agreement or nothing. 10

Q. When you first entered the shop did they have very much work to do? A. Well, they had quite a rush.

Q. They had quite a rush? A. Yes.

Q. Is a shop during a great rush apt to get somewhat disordered, if the men are rushing along and trying to speed up the work for the Government? A. Well, not exactly, if he know his business and knows how to run a place. 20

Q. It is not as apt to be in as good condition as if the man has plenty of time to oversee everything? A. We will admit that.

BY THE COURT:

Q. On that Sunday that you referred to, who was there? A. Well, I only say Mr. Pritchard there; there was Mr. Pritchard, and Pettit, and I don't know that man's name (indicating), he was there, and a few laborers, the wrecking crew. 30

Q. Work was going on, was it? A. Work was going on at the time.

Q. Who had charge of that work, as far as you could see? A. Roy Pettit, the foreman.

Q. Were you working? A. No, sir; I was not.

Q. What did you go there for? A. I went there, I was called over, Mr. Pritchard wanted to 40

Louis Kohler—Cross

10 speak to me.

Q. What did you do after you got there? A. I just stood around there and walked out again; I didn't say anything.

Q. Stood around where? A. In the factory; in the shop.

10 Q. What part of the shop? A. In the machine shop.

Q. What part of the machine shop? A. About in the center of the building.

Q. Did anybody stand there with you? A. No, I was standing there alone watching them work.

Q. How long did you stand there? A. About twenty minutes.

Q. Where was Mr. Pritchard? A. Mr. Pritchard, I think, was out in the yard.

20 Q. Where was Mr. Pettit? A. He was out in the yard.

Q. Do you know that they were, or do you just think so? A. I know they were.

Q. How do you know? A. Because I seen them going out, walk through the shop and walk out.

Q. Where is the yard? A. The yard is in the rear of the machine shop; between what they call the warehouse and the machine shop.

30 Q. Who went out first? A. Mr. Pritchard went out first.

Q. Where did you meet Mr. Pritchard when you came to the shop? A. Where did I meet Mr. Pritchard?

Q. Yes. A. I met him in the machine shop.

Q. Was he there when you arrived? A. No, he wasn't there when I arrived; he came after I did.

40 Q. How did you come to be there that Sunday, did you say? A. I really don't know what it was; I had taken a trip, there was something about a

Louis Kohler—Cross

screw that they wanted finished up for that and if the man did not show up he would start me in at it.

Q. That was the reason you came there? A. So the man showed up and he started him on the job.

Q. The man appeared? A. The man appeared. 10

Q. Was he there when you arrived? A. He was there.

Q. How long did you stay there? A. Oh, I stayed there, all told, in time about three-quarters of an hour; I got the train from West Side Avenue about five minutes to nine.

Q. How did you come to leave? A. Leave what?

Q. The shop? A. Well, I thought there was no use to stay around there and I went over to 20 New York and took a pleasure trip.

Q. Did you see Mr. Pritchard come in from the yard before you left? A. No, I did not.

Q. Did you see Mr. Pettit come in? A. No, sir.

BY MR. SEWELL:

Q. When Mr. Pettit left you got his position, didn't you? A. No, I didn't get it right off at 30 the start.

Q. How soon after did you get it? A. About a week after or so.

Q. About a week after? A. I didn't keep no tabs on that.

Q. Did you receive increased wages? A. I did not.

Q. You did not? A. No, sir.

Q. You are doing a different kind of work now? A. Yes. 40

John Bertollette—Direct

JOHN BERTOLETTE, Sworn:

DIRECT EXAMINATION BY MR. SIMPSON.

Q. Where do you live, Mr. Bertollette? A. 245 Virginia Avenue, Jersey City.

Q. What business are you engaged in? A. 10 Machine tool business.

Q. Where is your business located? A. Office at 359 West Side Avenue, and works on Orient Avenue.

Q. Do you know the C. W. Pritchard Company? A. Yes, sir.

Q. How near to their works are your works? A. Oh, probably about quarter of a mile.

Q. Do you know Leroy Pettit, the plaintiff here? A. Yes, for about ten years.

20 Q. Do you remember him coming to you about the middle of October last year? A. About the middle of October; yes, sir.

Q. Did you have a conversation with him? A. Yes, sir.

Q. What did he say? A. Well, he came into the office; I don't know whether it was in the morning or afternoon; I says to him, "Where are going, what is the matter?" He says, "I am going down to Kellog & Company for a position, I have 30 a letter of recommendation to them." "Well," I says, "Roy, I don't think you will catch anything down there because they have a name for poor pay; if you don't strike anything, on the way up come in." When he came in again I made an arrangement with him where he was to come to work in my place on the following Monday morning, but he never showed up.

Q. Do you know when that was? A. About the middle of October.

40 Q. Had you made any agreement with him as

William Ensign—Direct

to wages A. Yes, sir.

Q. What were they to be?

Mr. Sewell: I object to that as irrelevant.

The Court: I will sustain the objection.

(No cross examination.)

10

WILLIAM ENSIGN, Sworn:

DIRECT EXAMINATION BY MR. SIMPSON:

Q. Where do you live, Mr. Ensign? A. 61
Claremont Avenue.

Q. Where are you employed? A. For the C.
W. Pritchard Company.

Q. How long have you been employed by them? 20
A. About a year the last of February.

Q. Do you know Mr. Leroy Pettit? A. Yes,
sir.

Q. In the month of October, what job did he
hold with the Pritchard Company? A. Fore-
man.

Q. Were you working under him? A. Yes,
sir.

Q. Do you remember around the 20th of Oc-
tober hearing Mr. Pritchard say anything about 30
bonuses to be paid to the employees? A. I don't
remember on the 20th, but when the Fourth
Liberty Bond came out I do.

Q. Do you remember something being said
about a bonus—not bonds? A. No, sir; only he
told me that he was going to give a bonus—a con-
siderable bonus—around Christmas.

Q. Who was there when this announcement was
made? A. On the 20th?

Q. Yes. A. Oh, all the fellows in the shop 40

Walter Ensign—Direct—Cross

were there.

Q. How many were in the shop at that time?

A. I don't exactly know how many was there.

Q. Was Mr. Pettit among them? A. Yes, sir.

Q. Just tell us what did Mr. Pritchard say to the men who were assembled there? A. He told
10 the men around Christmas he would give a considerable bonus, but he would use his own judgement.

Q. Did you get a bonus? A. Yes, sir.

Q. How much did you get? A. \$15.

Q. When did you get it? A. The first Saturday in January—January 4th.

Q. Mr. Pritchard was to use his own judgement as to the amount of the bonus; is that right?

A. Yes, sir.

20 Q. Did you hear Mr. Pettit say anything when Mr. Pritchard announced that? A. No, sir.

Q. Where was Pettit standing—where was he when Mr. Pritchard announced that? A. It was in the office at the time, it was when the Fourth Liberty bonds came out.

Q. Nevermind the Fourth Liberty Bonds; where were you men all collected when Mr. Pritchard announced this? A. We were in the office, being paid off.

30 Q. You were being paid off? A. Yes, sir.

Q. Everybody? A. Yes, sir.

Q. Mr. Pettit, too? A. Yes, sir.

CROSS-EXAMINATION BY MR. SEWELL:

Q. Can you say whether or not, Mr. Pritchard—at any time—not this particular day but any time—has ever offered Leroy a \$500 bonus?

A. No, sir.

40 Q. Can you say whether he did or not? A.

William J. Linton—Direct

He did not; not as I know of; I was never told any thing about it.

Q. You never heard Mr Pritchard say in front of Leroy before today that he never offered him anything? A No, sir

Hearing continued until Saturday, February 8th,
1919, at 10 A. M. 10

Jersey City, February 8th, 1919.

Hearing resumed at ten o'clock A. M.

Mr. Sewell: I move Your Honor to amend the state of demand so as to waive any sum which comes over the jurisdiction of the Court, that is, we waive interest in this case over the \$500. 20

The Court: The amendment will be mad .

WILLIAM J. LINTON, Sworn:

DIRECT EXAMINATION BY MR. SIMPSON:

Q. Mr. Linton, by whom are you employed?
A. C. W. Pritchard Company.
Q. How long have you been in their employ? 30
A. Since about the 1st of October—the 5th of October; somewhere thereabouts.
Q. Of 1918? A. 1918, yes.
Q. What line of business are they in? A. Machine tools.
Q. How long have you been in the machine tool business? A. About 15 or 18 years.
Q. Are you familiar with the plant on Culver Avenue of the C. W. Pritchard Company? A. Yes. 40

William J. Linton—Direct

Q. Do you know Mr. Pettit? A. I do.

Q. What position did he hold down there while you were employed there? A. Superintendent of the works.

Q. That is the shop and machine plant? A. Yes, the warehouse and machine shop.

Q. What were Mr. Pettit's duties down there, 10 do you know? A. He gave orders to the men in regard to repairs, all the work that we did, so that it went out in proper condition.

Q. Do you know anything of this sale to the Betterment Company of Newark? A. I know that sale was made, yes.

Q. While you were employed with the Pritchard Company did you ever talk to Mr. Pettit about wages or bonus? A. The only conversation I had with Mr. Pettit that would have any 20 bearing upon that subject was when he came one day, he spoke to me one afternoon, I was over to the works, about his position there; and he asked me what I thought was the prospect of it continuing, with Mr. Pritchard; this was some time after, I think the armistice was declared, after the war was over, understand; and I said, "Well, what do you want to know? Do you want to have an unprejudiced opinion? My own personal opinion, what I would do if I were in your position?" He 30 said, "Yes." "Well," I said, "if I were you, Roy, I would try to hold my job down and look after my business and keep my position at least for a year, anyway."

Mr. Sewell: I object, Your Honor. This is not responsive and I ask that that be stricken out. He asked the witness if he ever recalled whether he had spoken to Mr. Pettit about a bonus.

William J. Linton—Direct

The Court: The answer will be stricken out as not responsive.

Q. (Last question repeated.) A. What wages, or bonus?

Q. Do you remember any, Mr. Linton, about a bonus? A. About a bonus, no; about wages I might say yes. 10

Q. What was it? A. Well, it would be, whether I thought, in my judgment, whether it would be well for him to keep his position there or for to try to better himself.

Q. Was that the only talk you had with him? A. That is all pertaining to the wages.

Q. How often did you visit the plant? A. Oh, about, probably sometimes twice a week; sometimes four or five times a week.

Q. From your knowledge of machine tool work, was there anything in the conduct of the plant under Mr. Pettit's supervision that would indicate to you that he was not doing his work properly? 20

Mr. Sewell: I object to that, Your Honor. The witness has not been qualified. It is true that he already stated that he had been in this business a long length of time, but I believe if this witness were asked the question it would be brought out that he has been a salesman and he has had no actual experience in making tools or maintaining a shop such as this was. 30

The Court: If you wish to cross-examine him you may, on that point.

William J. Linton—Direct

BY MR. SEWELL:

Q. Mr. Linton, just what line of work have you done in the machine tool business? A. I am not a practical machinist; if that is what you mean.

Q. You are not a practical machinist? A. 10 No; my business is engineering, and I have, I suppose, reorganized at least eleven or twelve large plants, some of them covering 23 acres, reorganized the plants and put them on a paying basis.

Q. Just what do you mean by "reorganized"? A. Well, taking hold of large plants, companies which were practically insolvent, putting the plants on a working basis, so that they would be able to pay their indebtedness and continue.

Q. That was merely a financial arrangement, 20 and not a business arrangement at all, wasn't it? A. A productive arrangement.

Q. A productive arrangement? A. Finance don't enter into running a factory.

Q. Have you ever had any experience in superintending a plant? A. Yes, many of them, some employing fifty men and some employing 1200 men.

Q. Whereabouts? You said a moment ago 30 that you were not a practical machinist. Isn't it customary to have a practical machinist as a superintendent of a machine shop? A. It depends upon what size shop you are speaking of. If you have 25 or 30 men working, I would have a foreman in the shop, a responsible foreman; if I would have 300 men in the shop, I would have probably two or three foremen and a general superintendent; and if you have 1200 men, you would have probably a foreman, superintendent and an 40 engineer—a production engineer.

William J. Linton—Direct

Mr. Simpson: Is the question allowed

The Court: Yes.

BY MR. SIMPSON:

Q. From your knowledge of machine tool work, was there anything in the conduct of the 10 plant under Mr. Pettit's supervision that would indicate to you that he was not doing his work properly? A. There were a great many things.

Q. Can you enumerate them? A. Well, I can enumerate several of them, and possibly I should answer that question by stating that I brought this matter to Mr. Pritchard's attention, that the shop was not—

Mr. Sewell: I ask that that be stricken 20 out as not responsive.

The Court:..Tell us what you found.

A. I found in going over to the works that there was practically no one giving what I considered the superintendent's supervision of the works. My reason for making that statement—one of the reasons is, men coming to the superintendent asking for work, whereas, in my 30 experience, the superintendent always had the work prepared for the men and gave it out without them asking for it; not only that, but work went out of the shop in imperfect condition; that I learned through the office.

Mr. Sewell. I ask that that be stricken out

The Court: That part of the answer will be stricken out. Please tell us just exactly what you found from your own observation; 40

William J. Linton—Direct

not what somebody else told you.

The Witness: I made no reply to what any person told me, Your Honor.

The Court: You were just about to tell what you found out through the office.

10

A. No, I had the office end as well as the shop end; some of the knowledge came through the office end, which took me through the shop to confirm.

The Court: Tell us only that which you found by actual observation, in the shop, from your own observation.

20 A. Well, probably I can cite one case of a large gear being made—I would have to get right down to facts. That gear was not made perfect by any means; it was put on a tool, shipped away, and Mr. Pritchard discovered that through his business correspondence.

Mr. Sewell: I ask that that be stricken out

30 The Court: That part of the answer will be stricken out.

A. If you will permit me to finish I will try to show you whether it is right or wrong.

Mr. Sewell: I object to that and ask that that be stricken out.

The Court: That will be stricken out.

40 BY THE COURT:

William J. Linton—Direct

Q. Was this machine under your supervision or examination, this particular machine? A. That particular piece, that came under my own observation, yes.

Q. Why don't you tell us what you found about it? Tell us, if it was imperfect, tell us how and why; don't tell us what Mr. Pritchard learned, or anyone else. A. Tools that were disassembled in the process of rebuilding, parts would be found here and there and all over the shop; some of them could not be found after they had been disassembled; the tool room in disorder, making it difficult for men to find tools which they went after, or to be handed out to them when they asked for them. 10

BY MR. SEWELL:

Q. What is that? A. The tool room being kept in very bad disorder, so that when men came and asked for tools, it took so much time in finding the tools, and sometimes they could not be found; whether they were there or not I won't say in every case; sometimes a tool might not be in the tool room; it might never have been there; I don't know that part of it because that tool room was never checked up. 20

BY MR. SIMPSON:

Q. Do you know anything about a radial drill?

A. Yes.

Q. What was there about that? A. When that drill came in I made up a description card of that tool, and when the tool came to be repaired a considerable portion of the feed gear box gears were missing and they could not be found; they were on the tool when I took the description—in- 30 40

William J. Linton—Direct

ventory of the tool.

Q. And what condition was it in when it came into the works? A. It was intact; the tool was intact, but considerably worn, of course, but the tool was intact.

Q. Had it been dissembled? A. After it came to the shop, yes.

10 Q. Now, after it was dissembled, what was the difficulty? A. Well, the gears were lost and could not be found.

Q. With respect to that grade of work, how did it affect the superintendent or foreman? A. Well, in this particular case it appears to be impossible to replace those gears.

Q. Well, with respect to the superintendent or foreman? A. Well, if he was foreman in my shop I would expect him to answer for those gears.

20 Q. Those gears were lost? A. Yes, sir; they cannot be found.

Q. Would that occasion much of a loss to the concern? A. Well, it means that the drill is there today; it cannot be sold; never used; I made every effort I could to have the manufacturers locate that drill by their drawings and to furnish the gears, but they cannot do that; we cannot find the serial number of the drill; the manufacturers have written me personally where to find the
30 number but we cannot find it. Now, the result is that we will have to go to work and make up a new gear box drive, but whether it will conform to that same tool as made by the manufacturer, we don't know.

BY THE COURT:

Q. Where is the manufacturer located A. In Cincinnati.

40 Q. How much would it cost to do what you

William J. Linton—Direct

just say you will probably have to do? A. It will probably cost, well, \$100 or \$125.

Q. What would it cost if you had the serial number? A. If we had the serial number of the tool we might be able to get gears for about probably \$35 or \$45.

BY MR. SIMPSON:

10

Q. Now, with respect to the drill itself as it stands, is it worth anything? A. It is valueless.

Q. Do you know anything about any other particular piece of machinery that was disassembled under Mr. Pettit's direction? A. I don't know as I can specify any particular tools, because it was not my position to go over there and find fault with Mr. Pettit, and I simply—

20

Mr. Sewell: I ask that this be stricken out as not responsive. He asked him what further machines he knows about, and then he is going on to tell us it was not his duty to find fault.

Mr. Simpson: I will withdraw the question to save time.

CROSS-EXAMINATION BY MR. SEWELL:

30

Q. Mr. Linton, had you ever visited the warehouse or the machine shop of the Pritchard Company, prior to the date of your employment by Mr. Pritchard? A. I might have been there once or twice; I am not sure.

Q. You may have been there once, you say? A. Yes.

Q. Did you make an inventory of the tools before you started your employment with the Prit- 40

William J. Linton—Cross

chard Company? A. Of course not.

Q. Did you ever make an inventory of the tools, or have you ever made an inventory of the tools in this connection? A. Yes.

Q. When did you make that? A. After I was employed by Mr. Pritchard.

Q. How long afterwards? A. I can't tell
10 you exactly; probably within a month.

Q. Probably when? A. Within the month after my employment.

Q. Was there any tools missing then? A. Any what?

Q. Any tools missing then when you say you made the inventory? A. Yes.

Q. Were there any tools missing? A. Well, define your question? Do you mean operating tools or machine.

20 Q. Part of the operating tools of the machine shop; you say there were certain tools missing and could not be found. Now I want to know, when you made your inventory within a month after you took your employment, were there any tools missing there that should have been there according to your record? A. There were some tools there that were not complete.

Q. Were there any tools missing that should have been there according to your record?

30

The Court: That is the best this man can say, if there was no previous inventory made. The best that he can say is that he found certain tools that were incomplete.

Q. You don't know whether those tools became incomplete, or tools were missing, during Mr. Pettit's employment?

40

The Court: Certainly not.

William J. Linton—Cross

A. I know what was there from the time I started over there.

Q. I mean before that? A. I had nothing to do with the business before that.

Q. You say you came over there two or four times a week; when you went there how long did you stay there? A. Sometimes an hour; sometimes three or four hours; sometimes nearly half a day. 10

Q. When did you first discover that Pettit was not taking proper care of that place? A. After I had gone over there four or five times.

Q. When did you tell Mr. Pritchard of that fact? A. Oh, possibly after I had been there about a month.

Q. Well, that would be, you say, around the first of November? A. Somewhere about there, yes; it might have been later than that; I wont say. 20

Q. Do you know, asa matter of your own observation, whether it was Pettit's duty to see that all the tools were complete there, or to see that tools were put in their proper position, or anything of the kind? A.,I can only answer that question by saying that if he was employed there as superintendent it would be his duty to see that the tools went out of the shop in perfect condition. 30

Q. I am speaking about tools used in operating the plant? A. Tools in operating the plant?

Q.,Yes. A. You didn't ask me that question before. The tools in operating the plant were in bad condition.

Q. I am saying, Do you know whether it was Pettit's duty to see—as a matter of your own information and knowledge, whether it was Pettit's duty to see that those tools were put in their proper position and kept properly? A. If I was sup 40

William J. Linton—Cross

erintendent—

Q. I am asking do you know whether it was Pettit's duty to do so? A. I never saw any contract to that effect, no.

Q. About the serial number on this engine, why was not the serial number on that? A. I am not talking about an engine; it is a radial
10 drill.

Q. Why wasn't the serial number on that? Isn't it customary to have a serial number on that? A. It is customary.

Q. Why wasn't the serial number on that, do you know? A. No, I don't know; of course not.

Q. It was an old machine, was it not? A. Yes.

Q. Did you see the machine the day it arrived at the shop? A. Not the day it arrived, no.

20 Q. So you don't know what condition it arrived there in, do you? A. I only know the condition it was in when I took an inventory of it.

Q. How long after it arrived was that? A. I couldn't tell you that.

Q. You don't know. Was it knocked down at the time—was it dissembled? A. It was not dissembled when I first saw it.

Q. It was not dissembled? A. Not the first time.

30 Q. Regarding this machine that went to the Betterment Company this was the Betterment Company in Newark; did you examine that before it left the shop? A. No.

Q. Well, you testified it was in defective condition, didn't you? A. I said it was? You never asked me about that before.

Q. I thought Mr. Simpson did. Didn't he ask you what you knew about the machine, and you said it was in defective condition? A. I found
40 that out through the office.

Joseph Callahan—Direct

Q. You don't know that of your own knowledge? A. No.

The Court: That was stricken out.

A. That firm wrote—

The Court: That is all. There is no question before the Court now. 10

Q. What did Mr. Pritchard say when you told him that Mr. Pettit was not acting properly in the factory and was not keeping proper supervision over it—you said there was no supervision, you told Mr. Pritchard. A. I don't know whether he made any comment to me or whether he said he would do anything at all about it.

20

JOSEPH CALLAHAN, Sworn,

DIRECT EXAMINATION BY MR. SIMPSON:

Q. Where do you live, Mr. Callahan? A. 360 Virginia Avenue.

Q. In Jersey City? A. Jersey City.

Q. By whom are you employed? A. C. W. Pritchard Company.

Q. How long have you been employed by them? A. Nearly a year.

Q. Do you know Mr. Pettit? A. I do.

Q. You know he was the foreman or superintendent down at the works do you not? A. Yes sir.

Q. Do you know anything about this machine that was sent to the Betterment Company at Newark? A. I was sent on that machine to repair it and found it necessary to take in all down and bring some of the parts back to the shop and 40

Joseph Callahan—Direct.

make new ones in their place and to go back out there and put them on.

Q. Were any of the parts of that machine broken? A. No.

Q. What was the trouble? A. The bearings were worn out and the gears were in poor condition, some of them, one or two, were not cut
10 properly.

Q. Did you try to operate the machine at Newark? A. I did.

Q. Would it go; would it work? A. On account of the loose bearings, the gears jammed and it refused to do the work except at very low speed.

Q. Do you know who passed on that machine before it went out of the Pritchard Company's works? A. I couldn't say as to who passed on
20 it; a machinist by the name of Rapp overhauled it.

Q. And Rapp was working under whom? A. Working under Mr. Pettit.

Q. How much time did it take you to put that machine in running condition? A. I spend four days in Newark and considerable time in the shop, and other men spent time on it.

Q. What position do you hold down at the works there? A. General machinist.

30 Q. During the past year, or up to the 4th of January of this year, did you have any difficulty in your work down there? A. I can't say that I have; no.

Q. Do you know anything about parts of machines being lost, or destroyed, or mislaid, or otherwise unaccounted for? A. Why, the parts of one drill were mislaid; that is all I can say.

Q. What were they for? A. The Miller Radial Drill that was spoken about before.

40 Q. Was that the drill that Mr. Linton testified

Joseph Callahan—Direct.

to? A. It is, I believe.

Q. What do you know about that? A. Why several of the shafts and gears were missing; I found one shaft was—well a shaft and several gears were missing.

Q. Whose duty was it to keep those parts together after the machine had been dissembled, to keep track of them? A. I couldn't say; I think Mr. Linton's and Mr. Pritchard's testimony covered that part. 10

Q. You don't know anything about that? A. No, I can't say that I do.

Q. Was it the workmen's place or the man who had supervision over the shop?

Mr. Sewell: I object to that.

The Court: Objection sustained. 20

Q. Do you remember where you found one of the shafts of this radial drill? A. On the back platform of the plant, among some other shafts—shafting.

Q. Were you at the works on Sunday morning, the 20th of October, or Sunday afternoon, whenever it was? A. No, I was out of the city at the time.

Q. Do you remember when the announcement was made regarding bonuses to the men? A. I can't say as to that date; I remember such announcement being made. 30

Q. Who made the announcement? A. Mr. Pritchard said there would be a considerable bonus given out.

Q. What else did he say? A. That he would be the judge of the bonus.

Q. To whom did he make this announcement? A. To all the men employed in the shop. 40

Joseph Callahan—Cross.

Q. Was Mr. Pettit there? A. I can't really say, but I believe he was.

Mr. Sewell: I ask that he believed he was be stricken out.

The Court: It will be stricken out.

10

Q. Do you remember definitely that Mr. Pritchard said he was to be the sole judge of what the bonuses were to be? A. I do.

{ Q. Did you receive your bonus? A. I did.

Q. How much did you receive A. I received \$25.

Q. When did you receive that? A. The first Saturday in January.

20 CROSS EXAMINATION BY MR. SEWELL:

Q. Did you perform any work on this machine that went to the Betterment Company? A. Not until after it had been taken to the Betterment Company's plant.

Q. You hadn't performed any work before it went out of the shop? A. Not on that particular machine.

30 Q. Did you ever examine it before it left the shop? A. No, I can't say I have.

Q. When you went out to the Betterment Company in Newark—did you say you went to the Betterment Company? A. Yes, sir.

The Court: Mr. Sewell, if this witness did not see it before it went out, then his testimony as to the failure of Mr. Pettit to make proper supervision is of no value.

40

Mr. Sewell: I only wanted to show that

Joseph Callahan—Cross.

when this machine went out it was imperfectly erected, or it was not properly erected in the plant at Newark where it was installed. I want to show that it was not in proper position.

Q. Did you notice whether it was properly installed in the plant at Newark? A. The machine was as properly installed as it could be in the condition that it was; all the parts were in their right place; as I stated before, the bearings were worn. 10

Q. Well, how far should the countershaft in such a machine be placed from the machine itself? A. I can't say as to that, as a general rule, I think they are placed—I don't know as there is any particular distance given for them.

Q. When did the Pritchard Company move out from those premises owned by Mr. Stahl, which I believe were about two doors away from the premises which they now occupy? A. I can't give you the exact date on that; I think it was some time in December. 20

Q. It was necessary, was it not, to move all the machines down to this new place? A. It was necessary to move what machines were in that building down to the plant itself.

Q. Was this particular drill that you speak of moved down? A. No, I think not. 30

Q. Where was that left? A. I think it was on the platform of the plant all the time.

Q. On the platform. A. I think it was.

Q. Which platform do you mean, of the old premises or the new premises? A. Well, what do you mean by the old premises and new premises?

Q. Well, wasn't there some property two doors away occupied and owned by a man named 40

Charles M. Muller—Direct.

Stahl and you moved from there to the new place

A. That was nothing more than a warehouse.

Q. Was this drill in that warehouse at any time? A. Not to my knowledge

CHARLES M, MULLER, Sworn:

10 DIRECT EXAMINATION BY MR. SIMPSON:

Q. Where do you live, Mr. Muller A. 47
Bleecker Street, Newark, N. J.

Q. By whom are you employed A. C. W.
Pritchard Company.

Q. How long have you been in their employ?
A. Since about last March, except to go away
to the war.

Q. When did you return from the war? A.
20 I believe it was about the 16th of December; yes,
I believe it was around the 15th or 16th of De-
cember.

Q. What job did you hold with the C. W.
Pritchard Company when you returned? A.
Chauffer.

Q. Chauffer A. When I returned I held the
job of timekeeper for a week.

Q. You were timekeeper? A. About a week,
yes.

30 Q. Do you remember on the 4th of January of
this year? A. Do I remember the day, the 4th
of January?

Q. Yes.

The Court: He remembers he was alive on
that day. What do you want him to remem-
ber

Q. You were in the employ of the C. W. Prit-
40 chard Company on the 4th of January? A. Yes,

Charles M. Muller—Direct.
Emma C. Pettit,—Recalled—Direct

sir.

Q. At that time were you still acting as time-keeper? A. On the 4th of January.

Q. Yes. A. Why, yes; I took care of the time and I drove a car as well.

Q. Did you pay off the men? A. Yes.

Q. Do you remember when these bonuses were distributed by the company, or Mr. Pritchard A. 10
Why, I believe they came in enveloped; I remember the day.

Q. Do you remember that occasion? A. Yes, sir.

Q. Did you pay off the men that day? A. Yes, sir.

Q. Do you remember handing Mr. Pettit his envelope? A. Why, yes, I remember it.

Q. Did he open it in your presence A. I 20
can't say that he did; I couldn't say that.

Q. Did Mr. Pettit say anything to you about his pay envelope or his check? A. No, sir.

Q. Are you sure of that? A. Yes, sir.

Q. How long after you paid the men that day did you remain in the shop or the works? A. Why, I remained there about, I believe, around half an hour and went up for lunch.

No Cross Examination.

Mr. Simpson: The defendant rests. 30

EMMA C. PETTIT, Recalled:

DIRECT EXAMINATION BY MR. SEWELL:

Q. Did you call Mr. Pritchard up on the telephone on Sunday morning, October 20th, 1918

A. No, sir.

CROSS EXAMINATION BY MR. SIMPSON: 40

Emma C. Pettit—Cross.

Q. What time of day was it that you received that call, Mrs. Pettit? A. In the evening; Sunday evening.

Q. What time? A. It was, it must have been—

10 Mr. Sewell: I object to that as not proper cross-examination, unless he wants to make her his own witness.

The Court: No, I don't think he has to, according to the question you asked.

Mr. Sewell: I will withdraw the objection.

A. Well, I should say about half past nine or quarter to ten.

20 Q. Did you at any time during the day call Mr. Pritchard, on the 20th of October? A. No, sir; I was away all day; I was down to the Morgans explosion before.

Q. You are positive in your mind about that?

A. I am certainly positive.

Q. Now, this is very important, Mrs. Pettit, and I want you to correct yourself on the record if you wish to. You did not call Mr. Pritchard from your house at all on October 20th, which was a Sunday A. No, sir.

30 Q. But Mr. Pritchard called you? A. In the evening.

Q. Now, did he state where he was when he called you?

Mr. Sewell: I object to that, if Your Honor please.

40 A. I didn't ask him any questions.

Emma C. Pettit—Cross.

Mr. Sewell: I don't see where it is proper. This was all thrashed out yesterday when she was under examination. Mrs. Pettit testified that Mr. Pritchard had called her up and I just called her to make sure of her testimony. on that.

The Court: I think we have been all over 10 this ground and I hardly see any need of going over it again.

Mr. Simpson: Then the objection is sustained?

The Court: Yes.

Mr. Simpson: I ask for an exception.

20

Mr. Sewell: If he insists on the question I will withdraw the objection, to save time.

Q. (Last question repeated).

A. No, I didn't ask him any questions.

LEROY I. PETTIT, Recalled:

DIRECT EXAMINATION BY MR. SEWELL:

30

Q. Mr. Pettit, you heard the testimony given relative to this machine sent to the Betterment Company of Newark; was this a new machine?

A. No, sir.

Q. How were the machines purchased by the Pritchard Company, do you know? A. Why, I think there was 17 purchased at one time; some were 3x36, others were 2x24.

Q. You mean 17 machines A. 17 machines.

Q. Similar to this one? A. Yes, sir. 40

Leroy I. Pettit—Recalled—Direct

Q. In putting this machine in working order was it necessary to take parts from one of these machines and put them on others? A. Yes, sir.

Q. And put them on this particular machine that went to the Betterment Company A. Yes, sir.

10 Q. Did you consider the machine in perfect order when it left your place? A. No, sir; I did not.

Q. Was it supposed to be put in perfect order? A. No, sir.

Q. Did you request Mr. Pritchard to put in new bearings and new parts on this machine? A. Yes, sir.

Q. What did he say A. He didn't want to buy them then.

Q. He didn't want to buy them? A. No.

20 Q. What did he tell you about that? A. He told me to take parts from other machines and make it up the best I could.

Q. Was this machine in working order when it left the factory? A. Why, yes, it was in running order.

Q. In running order A. Yes.

Q. Did you have any facilities, or did you have any instructions to put this machine under belt to run it? A. Yes, sir.

30 Q. When did you learn that that machine was defective? What was the first knowledge you had that that machine was defective? A. Why, I guess it was a little over a week.

Q. Where did you get that information from A. Mr. Pritchard.

Q. What did Mr. Pritchard say to you? A. Why, he told me that he wanted me to go out there and look that machine over, that he could not get it running.

40 Q. Did you go out? A. Yes, sir.

Leroy I. Pettit—Direct.

Q. Was there anyone with you? A. No, sir.

Q. You went alone A. Yes, sir.

Q. What was the condition of the machine when you got there? A. Why, the machine, we had sent it out dismantled in a team truck.

Q. Well, I mean when you got out there; what condition was the machine in, not when it left your place, but what condition was it in when you saw it out there installed in this factory in Newark? A. Why, not in very good condition. 10

Q. Was it installed properly? A. No, sir.

Q. What was the matter with the installation A. Why, the counter-shaft was only about three feet, I should judge, from the machine; there wasn't enough belt space.

Q. How long does it take for bearings to burn out on a machine that is not properly taken care of? A. It would not take very long to burn the bearings out when these Jones Lampson machines are not filled with oil. 20

Q. It would not take long to burn them out A. They run at very high speed.

Q. Was this machine properly oiled when you got there? A. There was oil in the bottom of the machine but not enough to cover the bearings.

Q. Could the condition of the want of oil in that machine have brought about the apparently poor condition of the machine A. If the machine had run it might have. 30

Q. Did you come back and make a report? A. Yes, sir.

Q. To whom? A. Mr. Pritchard.

Q. What did he do? A. Why, he told me that we would have to fix it; I came back with a bag full of parts that accumulated; I carried them in myself.

Q. You brought back parts yourself A. Little clutches and things like that that was lost. 40

Leroy I. Pettit—Direct.

Q. Did you repair the parts? A. Yes sir.

Q. Did you bring them back again? A. I left them right in the drawer to repair some parts myself, left them in the drawer before I left.

10 Q. About this drill which was spoken of, did you ever do any actual work on that drill? A. Why, I was sent to Philadelphia to inspect that machine; that and several other ones; I gave Mr. Pritchard a written report of those machines, each and every one, and when I told him about this gear box, there was hardly anything in the gear box, it was all broken down, the gear box of the machine and the housing was all broken down to pieces, and the teeth were taken right off the gear altogether, you could see the impression of the teeth, and I told him about this, and we brought the machine to the shop and it was disassembled, and it laid in the shop on the platform for almost
20 three months, I guess, there wasn't very much shelter on that platform, it is like in the open air

Q. What shelter is over the platform? A. Why, there is a roof over some of it.

Q. Was there any roof over this particular drill? A. Yes, sir.

Q. Were there any walls around there? A. Well, there was walls, the place has been fixed since then.

30 Q. I mean when it was first put there? A. Oh, yes, it was in the building.

Q. Near the door? A. It was near the door, yes.

Q. When did Mr. Pritchard first learn that this gear box was missing? A. Why, told him as soon as I came back.

Q. I mean from his personal inspection? A. I don't know when he looked at it.

40 Q. Did he ever say anything to you about it? A. He admitted it was in pretty bad shape, he

Leroy I. Pettit—Direct.

was up to Philadelphia with me that day and he saw it right there.

Q. Did you draw his attention to it at that time? A. Yes, sir; he went home and left me at Philadelphia to gather the parts that was missing, in this ammunition shop, and I got them all.

Q. About these tools; they say some of the tools that they use in the operation of the plant were missing; was there anyone there designated to check on tools? Did you have a checking system at all down there? A. Why, we used a brass check when the tool was given out from the tool room, there was a check supposed to be taken for that tool. 10

Q. Who had charge of the checking up? A. Why, there was a boy, about 16 years old.

Q. What is his name? A. I can't think of his name now. 20

Q. Is he in their employ now? A. No, he is not—yes, he came back. I understand he left but I hear he is back again.

Q. But don't you know whether he is back? A. No.

Q. Were you ever accused by Mr. Pritchard of losing tools, or did he ever say that they did not check up properly or anything? A. No, sir.

Q. Not while you were in their employ? A. No, sir. 30

Q. Did they deal in new machines, or second-hand machines? A. We had a few new machines.

Q. What was the most of the work? A. We never done any new work in the shop.

Q. It was all old work? A. We had new machinery in the shop, though, for sale.

Q. I want to ask you one question about these gears: In the making of this gear what is the proper tool to make a gear with? A. Why, a 40

Leroy I. Pettit—Direct.

gear of that size, you should have a gear cutter.

Q. Did you have one? A. Why, if you want to call it that.

Q. What do you mean—if you want to call it that? Did you have a proper tool to fix this gear up? A. We had a cutter; we had a part of a gear cutter there.

10 Q. A part of it? A. Yes, sir.

Q. Where was the rest of it? A. I don't know; there was supposed to be a set of gears come with these Gould Eberhard gear cutters, to cut these teeth accurately. I had to go to work and lay this out myself with a pair of dividers and put a boy on it to cut; Mr. Pritchard never wanted me to use a man machinist to cut gears, and I had to lay this gear out with a pair of dividers, this boy cut it, and I suppose he has gone one
20 way or the other—

Mr. Simpson: I object to what he supposes.

The Court: That will be stricken out. Just tell what you know.

A. By the time he got around to the last tooth, I suppose he was away off.

30

Mr. Simpson: I object to what he supposes.

The Court: That will be stricken out.

Q. You say this boy was not a machinist—a qualified machinist? A. No, he was only an apprentice boy.

40 Q. You say Mr. Pritchard gave you instructions not to put a machinist on cutting gears? A.

Leroy I. Pettit—Cross.

Yes, sir.

CROSS-EXAMINATION BY MR. SIMPSON:

Q. Mr. Pettit, just about this time the company was very busy with war work, wasn't it?

A. Yes, sir.

Q. You knew as a fact that the company was very anxious to get out these machines? A. Yes 10
sir.

Q. They were supplying principally ammunition plants, weren't they? A. Yes, sir.

Q. You say that Mr. Pritchard wanted you to keep a boy making gears? A. Yes, sir.

Q. You knew that the gears are one of the most important parts of all these machines, didn't you? A. Yes, sir.

Q. How many grown up men were employed 20
at the plant at that time? A. Why, I should say we had ten men in the shop.

Q. What kind of work were they doing? A. Machinist work; some were doing helping.

Q. All under your supervision? A. Yes, sir.

Q. You knew it was your duty to get these machines out A. Yes, sir.

Q. What did you tell Mr. Pritchard when he wanted you to have a boy cutting gears? A. I didn't say anything; I told Mr. Pritchard I had 30
an awful lot of gears to cut.

Q. Wait a minute: You say you didn't say anything? A. Mr. Pritchard didn't say anything.

Q. What did you say to Mr. Pritchard? A. I told him that we had an awful lot of gears and things like that to cut; then is when he installed this other gear cutter, but it was absolutely no use to be, there were no gears to operate that machine with. 40

Leroy I. Pettit—Cross.

Q. That is all you told him? A. Yes, sir.

Q. Where did they make gears for the machines during the whole year that you were there? A. Cut them on a milling machine.

Q. The machinery was right down in the plant there? A. Yes, sir.

10 Q. Whose duty was it to see that that machine was in proper working condition when it left the plant? A. My duty.

Q. Did you examine this machine that went to the Betterment Company? A. Yes, sir; I did.

Q. Did you operate it? A. I did when I got out there.

Q. Before it left the plant did you operate that machine? A. No, sir.

Q. Why didn't you do that? A. Because I didn't have time.

20 Q. You knew it was to be a delivery on the sale of it, didn't you? A. Yes, sir.

Q. You knew it was your duty to see that it was in running condition before it was shipped from the plant? A. Yes, sir.

Q. Then why didn't you put it in running condition and have it running before you shipped it? A. Why, I done the best I could do with that machine.

30 Q. What did you do? A. Why, about all that anybody could expect from an old machine like that.

Q. We don't know what was expected; we would like to know what you did? A. Why, I bushed a lot of gears, pinions and worms, put in new rods and bearings——

Q. You did not think it was worth while to start it under power and operate it and see how it worked, did you? A. No; we had to take it all apart to ship it to these people.

40 Q. Well, don't you always assemble your ma-

Leroy I. Pettit—Cross.

chines, get them in running condition, and then dissemble and ship them? A. Not always, no.

Q. What was the weight of this machine? A. I am not very good at weights; I don't like to guess at those things.

Q. What other machine, during the time that you were foreman or superintendent, did you ever see go out of that plant that had not been operated to see whether it was in operating condition or not? A. Why, some of the other Jones Lampson machines were sent out and never put under belt. 10

Q. What kind? A. Jones Lampson—the same kind of machines.

Q. Were there any others? A. Why, I never remember putting any other machines under belt, only some of the Jones Lampson are the only ones.

Q. What was the difficulty about this Philadelphia job? 20

Mr. Sewell: I object to that as improper cross examination.

The Court: There was no difficulty about any Philadelphia job. He testified that he went to Philadelphia to inspect machines but he did not repair any machine there.

Q. You went to Philadelphia with Mr. Pritchard? A. Not with him; I met him there. 30

Q. You met him there; what did you go there for? A. To inspect some machinery.

Q. Where did that machinery come from? A. I can't think of the name of the plant; it was an ammunition plant, though.

Q. Had it been sold by the Pritchard Company to those people? A. No, it hadn't been sold; Mr. Pritchard bought it from those people.

Q. Well, he bought it from the ammunition 40

Leroy I. Pettit—Cross.

plant in Philadelphia? A. Yes, sir.

Q. And it was to be sold from that plant to somebody else; is that right? A. It was to be brought to the warehouse and fixed up, and then sold.

Q. Well, when you went to Philadelphia, what was that for? A. To inspect the machines.

10 Q. What was that for, just to get your judgment on the value of it?— A. Why, the principal reason I went there, the parts of these machines were strewed all over this building and I collected everything, counter-shafts and wrenches and everything for these machines and got them all right, except this radial drill, and I drew Mr. Pritchard's attention to it, and he looked at it right there, then he saw this radial drill and the gear box.

20 Q. It was subsequently brought to the Jersey City plant, was it? A. Yes, sir.

Q. So that when you went to Philadelphia it was not by reason of something that had left the plant had gone to Philadelphia? A. No, sir.

Q. It was just to get your assistance on something which had been purchased? A. Yes, sir.

30 Q. Was that the machine that Mr. Pritchard admitted was in bad shape? A. That is the Muller Dresser radial drill I was talking about the gear box and some of the gears being missing.

Q. Were you at the plant when it reached the plant? A. Yes, sir.

Q. Wasn't everything there then? A. Everything was just as I got it at Philadelphia.

Q. Was it in running order? A. I don't know whether it was in running order or not; it was all rusty and it was laying out in the open.

Q. Did you report to Mr. Pritchard that there were any of these things missing—the gear box?

40 A. I told him when he was up there, he saw

Henry Kreutzfeldt—Direct.

everything.

Q. Was that gear box missing then? A. Why the gear box wasn't missing, but the gear box was all broken down and the gears and things inside was absolutely no use at all; they were just about there.

Q. Was that machine subsequently sold? A. It was not sold; it is down there, I believe yet. 10

Q. You heard what the other witnesses testified to about the gear box of that machine, didn't you? A. Yes, sir.

HENRY KREUTZFELDT, Sworn:

DIRECT EXAMINATION BY MR. SEWELL:

Q. Mr. Kreutzfeldt, when were you in the employ of the C. W. Pritchard Company? A. Either the latter part of July or the first of August. 20

Q. The first of when? A. The first of August.

Q. The first of August? A. Yes.

Q. You were employed from then to when? A. Oh, up to January 6th.

Q. Of this year? A. Yes, sir.

Q. Did you carry this machine, or drive the truck that took the machine that is referred to as going to the Betterment Company, at the Betterment plant? A. I loaded it on the truck at the plant. 30

Q. You loaded it on the truck at the plant? A. I loaded it on the truck at the plant.

Q. Did you take it up to Newark? A. No, sir; I went out later with Mr. Pritchard.

Q. Was the machine assembled, or was it disassembled? A. It was disassembled, it had to be to get in in the building. 40

Henry Kreutzfeldt—Direct.

Q. You say you went to Newark with Mr. Pritchard later? A. Yes, sir.

Q. Where was the machine when you got there? A. They were putting it in the building.

Q. Putting it in? A. Yes, sir.

Q. Was it already installed? A. They had part of it upstairs; the other part they were putting on the elevator.

10 Q. Did Mr. Pritchard oversee the installation of that machine? A. Yes, sir; he seen it.

Q. Did the machine start to run before you left there? A. We didn't have the machine put up.

Q. You didn't have the machine put up? A. The machine wasn't put up yet; it was all taken to pieces they had one part upstairs and the other part was left on the elevator.

Q. How long did Mr. Pritchard stay there? A. Mr. Pritchard and I was there about half an hour.

20 Q. Did he say anything about the machine being in defective condition at the time? A. No, sir.

Q. Have you seen machines taken out of the warehouse down there without being put under belt first? A. Yes, sir.

Q. On very many occasions? A. Most all of them except the Jones Lampsons; we tested out a few of them.

30 Q. Did you ever see any of the employees down there take parts of old engines and use them on other engines? A. Well, not engines, but other machines.

Q. On different machines, taking parts of old machines and putting them on others? A. Taking them from one Jones Lampson and using them to repair another, the same way with lathes.

Q. Do you know of any new parts being bought for Jones Lampson machines? A. No, sir; not
40 that I know of.

Henry Kreutzfeldt—Direct.

Q. What are you by trade, Mr. Kreutzfeldt?
A. Well, you might say a little of everything.

Q. What is that? A. I was a rigger foreman down there.

Q. Do you know how a gear is made? A. Yes, sir.

Q. What machine should you have to make a gear properly? A. A gear cutter. 10

Q. Was there a fully equipped machine of this kind at the Pritchard plant? A. No, sir; there was not.

Q. Do you know how this gear was made for this machine that went to the Betterment Company? A. It was laid out with a pair of dividers.

Q. Of what? A. With a pair of dividers.

Q. Who was it laid out by? A. Mr. Pettit.

Q. Do you know, from your own experience, 20 if there is any likelihood of misjudgment being made when a gear is made by dividers and not with a gear cutter? A. Well, if it was laid out equally with dividers it would come out perfect.

Q. Is there any likelihood of a defect resulting in the gear because of the non-use of a gear cutter?

A. Yes, certainly.

Q. Did you later go to the Betterment plant in Newark after the report was received that the machine was in defective condition? A. No, sir; 30 only to get some ropes and tackle.

Q. What is that? A. Only to stop there to get some ropes and tackle one day.

Q. When was this machine installed? Do you know the date when it was taken out there? A. I think it was some time in October.

Q. September or October? A. In October, I think.

CROSS EXAMINATION BY MR. SIMPSON: 40

Henry Kreutzfeldt—Cross.

Q. All you went to Newark for was to get your rope and tackle? A. On that second trip, coming back I just came there to get the tackle which was left there.

Q. You quit the Pritchard Company when? A. On the 6th of January; I gave them notice on the 7th that I was through.

10 Q. You quit on the 6th and gave them notice on the 7th, do you say? A. Yes, sir; the 6th was the last day I worked there—no, the 7th was the last.

Q. How long had you worked there? A. From, it was either the latter part of July or the first of August; I am not just sure.

TESTIMONY CLOSED

20 Mr. Simpson: If Your Honor please, I would like, before summing up, to ask Your Honor to give judgment for the defendant on the grounds stated in my motion for a non-suit. and on the further ground that the preponderance of the evidence is with the defendant.

The Court: I will deny your motion.

30 Mr. Simpson: I ask for an exception. Exception noted for purpose of appeal

40 The Court: It seems to be apparent that the defendant corporation was engaged in making tools for munition plants to a large extent that they were very much rushed; and in addition to that rush also, during the time in question, they moved their plant from one place to another. The most that can be said about the character of Mr. Pettit's work

Judgment.

by anybody is that one machine is called to our attention which might have been imperfect, and that there were parts of tools missing, and as to certain tools that were disassembled, parts were found at different places in the shop. In the rush of the war work and in the making of money, while getting goods out to these munition concerns and in moving, we assume that some of these things might have happened; but we do not have to assume that, because there is nothing in the testimony to show that at any time all the tools were complete, or that tools that were disassembled had been at any time ever complete. On the contrary, any evidence that we did have negatives that idea, because the tools, it appears, were brought in to be repaired and sold, and at any rate were second-hand tools. Those which were used in the shop, we don't know whether they were first or second-hand, but they had been used in the shop for some time.

I find that the plaintiff has sustained the burden of proof. I see no reason at all to disbelieve Mrs. Pettit when she tells us that after Mr. Pritchard found that Mr. Pettit, the plaintiff, was about to quit his job that he called up the mother of the young man and asked her to use her influence, to see whether she could influence her son to keep at the job. Mr. Pritchard himself tells us that he was in the hands of the enemy, that he needed men very badly and he was in the hands of the enemy to such an extent that he was compelled to do just what they wanted him to do. I see every reason for offering the \$500 to Mr. Pettit. In the rush of this war work Mr. Pettit was the man in charge of the shop, and,

Judgment.

10 if ordinary men were hard to get so certainly
would be a man who could take charge of shop
and who could be entrusted with its opera-
tion. The entire production and carrying on
of the business of the shop, to a large extent,
rested upon Pettit's shoulders, and he was
responsible for it. If the ordinary workmen
received bonuses of fifteen, twenty-five and
thirty-five dollars, as has been brought out in
the evidence, it does not seem at all unreason-
able or strange to me when Mr. Pettit tells
us that Mr. Pritchard promised him this
bonus of \$500 if he would remain to the end
of the year. That Mr. Pritchard was in the
hands of the enemy, if he really believed that
Mr. Pettit was not delivering the goods and
performing the services, is shown by the fact
20 that when Mr. Pettit told him he was going
to leave the employ of the C. W. Pritchard
Company, Inc., he induced him to
stay. At any rate, there is no ques-
tion that Mr. Pettit's wages were raised from
\$42 a week to \$50 a week. The only expla-
nation of such course of action is Mr. Prit-
chard's explanation of the fact that he was
in the hands of the enemy, unless he was very
anxious to retain the services of Mr. Pettit.
30 I believe he was. I believe that he was in a
position where it would have been very, very
serious for him to lose the services of Mr.
Pettit. Competition for labor was, as has
been brought out in the evidence, at that time
very keen; he could not afford to lose Mr.
Pettit; there was only one way to keep him
and that was to make it so satisfactory for
him in the employment of the Pritchard Com-
pany that he would stay there, and I believe
40 that he was promised a bonus of \$500.

Judgment.

Mr. Pritchard's statements were shaken to a large extent by his story of the conference on Sunday, which he was supposed to have had with Mr. Kohler, and Mr. Pettit. Mr. Kohler on the stand said that he went there, not because Mr. Pritchard requested him to come, although Mr. Pritchard had told us that he had Kohler come there to go over the work and to take the place of Pettit, and that Pettit had promised to show Kohler what the work was that he should take charge of. Still we have Kohler here on the stand absolutely denying that Mr. Pritchard asked him to come there for any such purpose; that he went around there expecting to do a job on a certain screw and that when he found that the man whom he thought would not appear, had appeared on the job, that he hung around for a little while and that he then went away and did not even tell Mr. Pritchard he was going. I believe that absolutely; it shows up Mr. Pritchard's testimony, and I believe there is nothing at all to shake the veracity of Mr. Pettit and Mrs. Pettit. They have sustained the burden of proof and therefore there will be a judgment for \$500 in favor of the plaintiff and against the defendant.

30

I, Harry Schirmer, the stenographer designated by the Court and sworn, to hereby certify that the foregoing is a fair and accurate transcript of the minutes and proceedings taken by me at the trial of the case of Leroy I. Pettit, plaintiff, against C. W. Pritchard Company, defendant, at the Second District Court of Jersey City.

Harry Schirmer,
Stenographer. 40

Exhibit.

January 4th, 1919

ATTENTION OF MR. ROY PETTIT.

10 After considerable thought I have decided
to put my brother J. W. Pritchard in full
charge of the shop and warehouse. You are
still retained as foreman of the shop, but in-
structions as to the tools to be repaired is to
come from him, in the absence of the writer;
or in other words instructions as to the ma-
chines we intend rebuilding or repairing will
come from him to you. All this Company
wants is a fair return for the money that we
pay out, and I have no doubt that under the
new arrangement it will be better for all con-
cerned, and there is no doubt that you and
20 my brother can make yourselves entirely
agreeable to each other, and work in harmony
The shop for the last six weeks has done
practically nothing in comparison with the
money paid out, and in order to keep same
running we must have some action. We have
had too many machines returned on account
of the inferior work turned out. This must
cease as under no conditions is a machine to
be shipped out of the shop, unless it is in
30 good running condition. My brother will
take charge of the watchme and other mat-
ters pertaining to the warehouse. It is fur-
ther understood that when you are not doing
detail work, you are to operate a machine the
same as the other machinists, unless of course
you have some drawings or other detail work
to attend to which no doubt takes up consider-
able of your time, but when the
men have work ahead of them, you
40 are to do your share on the ma-

Exhibit.

chines and other mechanical work. I have already arranged with Kohler to work at a corresponding reduction, but the other men such as Callahan and Lindbloom the rate commencing on Monday the 7th instant will be 70c per hour, instead of 72½c which amount they are now being paid.

10

The C. W. Pritchard Co., Inc.
Per C. W. Pritchard.

To the Chief Justice of the Supreme Court of
New Jersey:

I do hereby certify the foregoing transcript, made by the stenographer designated by me and sworn, as the minutes and proceedings of the trial of the case of Leroy I. Pettit, plaintiff against C. W. Pritchard Company, defendant, at the Second District Court of Jersey City, to be used on the appeal herein. 20

Clyde D. Souter,

Judge of Second District
Court of Jersey City

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New Jersey Court of Errors and Appeals

LEROY I. PETTIT,
Plaintiff-Respondent,

vs.

C. W. PRICHARD COMPANY, INC.,
Defendant.

On Appeal.

BRIEF FOR PLAINTIFF-RESPONDENT.

This appeal is from a judgment of the Supreme Court, affirming a judgment in favor of the plaintiff rendered in the Second District Court of Jersey City on February 8th, 1919.

The plaintiff was an employee of the C. W. Prichard Co., Inc., having entered its employ in February, 1918, and continuing therein up to and including January 3rd, 1919, when he voluntarily left the employ of the defendant company (page 9, lines 16-18; page 11, lines 32-36, State of Case).

The plaintiff testified that when he entered the employ of the defendant company, Mr. Charles W. Prichard, who was exercising general control and supervision over the machine shop and warehouse of the defendant company fixed his weekly wage at \$35. per week, which wage he received for a period of about 2 months (page 9, lines 19-26, State of Case). That plaintiff testified that he has witnessed Mr. Prichard hire and discharge men from the service of the company and regulate

their wages, while they were in the employ of the company (page 10, lines 8-15, State of Case). He further testified that on October 19th, 1918, he informed his superior Mr. Charles W. Prichard that he intended to leave the employ of the C. W. Prichard Company, Inc., as he had another position offered him. Mr. Prichard informed plaintiff that if he would not leave and would continue to act as superintendent of the company's plant, until the end of the year, his wages would be \$50. per week and at the end of the year he would receive a bonus of \$500. from the company; that he did remain in the employ of the company until the end of the year and did not receive the said bonus although the company did pay him the increased wage of \$50. per week up until the time he left the employ of the company (page 10, line 32, page 11, lines 1-37, State of Case).

At the close of the plaintiff's case defendant's attorney made a motion for a non suit on the ground that if any offer was made to the plaintiff by the defendant company, that it was made without consideration. This motion was properly denied.

Defendant relied on the case of *Voorhees v. Woodhull's Executors*, 33 N. J. L., 497. In this case the plaintiff had been employed by Doct. Woodhull as his cook and housekeeper for a stipulated monthly salary, from the year 1866 up to the time of his death. After his death plaintiff brought suit to recover compensation for extra pay. On page 495 VanSyckel, J., says:

"There being no proof of an express agreement for extra pay, his Honor, the Chief Justice, before whom the cause was tried at the Circuit, non-suited the plaintiff, and that constitutes the alleged error in this cause."

At the top of page 496 the court says:

“Upon the mere ground that she performed additional services, rendered necessary by the illness of the testator, no legal claim to additional remuneration arises.”

It is quite evident that the case cited differs materially from the case at bar. In the former case no express contract for the increased wages was proved while in the case at bar the plaintiff did prove an express contract. He testified that he informed his employer that he was leaving its employ, which he had a perfect right to do at the termination of the week ending October 19th, 1918. The defendant company being desirous of retaining him in its employ offered him an increase in wages to \$50. per week, and further agreed that if he would remain in its employ until the end of the year (1918) then it would pay him a bonus of \$500. Plaintiff then agreed to resume working for the defendant company at the increased weekly wage and in consideration of the promised bonus, and did work for the defendant company until the end of the year, receiving a weekly wage of \$50. He did not however receive the promised bonus of \$500. Surely in this case there was an express contract entered into between the parties and the trial court was correct in denying the motion for a non-suit and the motion for a verdict as requested by the defendant.

The case cited by defendant, *Hart v. Lauman*, 29 Barb, 410, is in no way applicable to the case at bar. In the case cited the plaintiff was under a contractual duty to perform a specific amount of work for a stipulated price. After a part performance he refused to continue the work until after he had received assurances from the defendant that he would pay him more than the agreed price if he

resumed and finished the work. The plaintiff in that case was under a contractual obligation to perform this specific amount of work for a specific price, agreed to between the parties, and therefore, the court rightly held that the plaintiff must show that the first contract was rescinded before he could hold the defendant to the alleged second contract.

That case differs from the case at bar in that this plaintiff was under no contractual obligation or duty to continue in the employ of the defendant company, having been employed by the week, and was, therefore, within his legal rights in terminating such employment at the end of the week ending October 19th, 1918. He did terminate his employment with the defendant company, at which time he was receiving \$42. per week, and entered into a contract with the defendant company, whereby in consideration of the increased wage agreed upon and the bonus promised; he did agree, and did do certain things for the defendant company which he was under no legal obligation or duty to perform. The mere fact that plaintiff did the same kind of work after he entered into the new contract is immaterial in view of the fact that the plaintiff did prove an express contract entered into between himself and the defendant company. The trial court did, therefore, properly deny the defendant's motions for a non-suit and for a verdict in its favor.

Plaintiff alleged and proved that Mr. Charles W. Prichard promised him, in behalf of the defendant company that the company would pay him a bonus of \$500. at the end of the year if plaintiff did resume working for the company and continue in said employment until the end of the year. He also testified at the trial that Mr. Prichard, who was in general control of the machine shop

and warehouse of the defendant company, arranged the wages of the men employed by the company, hired men, discharged men, raised and lowered their wages. This was not denied by the defendant company, and therefore, the inevitable conclusion is that Mr. Prichard had authority from the company to arrange the terms of the contract of employment with the plaintiff in behalf of the defendant company. We must also consider the fact that Mr. Prichard agreed with plaintiff that the company would pay him an increased wage of \$50. per week beginning with the week ending October 26th, 1918, and that this weekly wage of \$50. per week was paid plaintiff by the defendant company from October 26th, 1918, up to the time he voluntarily left the employ of the defendant company. Plaintiff did further introduce in evidence a letter dated January 4th, 1919 (pages 82 and 83, State of Case), wherein he was advised that his duties would be changed and also notifying the plaintiff that certain other employees of the defendant company would have their wages reduced. This letter was signed by the defendant company, "per C. W. Prichard." Mr. Prichard is the President and Treasurer of the defendant company as stated by himself (page 23, lines 7-9, State of Case). It is evident, therefore, that Mr. Prichard was the only authorized agent of the defendant company having general control and supervision of the company's employees in the machine shop and the warehouse in Jersey City, and that he did have authority to act for the company in regulating the wages of the defendant company's employees, and that he did have authority to act in behalf of the defendant company in regulating the compensation due this plaintiff for services performed. The trial court did so find as a matter of fact.

The preponderance of the evidence in this case was with the plaintiff, and the trial court did find as a matter of fact that the defendant company did enter into the contract as alleged by the plaintiff, and that he was entitled to judgment for \$500. and \$28.80 costs of suit. It is well settled that this court will not disturb a finding of fact by the trial court if there is any testimony in the record to support such finding. (*Upton v. Slator*, 83 L., 373.)

I most respectfully submit that this appeal be dismissed and said judgment with the costs of this appeal be affirmed.

WILLIAM E. SEWELL,
Attorney for Plaintiff-Respondent.

JOHN A. HARTPENCE,
of Counsel.

New Jersey Court of Errors and Appeals

LEROY I. PETTIT, Plaintiff-Respondent, vs. C. W. PRICHARD COMPANY, INC., Defendant-Appellant.	}	On Appeal.
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BRIEF FOR DEFENDANT-APPELLANT.

The question involved in this appeal is whether the alleged promise on the part of the defendant by its agents, is a contract based upon a proper consideration.

The plaintiff testified that he was employed by the defendant as a foreman at the rate of \$35 per week. On October 19, 1918 (p. 10), he alleges, he had a conversation with Mr. Prichard in which the plaintiff was asked not to leave the employment and that his wages would be raised (p. 11) to \$50 per week, and that at the end of the year he would be given a bonus of \$500. It must be remembered that at that time only two months of the war remained. That plaintiff received the increased wages and claimed that he worked up to January 4, 1919. On cross-examination he stated (p. 14) that the exact words used were "that if I would stay there and do the right thing, at the end of the year the company was going to give me \$500." He testified that after the 19th of October, 1918, he was doing the same kind of work (p. 14, l. 10 to 20); further along in his cross-examination (p. 16, l. 16 to 20) he testified that Mr. Prichard "would figure out the bonuses himself, the ones who deserved it, why, got it." Exhibit P-1 (p. 82) shows the attitude of the company on January 4, 1919, when the plaintiff quit the employment. The plaintiff by that exhibit, was informed that "the shop for the last

six weeks has done practically nothing in comparison with the money paid out, and in order to keep same running we must have some action. We have had too many machines returned on account of the inferior work turned out."

The testimony of Mrs. Pettit, the plaintiff's mother, differs very materially from the testimony of the plaintiff. The plaintiff testified that on *October 19, 1918*, everything was settled by him, which would leave nothing whatever to be added. Mrs. Pettit testified, however (p. 236, l. 39), that Mr. Prichard called her on the 'phone and asked her to permit him to call and see her in relation to the plaintiff's employment. It is sound argument to say that if, as testified by the plaintiff, the promise was made on *October 19*, why should the defendant, or any of its agents, call up Mrs. Pettit on the telephone and ask Mrs. Pettit to influence the plaintiff to remain in the employ of the defendant? (P. 18, l. 6.)

The testimony therefore took a very peculiar turn; the plaintiff testifying that everything was settled on the 19th of October, and the mother testifying that on *the 21st of October* the defendant was asking her "to influence Leroy to stay with him." This was the testimony which was relied upon to corroborate the plaintiff's claim that he had been promised a bonus of \$500, when, according to his own testimony (p. 16, l. 16 to 20), "Mr. Prichard would figure out the bonuses himself, the ones deserving it, why, got it." Surely there was nothing in this evidence to substantiate or establish as a fact that a clean cut bonus of \$500 was to be paid to the plaintiff. So there remained nothing upon which it could be proved as a fact, that an agreement had been made. There was no evidence in the case whatever to support the finding by the Supreme Court that a contract had been made.

The fact remains that the plaintiff himself accepted a cheque from the defendant which he believed was for the bonus testified to by all the witnesses (p. 14, l. 27) :

“Q. Now do you remember receiving a check for \$35.? A. Yes, sir.

Q. On the 4th of January? A. Yes, sir.

Q. What was that for? A. I don't know what it was for. *I think it was a bonus; it came in my envelope; my pay envelope.*”

As a fact the instructions of the company as to what was to be paid as a bonus is shown by the other employees of the company, and by Charles W. Prichard “You give this thing (their work) the best you got and you will have a bonus on Christmas if you will do right, but it will be up to me to say whether he shall receive anything and I will be the sole judge of who is entitled to the bonus.” (P. 24, l. 30 to 40.) This declaration was made to the whole shop. (P. 25, l. 1.) See testimony of

Walter Ensign (p. 44, l. 8 to 12),

Joseph Callahan (p. 59, l. 36 to 40),

and the plaintiff himself at p. 16, l. 16 to 20.

This action is based on the specific claim that a bonus of \$500 was promised the plaintiff. The work to be done by the plaintiff did not differ in any way from that which he had been doing. His salary had been increased, but he was not called upon to do any work other than what he had been doing. (P. 14, l. 12 to 21.)

POINT.

The alleged promise, if made at all, was without consideration.

In 9 Cyc, at p. 316, the rule is stated to be that

“there is no consideration for a promise where no benefit is conferred upon the promiser nor

detriment suffered by the promisee and the promisee neither undertakes to do anything which he is not bound to do nor forbears to do anything which he has a right to do. It makes no difference that one to whom a naked promise was made has suffered damage through relying or acting upon it."

Citing, among others,

Conover vs. Stillwell, 34 N. J. L. 54;
Sterling vs. Sinnickson, 5 N. J. L. 756;
Buckingham vs. Ludlow, 40 N. J. Eq. 422.

"A promise to do what the promisor is already bound to do cannot be a consideration, for if a person gets nothing in return for his promise but that to which he is already legally entitled, the consideration is unreal. Therefore, as a general rule the performance of, or promise to perform, an existing legal obligation is not a legal consideration."

13 C. J., p. 351, and cases cited.

It was error for the Supreme Court to find that the plaintiff was entitled to recover a bonus which had never been promised him. Assuming the plaintiff's claim to be true, the promise was without consideration under the authorities.

It was also error to refuse to non-suit the plaintiff at the close of the plaintiff's case, and again to refuse to give judgment for the defendant at the close of the whole case. For these reasons the judgment should have been reversed by the Supreme Court. For this error this appeal is taken.

It is respectfully submitted that the judgment of the Supreme Court should be reversed.

CHAS. E. S. SIMPSON,
 Of counsel with Defendant-Appellant.

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