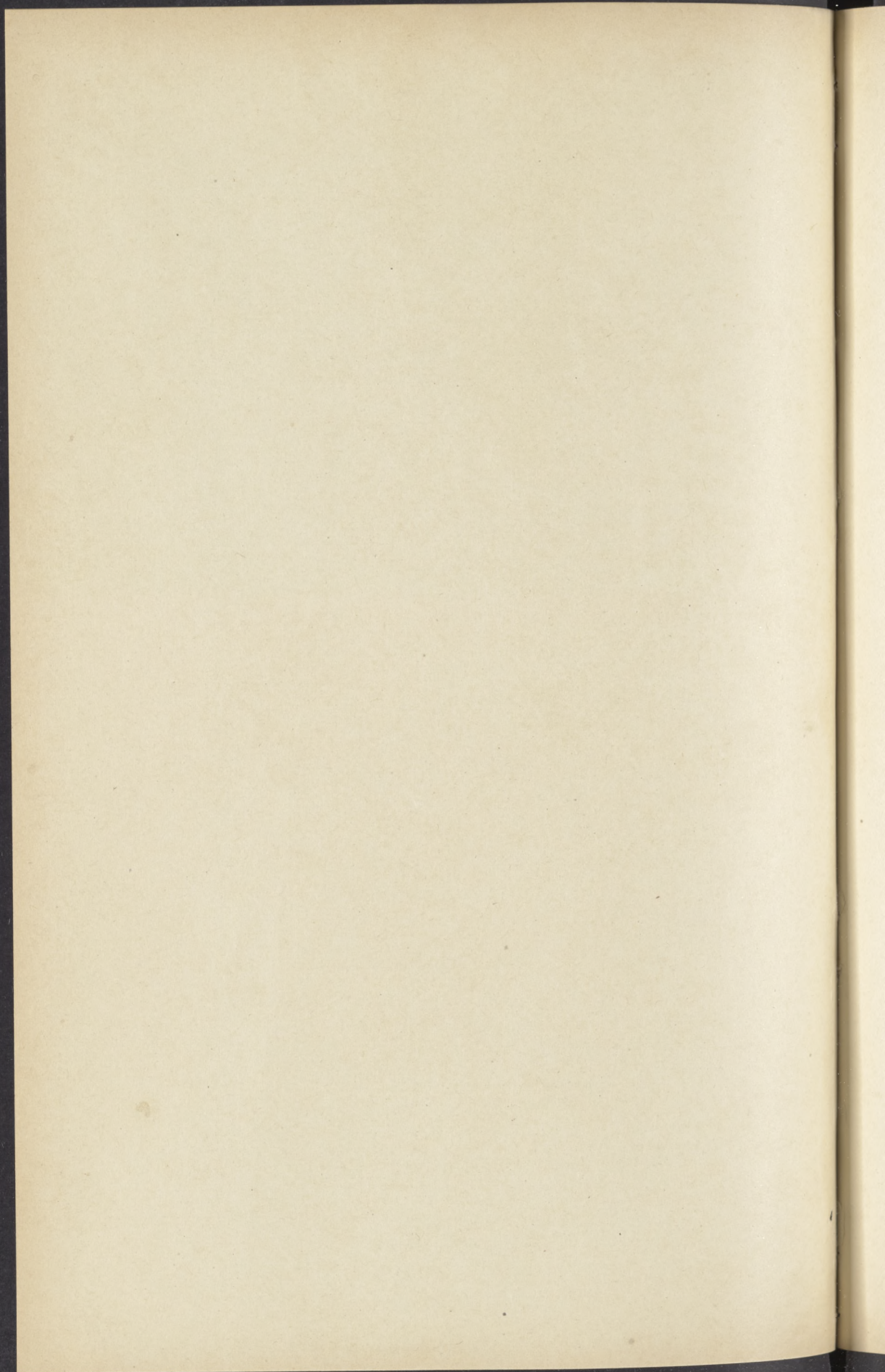


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NEW JERSEY COURT OF ERRORS AND
APPEALS

BASIC IRON ORE COMPANY, <i>Complainant-Appellee,</i>	}	ON APPEAL FROM THE COURT OF CHANCERY.
vs.		
JOHN H. DAHLKE, <i>Defendant-Appellant.</i>	}	PETITION OF APPEAL.

(Filed January 8, 1930.)

To the Honorable the Court of Errors and Appeals in
the Last Resort of All Causes:

The petition of John H. Dahlke, the appellant in the
above entitled cause, respectfully shows that:

1. Petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date July 9, 1929, in a certain cause in said Court of Chancery wherein the said Basic Iron Ore Company was complainant and the said John H. Dahlke was defendant, in this respect, to wit, that the said decree ADJUDGES, that under the provisions of the mining leases made in 1901 and 1903 between the defendant, John H. Dahlke as lessee, and Robert L. Ahles as lessor, and thereafter assigned to the complainant in 1904 by the said R. L. Ahles, that no

royalties are to be paid by the complainant to defendant on account of ore shipped until the aggregate amount of such royalties shall exceed the amount of the quarterly installments previously paid and then that such payment shall be only in the amount of the excess over the total of such quarterly installments payments, and that from the "earned royalties" upon ore subsequently shipped there may be deducted the quarterly installments previously paid, irrespective of whether such ore has been raised before or after the date when the quarterly installment was paid;

And also further ORDERS, ADJUDGES and DECREES that any amount which may be due from the defendant to the complainant or from the complainant to the defendant, under the construction placed upon said leases by this decree, be paid by the one to the other when said amount has been duly ascertained;

20

And also further ADJUDGES that the said defendant account under oath for the royalties received by him since the eighteenth day of November, 1921, and that complainant make full and true discovery and disclosure of said royalties so paid by it, whether minimum quarterly payments or otherwise, and that complainant may receive full credit for all quarterly payments and payments on account of royalties made by it to the defendant, before Charles L. Carrick, Esquire, one of the Masters of this Court, to whom the said matter and things are hereby referred to be ascertained and reported on by him;

30

And also further ORDERS that said Master report what balance appears to be due from said defendant to said complainant, or from said complainant to said defendant.

from the eighteenth day of November, 1921 under the construction put upon said mining lease by this decree;

And petitioner appeals from so much of the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous in that:

1. The construction of the provisions of the mining lease determined by the Court of Chancery is contrary to the plain wording and intent thereof, and unlawful and inequitable. 10

2. That the decree directs a settlement of account from November 18, 1921, whereas there has been a complete settlement thereof, and an accord and satisfaction up to June 30, 1923, and by reason thereof was unlawful and inequitable.

Petitioner therefore prays that the part of said decree of said Chancellor may be, in the particulars aforesaid reversed, set aside and for nothing holden, and that petitioner may have such other relief in the premises as to this court shall seem proper. 20

JOHN H. DAHLKE,
Sol'r for and of Counsel *pro se*.

ANSWER TO PETITION OF APPEAL

(Filed

)

The answer of the Basic Iron Ore Company, a body corporate of the state of New Jersey, the above named appellee, to the petition of appeal of John E. Dahlke, the above named appellant.

10

1. The appellee reserves the right to move to dismiss the appeal at or before the final hearing thereof on the ground that it is an appeal from an interlocutory decree, which is barred because the appellant has failed to present it within the period of time prescribed by statute and the rules of this Court.

20 2. This appellee, not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto nevertheless admits that a decree was, on July 9, 1929, made and entered in the Court of Chancery of New Jersey, for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said decree, this appellee begs leave to refer there- to when the same shall be produced.

30 3. This appellee is advised and believes that the said decree is agreeable to equity; and it prays that the same may be affirmed with costs to be taxed in favor of this appellee.

EDGAR W. HUNT,
Solicitor for and of Counsel
with Appellee.

BILL OF COMPLAINT

(Filed July 23, 1926.)

The complainant, Basic Iron Ore Company, a New Jersey corporation, respectfully shows that:

1. It is a corporation organized and existing under and by virtue of the laws of the State of New Jersey and has been engaged in mining operations and in the sale of iron ore from mining operations in Oxford Township, Warren County, New Jersey. 10

2. Defendant John H. Dahlke was at the times herein-after mentioned the owner of certain lands and premises situate in Oxford Township, Warren County, New Jersey. 20

3. On October 3, 1903 the defendant leased the mining rights in the said land for a term of twenty years, to commence on November 18, 1921 and to end on November 18, 1941, which lease was duly recorded in the County Clerk's office of Warren County, New Jersey, and a true copy of which lease (exclusive of the acknowledgments in due form) is hereto annexed and marked "Exhibit A." Said lease was an extension of a prior lease in substantially the same form, between the same parties, relating to the same mining rights, dated November 18, 1901, duly acknowledged and recorded, for a term of twenty years to commence on November 18, 1901 and to end on November 18, 1921. Both of said agreements of lease were on March 3, 1904, duly assigned by Robert H. Ahles, one 30

of the parties to said agreements, to the Basic Iron Ore Company, which thereupon became the owner thereof and of all the rights and privileges of the said Robert H. Ahles thereunder, and still continues to be the owner and possessor thereof. By agreement in writing between the complainant and defendant, dated June 22, 1912, the said agreements of lease were modified in consideration of a cash payment of \$5000 made to the defendant by the complainant, such modification providing that the royalty
10 on all iron shipped on and after that date would be reduced to ten cents (10c) per ton for untreated ore and twelve and one-half cents ($12\frac{1}{2}c$) per ton for treated or refined ore.

4. Mining operations were carried on by the complainant on said premises from March 31, 1904, to August, 1914. The complainant expended large sums of money in the installment of necessary machinery, sinking
20 of shafts and raising of ore, and by September 1, 1914 about 134,000 tons of crude ore had been raised and stored in bank on the premises. In April, 1913 the complainant installed at great expense a plant for treating, washing, and concentrating the crude ore, and operated said plant until December, 1914. Thereafter, in July, 1919, the complainant installed at considerable expense a new concentrating plant upon the said premises which it operated until May, 1921. No ore has been raised from the mine since September 1, 1914.

30 5. The ore taken from the ground in the process of mining is called crude or unwashed ore. By the treatment or process of washing or concentrating this crude ore is broken up and the ore proper is separated from the rock and other materials. The ore proper is then called treated,

refined, or washed ore and the other materials consist of rock and tailings, some of the tailings have from time been used in the manufacture of paint.

6. All payments due under said lease have been made in full to the defendant to the 1st day of April, 1923. Since that time a dispute has arisen between the complainant and the defendant with respect to the construction of the agreement and the manner of payment of the royalties. The complainant contends that no royalties are to be paid on account of ore shipped until the aggregate amount of such royalties shall exceed the amount of quarterly installments previously paid, and that such payment shall then be only in the amount of the excess over the total of such quarterly installment payments, and that from the "earned royalties" upon ore subsequently shipped there may be deducted the quarterly installments previously paid, irrespective of whether such ore has been raised before or after the date when the quarterly installment was paid. The defendant contends that the ore must have been mined and raised after and not before the accruing of the quarterly payments to entitle the lessee to deduct the "earned royalties" on subsequent shipments.

7. The foregoing question was submitted to arbitration by the complainant and defendant by an arbitration agreement dated February 26, 1924, the arbitrators being Borden D. Whiting, Esq., and William C. Gebhardt, Esq., and that under and by virtue of the terms of the said arbitration agreement it was provided that "the parties hereto in their future dealing shall be bound by the principles involved in the findings of the arbitrators' and that the arbitrators' proceedings have not yet been concluded.

8. On or about July 6, 1926, the complainant received a letter from the defendant, dated July 3, 1926, a copy of which is hereto annexed and made part hereof, by the terms of which the defendant made written demand for \$1674.63, which he claimed was due him by virtue of the provision of the aforesaid agreements, adopting the construction which he has placed upon them. Adopting the construction which the complainant places upon said agreements there is nothing due and owing from the complainant to the defendant at the present time. The defendant threatens to exercise his right to forfeit the lease and to enter upon the said premises and thereby deprive the complainant of all its rights, title and interest in the said premises and the valuable improvements which it has constructed thereon.

9. On July 9, 1926 Albert S. Wright, Esq., of Parsons, Closson & McIlvaine, 52 William Street, New York, wrote a letter to the defendant, a copy of which is annexed hereto and marked "Exhibit C" and thereafter received a reply thereto, dated July 10, 1926, a copy of which is annexed hereto and marked "Exhibit D."

10. The complainant is willing to pay and now tenders any sum to the defendant which may be ascertained upon the correct construction of the said lease to be due him, and is willing to tender by way of security pending this cause anything which may be required of it by the Court.

Complainant is without adequate remedy in the courts of law and therefore prays:

1. That John Dahlke, who is the defendant in this

suit, may answer this Bill of Complaint and each statement therein made.

2. That a decree be made construing the lease hereinbefore mentioned, which decree shall declare the respective rights and status of the complainant and defendant with respect to the said leases, and which decree shall determine either that no royalties are to be paid by the complainant to defendant on account of ore shipped until the aggregate amount of such royalties shall exceed the amount of the quarterly installments previously paid and then that such payment shall be only in the amount of the excess over the total of such quarterly installment payments, and that from the "earned royalties" upon ore subsequently shipped there may be deducted the quarterly installments previously paid, irrespective of whether such ore has been raised before or after the date when the quarterly installment was paid, or shall determine that the ore must have been mined and raised after and not before the accruing of the quarterly payments to entitle the lessee to deduct the "earned royalties" on subsequent shipments.

3. That pending the determination of this cause the defendant be enjoined from entering upon the premises mentioned in said lease for the purpose of removing the complainant therefrom, and be further enjoined from in any way putting into effect a forfeiture of the said lease or in any way interfering with the complainant and its operations on the said premises until the matters arising in this controversy be determined.

4. That an account be taken of the amount, if any, due from the complainant to the defendant pursuant to the construction placed upon said lease by the decree of this court, and that a writ of supoena may issue commanding

the defendant to answer this Bill of Complaint and to abide by such decree as this Court may make in the premises.

Dated, July 22, 1926.

E. W. HUNT,
Solicitor for Complainant.

HARLAN BESSON,
Of Counsel with Complainant.

10

STATE OF NEW JERSEY,
COUNTY OF MERCER.

ss.

CHARLES E. HEWITT, of full age, being duly sworn according to law, on his oath deposes and says:

1. I am the President of the Basic Iron Ore Company, a corporation organized and existing under and by virtue of the laws of the State of New Jersey.

20

2. I have exercised a general supervision and control over the operation and accounts of the Basic Iron Ore Company for many years past and am familiar with the amount of ore removed and sold on the said premises.

3. I am personally acquainted with all of the facts alleged in the Bill of Complaint and have personal knowledge of them.

30

4. I have personally examined the original lease of which Exhibit A is a copy and know that Exhibit A is a true copy thereof.

5. I am acquainted with the defendant John H. Dahilke and know his handwriting and know that the originals of

the letters marked Exhibit C and Exhibit D were signed by him. I also know that the original of the letter marked Exhibit C was signed by Albert S. Wright.

6. The complainant has expended many thousands of dollars in the construction of buildings and machinery on the said premises to carry on its mining operations.

7. Adopting the construction of the lease which has been annexed to this Bill of Complaint and marked Exhibit A, there is nothing due and owing from the complainant to the defendant under the terms of the said agreement. 10

8. The complainant is ready and willing to pay anything which is justly due to the defendant under the terms of the said lease, and it is willing to tender by way of security pending this cause anything which may be required of it by the Court. 20

CHARLES E. HEWITT.

Sworn to and subscribed before
me this 22nd day of July, A. D.
1926.

KENNETH J. DAWES,
Notary Public of N. J.

EXHIBIT "A"

Articles of Agreement made and entered into the twenty-third day of October, A. D. nineteen hundred and three, between John H. Dahlke, of the Town of Belvidere, in the County of Warren and State of New Jersey, party of the first part, and Robert L. Ahles, of the Town of
10 Bayside, Long Island, party of the second part.

Whereas, the parties of the first and second part have heretofore entered into an article of agreement and lease, by which the party of the first part granted, bargained and sold to the party of second part, for a term of twenty years, the exclusive right to mine and remove the iron-ore contained on, in and under all the lands and premises, situate lying and being in the township of Oxford, in the
20 County of Warren and State of New Jersey, and particularly described in said article of agreement and lease, upon certain terms and conditions, said article of agreement and lease bears date on the eighteenth day of November, A. D. nineteen hundred and one, and the term of twenty years therein mentioned is to begin on the date of said article of agreement and lease. Said article of agreement and lease was duly acknowledged by the parties thereto before Nicholas Harris, Esq., a master in Chancery of the State of New Jersey, on the thirtieth day of
30 December, A. D. nineteen hundred and one, and duly delivered to the party of the second part by the party of the first part, and is the same agreement and lease under which mining operations for iron-ore are now conducted on the said premises.

Now, therefore, witnesseth, that in consideration of the

premises and the further consideration of the sum of one dollar, duly paid to the party of the first part by the party of the second part, and of the covenants and agreements, hereinafter set forth, to be kept on the part of the party of the second part, the party of the first part has and by these presents doth grant, bargain and sell to the party of the second part, for the further term of twenty years, from the eighteenth day of November, A. D. nineteen hundred and twenty-one until the eighteenth day of November, A. D. nineteen hundred and forty-one, the exclusive right to mine and remove all the remaining iron ore contained in, on and under all that tract of land and premises situate, lying and being in the township of Oxford, in the County of Warren and State of New Jersey, owned by the party of the first part and being about two hundred and fifteen acres of land, adjoining land of John Sarson, Jacob Cummins, the "Hoagland Farm," the Hixon lot, the Cutzler lot, the Pittenger lot and the Raub Farm, together with all the necessary rights and privileges for exploring, mining and carrying away said ores, including the right of way for railroads and other roads to and from any part thereof to the public highways, also to have the right of washing on the said premises such ores as shall require washing, and to use any creek and other water for such purposes; also to have the right and privilege to erect on the said premises the necessary building and machinery for mining and washing ores, and to enjoy every facility for mining, washing and carrying ores away as he would or could have if he was the real owner of the land, but not to do unnecessary damage and to pay the tenant for crops that should be destroyed by him.

In consideration whereof the said party of the second part, agrees to pay to the party of the first part, for every

ton of twenty-two hundred and forty pounds in weight of merchandise iron-ore raised, mined and taken away from the said premises the sum of twenty-five cents on washed iron ore the market value of which is four dollars per ton and over, f. o. b. at mines, and for washed iron ore the market value of which is less than four dollars per ton at the ratio in value of twenty-five cents to four dollars, and on all unwashed iron ores shipped and used fifteen cents per ton, said royalties to be paid quarterly on the first day of April, July, October and January of each year for the quarter immediately preceding. The weights of ores to be ascertained from scales of railroad companies transporting the ore, and if not shipped by railroad to be ascertained in any other reasonable manner; the party of the second part to furnish statement of ores shipped, to whom shipped and when shipped, and the prices and values thereof with payment of royalties, party of the first part to have the right at all reasonable hours to inspect the books or book in which weights and prices of ores are kept and to take statements therefrom.

It is further agreed that the party of the second part shall each and every year during the term of this lease and agreement pay unto the party of the first part the sum of four hundred dollars, to be paid in quarterly payments of one hundred dollars each quarter on the quarterly dates specified, which sum shall be credited against royalties on iron ore subsequently mined. In case of failure to pay such quarterly payments or royalties within twenty days after they are due and written demand has been made for the same then in that case this lease shall be null and void, at the option of the party of the first part, and the party of the first part, his heirs and assigns may enter.

This agreement and lease is however upon this express

condition, that if the agreement and lease between the parties hereto for the mining &c. of the iron ore for twenty years from the eighteenth day of November, A. D. nineteen hundred and one, which lease and agreement has been hereinbefore described, shall have been surrendered, cancelled, or avoided or forfeited in any way, then in that case this agreement and lease shall be absolutely void and of no effect; and the term therein granted shall be for nothing holden.

It is further agreed that this agreement and lease shall 10
be subject to the lease for limestone made heretofore by the party of the first part to one Joseph H. Wilson.

It is further agreed that the party of the second part may surrender this agreement and lease upon thirty days notice in writing to the party of the first part; but in case of the surrender of this lease the party of the second part agrees to keep the shaft or shafts in operation, free from water as is usual, up to the date of such surrender, and the party of the second part, during the term of this lease and 20
agreement, shall have the right to remove his property, including buildings and machinery, &c., by him erected, provided however that royalties and payments to be made under this lease are first paid. Mining operations are not to be carried on within a hundred feet of any farm buildings now upon the premises, except by the written consent of the party of the first part.

It is further agreed, that the heirs, executors, administrators and assigns of the respective parties hereto are bound to the performance of all agreements, covenants 30
and conditions and are also entitled to all the benefits and advantages arising from such agreements, covenants and conditions the same as if each had every time been mentioned and bound to the performance of such agreements, covenants and conditions as are herein set forth.

In witness whereof the parties hereto have set their hands and seals the day and year first above written.

Executed in duplicate.

JOHN H. DAHLKE (L.S.)

ROBERT L. AHLES (L.S.)

Signed, sealed and delivered
in the presence of

L. TAYLOR.

10

EXHIBIT "B"

July 3, 1926.

JOHN H. DAHLKE,
Counsellor-at-Law
Belvidere, New Jersey.
BASIC IRON ORE COMPANY,
50 Church Street,
New York City.

20 Gentlemen:

In accordance with the statements of ore shipments rendered me as follows, viz:

July 31, 1923	5345.19	g.t. @ 10c	\$534.59
" 31, 1923	358.06	" " 12½c	44.79
Aug. 31, 1923	6872.12	" " 10c	687.26
Sept. 30, 1923	3236.17	" " 10c	323.69
Oct. 31, 1923	5407.71	" " 10c	547.14
Nov. 30, 1923	4967.09	" " 10c	496.75
Dec. 31, 1923	3404.02	" " 10c	340.41

30 there was due to me for such shipments the sum of \$2,947.63.

On account of these royalties due, you made a payment on account under date of March 6, 1924, of \$1,300., which leaves due to me a balance of \$1,674.63.

According to our lease and agreement these payments are to be made when due at the end of each quarter, but they were not paid to me by you, and I am entitled to have the same paid to me with interest from their respective due dates.

You will observe that the matter which we submitted to arbitration heretofore does not relieve you from making the payments as due.

I call your attention to a clause in the lease and agreement which provides as follows: 10

"In case of failure to pay such quarterly payments or royalties within twenty days after they are due and written demand has been made for the same then in that case this lease shall be null and void, at the option of the party of the first part, and the party of the first part, his heirs and assigns may enter."

In accordance with said lease and agreement I do now and hereby make such written demand for all moneys due me under the said lease and agreement and in event of 20 your failure to make such payment I may declare said lease and agreement null and void.

Yours truly,

(Sgd.) JOHN H. DAHLKE.

EXHIBIT "C"

July 9, 1926.

MR. JOHN H. DAHLKE,
Belvidere, N. J.

30

Dear Mr. Dahlke:

I am in receipt of the two copies of stipulation signed by you, and the original checks which you returned, and beg to thank you for your prompt attention. Will you please note that on the second page of the stipulation I

have inserted the word "other" so as to make the first line of the first paragraph read "The only other payments made by said Basic Iron Ore Company." I am sending the original of this stipulation to Mr. Whiting and a copy of it to Senator Gebhardt, and to the latter, in accordance with his request, I am also sending a copy of the condensed statement of shipment. I shall also prepare and submit at an early date a short memorandum argument upon our contention in the matter.

- 10 Yesterday Mr. Hewitt sent me your letter to him of the 3rd inst. In sending this notification had you not overlooked the provision of the arbitration agreement to the effect that "The parties herein in their future dealings shall be bound by the principles involved in the findings of the arbitrators"? I assume that you claim the additional amount for the later period upon the same construction of the lease as claimed by you before the arbitrators. I think that the spirit, as well as the letter, of our agree-
- 20 ment was that the arbitrators should first determine upon the proper construction of the lease and that such construction should then control as to the specified sum there in contention, and like amounts thereafter becoming due.

Do you not agree with me that under the circumstances your notice should be temporarily withdrawn? It can, of course, be served again if a decision of the arbitrators is in your favor, although I think I may say that payment in such case will be made to you without need of any such notice.

30

Yours very truly,

(Sgd.) ALBERT S. WRIGHT.

EXHIBIT "D"

July 10, 1926.

JOHN H. DAHLKE
Counsellor-at-law
Belvidere, New Jersey
PARSONS, CLOSSON & McILVAINE, Esqs.,
52 William Street,
New York City
Attention of Mr. Wright.

10

My dear Sir:

I am in receipt of your letter of the 9th instant.

In reference to my demand for the payment of royalties due on shipments of iron ore as per statements rendered to me I beg to say that I have not overlooked the provisions of the agreement in the Article of Arbitration.

If you will examine the lease and agreement and the statements of the shipments of iron ore you will find that the amount of royalties for such shipments became due 20 and payable quarterly; all quarterly payments theretofore made *i.e.* up to July 1, 1923 were taken into consideration by the Arbitration.

As to whether quarterly payments are deductible thereafter is also submitted to arbitration but at the time when the statements were rendered the royalty was due me and no quarterly payments were made after July 1, 1923 until April 1, 1924.

I beg further to advise that I do not care to withdraw my notice but will stand upon the terms of the lease and 30 agreement.

Yours truly,
(Sgd.) JOHN H. DAHLKE.

IN CHANCERY OF NEW JERSEY.

ORDER TO SHOW CAUSE

(Filed July 23, 1926.)

This matter being opened to the court by Harlan Bes-
son, Esquire, of counsel with the complainant and upon
10 reading and filing duly verified Bill of Complaint in this
cause, IT IS on this twenty-third day of July, A. D. 1926,
ORDERED, That John H. Dahlke, the defendant herein
show cause before this Honorable Court on the seven-
teenth day of August, A. D. 1926, at 10:30 o'clock,
(Daylight Saving Time) in the forenoon, or as soon
thereafter as counsel can be heard, at the Chancery Cham-
bers, at the State House, in the City of Trenton, why a
temporary injunction should not issue restraining the said
20 John H. Dahlke from enforcing the forfeiture clause con-
tained in a certain lease made by the said John H. Dahlke,
defendant herein, to Robert L. Ahles and thereafter as-
signed by the said Robert L. Ahles, to the complainant,
and to further show cause why the said defendant should
not be restrained from interfering with the peaceful pos-
session and occupation by the complainant of the premises
leased as aforesaid; and it is further ordered that pending
the determination of the questions arising upon this order
to show cause and until the further order of this court, the
30 said John H. Dahlke, be restrained from enforcing the
forfeiture clause contained in the lease aforesaid and set
forth in the Bill of Complaint and from interfering with
the peaceful possession and occupation by the complainant
of the premises leased to the complainant under the terms
of the aforesaid lease and assignment thereof.

It is further ordered that a true copy of the Bill of Complaint and accompanying affidavits in this cause be served upon the said John H. Dahlke, within five days from the date hereof.

Respectfully advised:

E. R. WALKER,
Chancellor.

MALCOLM G. BUCHANAN,
Vice-Chancellor.

10

ACKNOWLEDGMENT OF SERVICE.

(Filed July 28, 1926.)

On this 24th day of July, A. D. 1926, I, John H. Dahlke, of Belvidere, N. J., defendant in the above named cause and solicitor *pro se*, hereby acknowledge service upon me of a true copy of the Bill of Complaint heretofore filed in the above named cause and a true copy of the Restraining Order issued in said cause, dated July 23, 1926, and returnable at the Chancery Chambers in the State House at Trenton, New Jersey, on August 17, 1926 at 10:30 o'clock in the forenoon (Daylight Saving Time), or as soon thereafter as counsel can be heard.

JOHN H. DAHLKE,
Defendant and Solicitor
Pro Se.

20
30

ANSWER

(Filed August 7, 1926.)

The defendant, John H. Dahlke, residing at Belvidere, Warren County, New Jersey, answering complainant's Bill of Complaint says:

- 10 1. He admits paragraphs 1, 2, 3, 4 and 5 of the bill.
 2. He admits the contention of the complainant and the defendant as stated in paragraph 6 except as insofar as is stated therein that "All payments due under said lease have been made to the defendant to the first day of April, 1923."

Defendant says that all payments due under the said lease have been made in full to him until July 1, 1923.

- 20 3. Defendant admits paragraph 7 but in addition thereto says that the submission to arbitration does not affect the question of the payment of the \$1,674.63 claimed by the defendant as due to him for the reason that on or about July 9, 1923, the complainant paid to the defendant the sum of \$1,087.85 in settlement of royalties that became due for shipments of ore in the month of May 1923 in the sum of \$476.80 and in the month of June 1923 in the sum of \$611.05 and that after the said payment of the said sum of \$1,087.85 had been made the complainant contended to the defendant that it had a right to deduct
30 all quarterly payments theretofore made from royalties due on ore shipped subsequently but which had been previously mined and that it had overpaid the defendant the sum of \$629.54, it not having deducted quarterly payments theretofore made.

On the contrary the defendant contends that according to the lease and agreement in the complaint referred to the complainant had no right to deduct quarterly payments theretofore made from royalties on ore which was previously mined, and said contention is the matter that was submitted to arbitration, in which arbitration it was further provided, that if the complainant was right in its contention that the defendant had been overpaid the sum of \$629.54 that then he should pay back to the complainant the said sum but if the defendant was right in his contention the matter was to be considered settled, and further that the parties complainant and defendant were to be governed by the said findings in their future dealings. 10

4. The aforesaid sum of \$1,674.63 is claimed by the defendant to be for the payment of the royalties due on ore shipped as shown by the complainant's Exhibit "B" and the said sum so claimed became due and payable in manner following, *i.e.* quarterly, the sum of \$1,590.33 on September 30, 1923 and the sum of \$1,384.30 on December 31, 1923, amounting to \$2,974.63 in the whole upon which there has been paid on account the sum of \$1,300., leaving the balance of \$1,674.63, as above stated, due; and that at the time when the said sums as last aforesaid became due and payable no previous quarterly payments had been made by the complainant and therefore none could be deducted and for that reason the said sums so due were not affected by the matter submitted to arbitration. 20

5. Defendant admits paragraphs 8 and 9 of the bill and says he has no knowledge as to the matters stated in paragraph 10. 30

Defendant prays that the Bill of Complaint may be dismissed, the restraining order dissolved and that he may

be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

JOHN H. DAHLKE,
Defendant and Solicitor *Pro Se*.

STATE OF NEW JERSEY,
COUNTY OF WARREN,

ss.

John H. Dahlke being duly sworn according to law
10 upon his oath deposes and says:

1. I am the defendant in the above captioned cause.

2. I have personal knowledge of all the matters set forth in the above answer and the facts as therein stated are true, except that the amount of \$629.54 claimed by the complainant may have been reduced by error on the part of the complainant to some amount of which I have no knowledge.

3. I further say that the sum of \$1,590.33 became due
20 and payable to me within 20 days after June 30, 1923, and that the sum of \$1,384.30 became due and payable to me within 20 days after December 31, 1923, upon which amounts which aggregate the sum of \$2,974.63, the complainant paid on account the sum of \$1,300., and that the balance of \$1,674.63 remains due and unpaid and that at the times when the said sums became due and payable no previous quarterly payments had been made to me, except those quarterly payments submitted to Arbitration and which were to be adjusted in connection with the sum
30 of \$1,087.85 paid about July 9, 1923.

JOHN H. DALKE.

Subscribed and sworn to before me
this 6th day of August, 1926.

JOHN H. DAHLKE.

Notary Public of N. J.

ON BILL, &c., NOTICE.

(Filed August 6, 1926)

Take notice of the filing of the Answer together with the affidavit thereto annexed in the above captioned cause, and of the reading of said answer and affidavit, on Tuesday, August 17, 1926, on the return of the Rule to Show Cause in said matter, as evidence.

10

A copy of said Answer and the Affidavit thereto annexed are herewith served upon you.

Dated: August 6th, 1926.

JOHN H. DAHLKE,

Defendant and Solicitor *Pro Se*.

To Edgar W. Hunt, Esq.,

Solicitor for Complainant.

IN CHANCERY OF NEW JERSEY.

20

ON BILL, &c., ORDER.

(Filed August 23, 1926.)

This matter being opened to the Court by Harlan Beson, Esq., of counsel with the complainant, in the presence of John H. Dahlke, Esq., as counsel *pro se*, and it appearing that an Order to Show Cause and Restraining Order had heretofore been issued in this cause requiring the defendant to show cause why a temporary injunction should not issue restraining the said John H. Dahlke from enforcing the forfeiture clause contained in a certain lease, etc., as in the said order more fully appears, and the Court having examined the verified Bill of Complaint filed in this

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cause and the Answer of the defendant and the affidavits thereto appended and having heard the arguments of counsel;

It is, on this 20th day of August, A. D. 1926, ORDERED that pending the determination of the questions arising in this cause a temporary injunction issue out of and under the seal of this Court, restraining the said John H. Dahlke from enforcing the forfeiture clause contained in a certain lease made by the said John H. Dahlke, defendant herein, to Robert H. Ahles and thereafter assigned by the said Robert H. Ahles to the complainant, and to refrain from interfering with the peaceful possession and occupation by the complainant of the premises leased as aforesaid under the terms of the said lease and the assignment thereof.

It is further ORDERED that the costs of this application abide the event.

E. R. WALKER,
Chancellor.

20 E. B. LEAMING,
Vice-Chancellor.

INJUNCTION

(Filed August 30, 1926.)

NEW JERSEY, ss.

(SEAL)

THE STATE OF NEW JERSEY TO
JOHN H. DAHLKE,

10

GREETING—

WHEREAS, it has been represented to us, in our Court of Chancery, on the part of the BASIC IRON ORE COMPANY, a corporation complainant, that it has lately exhibited its Bill of Complaint against you, the said JOHN H. DAHLKE, to be relieved touching the matters therein contained, in which said Bill it is, among other matters, set forth that you threaten to exercise your right to forfeit a certain lease made by you to ROBERT H. AHLES and thereafter assigned by the said ROBERT H. AHLES to the BASIC IRON ORE COMPANY, and that you threaten to enter upon the leased premises and thereby deprive the Basic Ore Company of all its right, title and interest in said premises and the valuable improvements which it has constructed thereon:

We, therefore, in consideration thereof and of the particular matters in said Bill set forth, do strictly enjoin and command you, the said John H. Dahlke, under the penalty that may fall thereon, that you do absolutely desist and refrain from entering upon the premises mentioned in the said lease for the purpose of removing the complainant therefrom and from putting into effect a forfeiture of the said lease, or in any way interfering with the peace-

able possession of the complainant and with its operations on the said premises until you, the said John H. Dahlke, shall have fully answered the Bill of Complaint and our said Court shall make further order to the contrary.

WITNESS, Edwin R. Walker, Esq., Chancellor, at Trenton, the 23rd day of August, A. D. 1926.

THOMAS BARBER,
Clerk.

10

E. W. HUNT,
Solicitor.

Duly served the within temporary Injunction with endorsements thereon upon John H. Dahlke the defendant personally at his office in the town of Belvidere, Warren County, N. J., this 27th day of August, 1926.

20

WM. JONES, Sheriff
by
C. D. GARIS,
Under-sheriff.

Fee \$3.50.

30

ORDER OF REFERENCE

(Filed October 5, 1926)

This matter being opened to the court by Edgar W. Hunt, Esquire, solicitor for and of counsel with the complainant and upon reading the annexed consent of the defendant, IT IS, on this 5th day of October, A. D. 1926: 10

ORDERED, that the above stated cause be referred to Hon. M. G. Buchanan, one of the Vice-Chancellors of this Court to hear the same for the Chancellor and to report to him and advise what order or decree should be made therein.

E. R. WALKER,
Chancellor 20

We consent to the making and entry of the foregoing order.

E. W. HUNT,
Sol'c. for Complainant

JOHN H. DAHLKE,
Defendant Sol'c. Pro se.

DESIGNATION

(Filed January 5, 1927)

This matter being opened to the court by Edgar W. Hunt, Esquire, of counsel with the complainant and upon reading the annexed consent of the defendant and
10 it appearing that this cause has been heretofore referred to the Honorable M. G. Buchanan, one of the Vice Chancellors of this court to hear the same for the Chancellor and to report to him and advise what order or decree should be made therein, it is on the thirty-first day of December, A. D. 1926,

ORDERED, that the hearing of the above named cause be before me at the Chancery Chambers at the State House
20 in Trenton, the fourth day of April, A. D. 1927, at 10:30 A. M.

MALCOLM G. BUCHANAN,
Vice-Chancellor

We consent to the making and entry of the foregoing order.

E. W. HUNT,
Solicitor for Complainant.

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JOHN H. DAHLKE,
Defendant Solicitor, Pro se.

NOTICE OF HEARING

(Filed January 4, 1927)

To: JOHN H. DAHLKE, Solicitor, Pro se.

SIR:

10

TAKE NOTICE that I shall move the hearing of the above named cause before the Honorable Malcolm G. Buchanan, Vice Chancellor, at his chambers in the State House in the City of Trenton, New Jersey on the fourth day of April next, at ten thirty o'clock (10:30) in the forenoon or as soon thereafter as counsel can be heard. If Daylight Saving Time is in effect on the day fixed in this notice, then it should be understood that the hour designated will be ten thirty (10:30) 20 o'clock, Daylight Saving Time.

Respectfully,

EDGAR W. HUNT,
Attorney for Complainant.

Due and legal service of the within notice is hereby acknowledged.

Dated: Jan. 21, 1927.

JOHN H. DAHLKE

30

IN CHANCERY OF NEW JERSEY

CONCLUSIONS

ON FINAL HEARING

10

(Filed)

BUCHANAN, V. C.

Complainant's bill is to restrain defendant from the threatened forfeiture of complainant's rights as lessee of mining rights for iron ore on defendant's premises in Warren County; and for a judicial accounting between the parties,—tendering payment of any amount found due.

20

The case turns on the determination of the true interpretation of the terms of the mining lease held by complainant. Defendant leased the mining rights to one Ahles in 1901 for a term of twenty years, and again in 1903 for a further term of twenty years: the provisions of the two leases being substantially similar. In 1904 complainant took the place of Ahles, by assignment from him. In 1912 by due agreement between complainant and defendant the rate of royalty in the leases was modified.

30

The two paragraphs of the lease which are particularly pertinent to the present consideration, (as modified

by the later agreement changing the royalty rate), are substantially as follows, (designated "A" and "B" for convenience) :—

A. "In consideration whereof the said lessee agrees to pay to the lessor for every ton of twenty-two hundred and forty pounds in weight of merchantable iron ore raised, mined and taken from the said premises the sum of twelve and one-half cents on washed iron ore, and on all unwashed ores shipped and used ten cents per ton, said royalties to be paid quarterly on the first day of April, July, October and January of each year for the quarter immediately preceding. The weights of ores to be ascertained from scales of railroad companies transporting the ore, and if not shipped by railroad to be ascertained in any other reasonable manner; the lessee to furnish statement of ores shipped, to whom shipped and when shipped, and the prices and values thereof with payments of royalties, lessor to have the right at all reasonable hours to inspect the books or book in which weights and prices of ores are kept and to take statements therefrom.

B. "It is further agreed that the lessee shall each and every year during the term of this lease and agreement pay unto the lessor the sum of four hundred dollars, to be paid in quarterly payments of one hundred dollars each quarter on the quarterly dates specified, which sum shall be credited against royalties on iron ore subsequently mined. In case of failure to pay such quarterly payments or royalties within twenty days after they are due and written demand has been made for the same, then in that case this lease shall be null and void, at the option of the lessor, and the lessor, his heirs and assigns may enter."

Complainant, prior to September 1st, 1914, mined and brought to the surface more ore than it shipped, and thus accumulated a large bank of ore on the surface. Since September 1st, 1914, it has brought no ore to the surface; all of its subsequent shipments have been made of ore from the bank theretofore accumulated.

10 From the middle of 1914 to the middle of 1919, complainant shipped practically no ore, (because it could find no customers). From January 1st, 1915 to April 1st, 1923, inclusive, it paid the minimum quarterly payments, but no royalties calculated on ore shipped, because during that period the royalties due for ore shipped did not amount to the sum of the minimum quarterly payments required by the lease.

20 Subsequently the amount of royalty computed on ore shipped (hereinafter called the "earned royalty") has exceeded the minimum quarterly payment. Complainant claims the right to credit the minimum quarterly payments previously made, against the earned royalties subsequently accruing. Defendant denies that complainant has such right, because the earned royalties have accrued only from shipments of ore which was brought to the surface prior to September 1st, 1914: he contends that under the terms of the lease providing for the crediting of the minimum payments "against royalties on iron ore subsequently mined," the minimum payments can be credited by complainant only against royalties accruing in respect of ore brought to the surface subsequent to the making of such minimum payments.

30

Complainant has made payments or tenders of earned royalties computed according to his contention. Defen-

dant, claiming that these are less than he is entitled to under the lease, has demanded additional payments, and has threatened that if they be not made he will exercise a right claimed by him under the lease to declare the lease null and void.

It seems clear that complainant is entitled to permanent injunction against the threatened forfeiture; first because defendant has no right under the lease to such forfeiture; and secondly, because assuming that he ever had such a right, he has waived it; thirdly, because complainant is not in default. 10

The alleged right to declare a forfeiture rests on the second quoted paragraph of the lease, wherein it is conditioned upon failure of the lease "to pay such quarterly payments or royalties within twenty days" etc. The subject matter of this paragraph is the requirement that the lessee pay a minimum rental or compensation, quarterly, even though no ore be mined and shipped. The subject matter of the preceding paragraph, ("A"), is the requirement that the lessee pay a rental or royalty per ton on all ore taken away. The clause as to forfeiture is not a separate paragraph, but is a part of paragraph "B," which tends to indicate that the right to forfeiture is only for default in the minimum quarterly payments. It is true that the royalties on the ore mined are referred to earlier in that paragraph, and that the clause in question says "such quarterly payments *or royalties*," but it is also clear that the word "royalties" may be construed as being an alternative designation of the "quarterly payments" equally as well as it may be construed as referring to the royalties on mined ore. That it should be interpreted as a mere alternative designation of the "quarterly pay- 20 30

ments" is supported by that fact that in each of the receipts given by defendant and accepted by complainant, for all these \$100.00 quarterly payments down to the time that controversy first arose between them in 1923, such payments are designated payments of "minimum royalty."

10 Considering the respective main subject matter of the two paragraphs; and the rule that construction is to be made against, rather than in favor of, a forfeiture; and the further rules that construction is to be made against, rather than in favor of, the lessor and the draftsman—it is concluded that the lease does not give the lessor the right to forfeit for failure to pay the earned royalties on ore mined. There is no contention that there has been any default in payment of the minimum quarterly payments.

20 Furthermore, if any such right to declare a forfeiture had existed in favor of defendant, it was waived by him. In an arbitration agreement made two or three years before the commencement of this suit, defendant, together with complainant, submitted to arbitrators the determination of a controversy between them as to the amount at that time due from complainant to defendant (or vice versa), involving the very same question as to whether or not complainant was entitled to credit minimum royalties against earned royalties thereafter accruing on shipments of ore brought to the surface before September 1st,
30 1914; and agreed that in their future dealings they should be bound by the principles involved in the findings of the arbitrators.

It would seem that this impliedly constitutes a waiver of any right defendant might otherwise have claimed, to

penalize complainant for alleged default in payments by forfeiture of the leasehold rights—at least unless, and until, the arbitrators should find in favor of defendant.

In the third place, there has been no default by complainant. Concededly the question as to whether there was or was not such default, rests solely upon the determination of the true interpretation of the lease. If complainant has the right, under the lease, to credit minimum quarterly payments against earned royalties subsequently accruing on shipments of ore raised to the surface prior to the making of the minimum payments, then complainant is not in default. To hold that complainant had not that right, it would be necessary to ascribe to the word 'mined,' in the quoted paragraph "B"), an extremely limited and special meaning; and for this, no justification can be found either in the lease itself, or the surrounding circumstances, or the subsequent acts of the parties. 10

Defendant contends that "mined" means "dug and taken from the earth"; that the ore already in bank on the surface previous to the time of the quarterly payment, had then already been "mined" and was not ore "subsequently mined"; and that the parties intended by the lease that complainant could credit against the quarterly payments royalties only on ore 'dug and taken from the ground' *subsequent* to the quarterly payments. 20

There is nothing whatever to indicate that the parties, or either of them, ever had any such intention. On the contrary, consideration of the whole lease, and all the attendant circumstances, makes it clear that the clause 'royalties on iron ore subsequently mined' is to be interpreted as if it read "royalties subsequently accruing due on iron ore." 30

In a mining lease the lessor compensation fulfills a two-fold character—(1) rent, or interest on his capital in-

vested in the ownership of the tract; and (2) royalty, or payment for the ore taken out of and away from his ground. If the lease provided for compensation to the lessor solely by a royalty on the ore, then unless there were a covenant by the lessee to mine and pay royalty on at least a minimum fixed amount, the lessee might refrain from mining and thus deprive the lessor of any compensation whatever, at the same time depriving the lessor of the right to mine for himself.

10

In the present lease, instead of a covenant to mine a certain minimum amount, there is the covenant to pay the minimum quarterly payment of \$100.00 each quarter. This was a fair provision to protect the lessor. In order to make it fair for the lessee as well, and to make it substantially as beneficial to the lessee as a covenant to mine a minimum quantity, the clause providing that the minimum quarterly payments should be credited on subsequent royalties, was inserted.

20

There was no reason in the nature of things nor in the circumstances of the parties why this credit should not be allowed on all subsequent royalties earned—no reason why it should be limited to royalties on or *subsequently taken from the earth*. The defendant has been unable to suggest any such reason: at any rate none has been suggested by him. There was of course an obvious reason for limiting the crediting to royalties *subsequently accruing* (instead of allowing it as well on royalties *previously paid*)—but there was no reason for such meticulous refinement of limitation as allowing it only on royalties subsequently accruing on ore subsequently taken from the ground.

30

The thing which was important to the lessor was not

to secure at least a minimum amount of operation by the lessee; but to secure at least a minimum constant income; the thing which was important to the lessee was to avoid, as far as possible, having to pay the minimum yearly payments without itself deriving any benefit.

It seems fairly obvious that neither party contemplated the contingency which has now arisen. The natural and normal course of mining would be the mining, concentrating, and shipping to be carried along contemporaneously, and at approximately the same rate. Any considerable accumulation of ore on the surface would not be contemplated by either party. It would do the lessee harm rather than good—for it could not get back any of the cost of mining until it sold and shipped; it would do the lessor good rather than harm—for any ore raised to the surface and not shipped prior to the expiration of the lease, would enure entirely to his benefit without expense, and in the meantime the minimum quarterly payment assured him a constant income.

The provisions in this lease reflect precisely the circumstances of the parties and the intentions naturally to be expected under those circumstances. The lessor's compensation is fixed primarily on a sale basis—a royalty per ton on ore taken away;—with a "rent" or minimum yearly payment provision for protection in case the lessee did not operate. The royalty is payable only when the ore is removed from the lessor's lands—(on the ore "raised, mined and *taken away* from said premises," and on the ore "*shipped* and used,")—until it was removed from the premises it would still remain the lessor's, with the added benefit of whatever work had been done on it by the lessee.

Not only does the general situation disclosed by the lease and the attendant circumstances tend to refute defendant's contention—there are specific provisions and indications in the lease which disprove his claim.

That ore was not "mined" when it had been raised to the surface is shown by the words in the preceding quoted paragraph ('A'), "iron ore raised, mined, and taken away"—indicating clearly that it was to be "mined" *after*
10 it was "raised."

Again, the lease provides no means for ascertaining the amount or tonnage of ore "mined" or "raised to the surface"—as would be expected if this operation were in any wise material under any provision of the lease. The provision is only for ascertaining the weight of ore "shipped"; the same is true as to the provision for lessee's furnishing statements of ores "shipped," not for ore
20 "mined" or "raised."

The rules as to construction most strongly against the the lessor and the draftsman also would operate against defendant; although it seems unnecessary in this case to call them into operation.

For these reasons it is concluded that complainant had, and has, the right under the lease, to credit the minimum quarterly payments upon royalties accruing due on subsequent shipments of ore, whether such are was raised
30 from the ground before or after the making of the quarterly payments.

Moreover, there is a further cogent reason for this determination; namely, the construction by defendant him-

self, as evidenced by his own admissions. The evidence shows that from January 1st, 1915 down to October 1st, 1917, the lessee shipped no ore, but made the minimum quarterly payments aggregating \$1200.00. In the quarter October 1st, 1917 to January 1st, 1918 it shipped ore which was raised from the ground before 1915, and on which the royalties would have amounted to about \$345.00, but made no payment of tonnage royalty, obviously because it had the \$1200.00 credit of the minimum quarterly payments. The same thing happened in six or 10 seven other quarters in 1919, 1920, and 1921—the lessee shipped, in each of said quarters, ore raised from the ground before 1915, on which the tonnage royalty would have exceeded the \$100.00 minimum quarterly payment, but made no payment of any tonnage royalty because of the aggregate amount of minimum quarterly payments standing to its credit. This was no accident—eight different occasions covering four years. The defendant accepted simply the minimum quarterly payments, and made 20 no demand for additional payments because of tonnage royalty. He acquiesced in the construction now contended by complainant; he made no contention for the construction now argued by him. More than that he made the specific admission, in the arbitration agreement, on February 6th, 1924, that all payments due under the lease "*have been paid in full* to the said John H. Dahlke to the first day of April, 1923"; and still further, he makes a similar specific admission in his own answer (drawn by himself), in the present suit. 30

If the parties cannot agree upon an accounting upon the basis herein determined, it may be referred to a master to state such account, and the decree will of course provide for the payment of such balance as may be found due from either party to the other.

NOTICE OF APPLICATION TO SETTLE
DECREE

(Filed August 2, 1929)

To JOHN H. DAHLKE, ESQ.,

10 Solicitor pro se., Belvidere, N. J.

Sir:

Take notice that on the 9th day of July, A. D. 1929,
at 10:30 o'clock in the forenoon, daylight saving time, at
the Chancery Chambers, in the State House, in the City
of Trenton, New Jersey, I shall move before the Hon.
Malcolm G. Buchanan, Vice-Chancellor, for the settle-
20 ment of the decree in this cause in conformity with his
conclusions heretofore filed.

Respectfully,

EDGAR W. HUNT,
Solicitor for Complainant.

Service admitted this 6th day of July, 1929.

30 JOHN H. DAHLKE,
Solicitor pro se.

Endorsed:

IN CHANCERY OF NEW JERSEY

FINAL DECREE

(Filed July 9, 1929)

This cause coming on to be heard in the presence of 10
Harlan Besson, Esq., of Counsel with the complainant,
and John H. Dahlke, Esq., pro se., and Sylvester C.
Smith, Jr., Esq., of counsel with the defendant, and the
Court having examined the pleadings, and having taken
proofs orally and in open court, and having heard and
considered the arguments of Counsel thereon, and it ap-
pearing to the satisfaction of the Court by the true con-
struction of the two mining leases made in 1901 and 1903
to Robert L. Ahles by the defendant, and thereafter as- 20
signed by said Ahles in 1904 to the complainant, that no
royalties are to be paid by the complainant to defendant
on account of ore shipped until the aggregate amount of
such royalties shall exceed the amount of the quarterly
installments previously paid and then that such payment
shall be only in the amount of the excess over the total
of such quarterly installment payments, and that from
the "earned royalties" upon ore subsequently shipped there 30
may be deducted the quarterly installments previously
paid, irrespective of whether such ore has been raised be-
fore or after the date when the quarterly installment was
paid;

And it further appearing to the satisfaction of the
Court that the defendant has no right, under the terms

not before the accruing of the quarterly payments to entitle the lessee to deduct "earned royalties" on subsequent shipments;

It is further ORDERED, ADJUDGED and DECREED that in the event that the parties thereto can not agree to state their account under the construction put upon the said leases by this decree, then within ten days from the date hereof, that the said complainant account under oath for the royalties received by it since the eighteenth day of November, 1921, and make full and true discovery and disclosure of said royalties so received by it, and that complainant may receive full credit for all quarterly payments on account of royalties made by it to the defendant before Charles L. Carrick, Esquire, one of the Masters of this Court, to whom the said matters and things are hereby referred to be ascertained and reported on by him; 10

It is further ORDERED that said Master report what balance appears to be due from said defendant to said complainant, or from said complainant to said defendant; 20

It is further ORDERED that the said Master make a report to this Court, with all convenient speed, and all further equity is reserved until the coming in of said Master's report.

It is further ORDERED and DECREED that the defendant pay to the complainant the costs of this suit to be taxed, including a counsel fee of three hundred dollars, which is hereby allowed to said complainants; and that, in default of the payment of said taxed costs within ten days after the service upon the defendant of true but uncertified copies of said taxed costs and of this decree, execution issue against the goods and chattels, lands, tenements, hereditaments and real estate of 30

said defendant to make said taxed costs, according to the practice of this court.

Respectfully advised,
MALCOLM G. BUCHANAN,
Vice Chancellor.

E. R. WALKER,
C.

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NOTICE OF APPEAL

(Filed January 8, 1930)

The defendant, John H. Dahlke, hereby appeals from so much of the final decree made by the Chancellor on the advice of Vice Chancellor Buchanan in the above entitled cause on July 9, 1929, as ordered, adjudged and
20 decreed, that under the provisions of the mining leases made in 1901 and 1903 between the defendant, John H. Dahlke as lessee, and Robert H. Ahles as lessor, and thereafter assigned to the complainant in 1904 by the said R. L. Ahles, that no royalties are to be paid by the complainant to defendant on account of ore shipped until the aggregate amount of such royalties shall exceed the amount of the quarterly installments previously paid and then that such payment shall be only in the amount of the
30 excess over the total of such quarterly installments payments, and that from the "earned royalties" upon ore subsequently shipped there may be deducted the quarterly installments previously paid, irrespective of whether such ore has been arised before or after the date when the quarterly installment was paid;

And also as further ORDERED, ADJUDGED and DECREED that any amount which may be due from the defendant to the complainant or from the complainant to the defendant, under the construction placed upon said leases by this decree, be paid by the one to the other when said amount has been duly ascertained; and also so much of said decree, as ORDERED, ADJUDGED and DECREED that the said defendant account under oath for the royalties received by him since the eighteenth day of November, 1921, and that complainant make full and true discovery and disclosure of said royalties so paid by it, whether minimum quarterly payments or otherwise, and that complainant may receive full credit for all quarterly payments and payment on account of royalties made by it to the defendant, before Charles L. Carrick, Esquire, one of the Masters of this Court, to whom the said matter and things are hereby referred to be ascertained and reported on by him; 10

And also as further ORDERED that said Master report 20 what balance appears to be due from said defendant to said complainant, or from said complainant to said defendant, from the eighteenth day of November, 1921, under the construction put upon said mining lease by this decree.

JOHN H. DAHLKE,
Solicitor for and of Counsel pro se.

I conceive there is good cause for appeal in the above entitled cause. 30

SYLVESTER C. SMITH, JR.,
Of Counsel with defendant, John H. Dahlke.

(Dated April 4, 1927

IN CHANCERY OF NEW JERSEY

TESTIMONY

10 Proceedings had in the above entitled cause at the State House, Trenton, New Jersey, on Monday, the fourth day of April, 1927, at ten-thirty A. M.,

Before HON. MALCOLM G. BUCHANAN, Vice Chancellor.

APPEARANCES:

20 HARLAN BESSON, Esquire, (and ALBERT S. WRIGHT, Esquire, of the New York Bar, of counsel) for complainant.

SYLVESTER C. SMITH, JR., Esquire, and JOHN H. DAHLKE, Esquire, pro se., for defendant.

30 MR. BESSON—I offer a statement of all royalty payments made by the Basic Iron Ore Company to Mr. Dahlke, beginning October first, 1902, and ending June first, 1926, which was the last payment made.

MR. SMITH—I offer an objection, not as to the form, but on the ground that it is immaterial, in reference to transactions that took place prior to the matter in dispute. In other words, that these are matters

closed during a period of time long past and down to July 9, 1923, when the arbitration agreement —

THE COURT—That is the real matter in dispute, isn't it?

MR. SMITH—No, sir.

THE COURT—It is, at least, a vital matter in dispute. 10

MR. SMITH—Only on the other matter.

THE COURT—It is one of the main issues, and if I should decide against you I would not have the data which I would require in the disposition of the cause. I will take it and rule on it later.

You admit it is a correct statement as to the payments; that is, as to the amounts and the dates? 20

MR. SMITH—We do.

(Said statement is marked Exhibit C-1.)

MR. BESSON—I offer in evidence the agreement submitting this matter to arbitration.

MR. SMITH—There is no objection to that. It is admitted that that is the agreement. 30

THE COURT—It is admitted that that is the agreement made between these parties.

MR. SMITH—Yes, sir, we admit it is the agreement.

THE COURT—That will also be admitted.

(Said arbitration agreement is marked Exhibit C-2.)

10 MR. BESSON—I have here also a number of letters which were written between the parties, the originals of which were dated October 16th, 1923; a letter from Charles E. Hewitt on behalf of the Basic Iron Ore Company to Mr. John H. Dahlke and enclosure contained in that letter; and Mr. Dahlke's reply of October 17, 1923. He addressed it to the Pequest Company. I understand it was intended to go to the Basic Iron Company. Another letter of October 22d, 1923, by Mr. Hewitt on behalf of the Basic Iron Ore Company to Mr. Dahlke. Another letter dated 20 October 24, 1923, from John H. Dahlke to the Pequest Company, attention of Charles E. Hewitt. Another letter October 27, 1923, from the Basic Iron Ore Company by Charles E. Hewitt to John H. Dahlke. I think all of these letters have been examined. I will offer the copies and no objection has been made to the use of the copies.

MR. SMITH—No, there is no objection.

30 THE COURT—It is admitted that these letters were sent and received at or about the dates they bear and that they were sent and received by and between the parties to this suit and were so considered notwithstanding the apparent errors in the addresses of some of them?

MR. SMITH—Yes, sir.

(Said letters, six in number, are marked Exhibit C-3.)

MR. BESSON—I have here a number of receipts for royalties. They are all minimum royalty receipts which I would like to offer.

THE COURT—They are not covered by the list 10
of payments?

MR. BESSON—They are offered for the purpose of showing the \$100 payment described in the receipt is in payment of minimum royalties. Mr. Dahlke wrote in one of his letters that this was not a royalty. We just want to put the construction upon it put upon it in this receipt.

MR. SMITH—There is no objection to that only 20
as far as payments were received prior to July first, 1923. They are immaterial.

THE COURT—It is admitted that these are receipts given by Mr. Dahlke?

MR. SMITH—We admit that.

(Said receipts, thirty-four in number, are marked Exhibit C-4.) 30

MR. BESSON—We have here the true copies of the price of the shipment of ore. It was agreed upon by Mr. Hewitt and Mr. Dahlke. I would like to offer them as it throws light on the actual quantities of our

shipments and also gives a list of the dates of the minimum payments.

MR. SMITH—We will not object except that they are immaterial in respect to the prior dates.

THE COURT—You admit the accuracy of the statements in that stipulation contained?

10 MR. SMITH—We do.

(Said document is marked Exhibit C-5.)

COMPLAINANT RESTS

MR. SMITH—We would like to ask the other side to admit that this represents the ore shipped.

20 MR. BESSON—Yes, that is correct. It is simply a reiteration.

MR. SMITH—I offer that.

(The document referred to by Mr. Smith is marked Exhibit D-1.)

MR. SMITH—We would like to call upon the complainant to admit, for the purposes of the record, that no iron ore was raised from the ground since 1914.

30 MR. BESSON—As I understand, Mr. Smith wants us to admit there was no ore taken from beneath the surface and put upon the ground since 1914. We are willing to admit that.

MR. SMITH—And that all the ore since that time has been on the bank.

MR. BESSON—Yes, all ore shipped on the premises has been taken from the bank.

THE COURT—It was accumulated prior to 1914?

MR. BESSON—Yes, sir.

10

BOTH SIDES REST

THE COURT—You may file original briefs in one week and if there is anything to answer you may file supplemental briefs within the week following.

20

30

COPY

BASIC IRON ORE COMPANY

Royalty Account of John H. Dahlke from October 1,
1902, to June 1, 1926.

1902

	Oct. 1—To Cash	\$677.06	
10	Oct. 31—By Royalties for July, August and September		\$677.06
	Dec. 31—By Royalties for Octo- ber, November and Decem- ber		322.39

1903

	Jan. 8—To Cash	322.39	
	Jan. 31—By Royalties		199.65
	Feb. 28—By Royalties		138.21
20	Mar. 31—By Royalties		272.07
	Apr. 2—To Cash	609.93	
	Apr. 30—To Cash	52.64	
	April 30—By Royalties for April, May & June, 1902		52.64
	By Royalties		300.92
	May 31—By Royalties		257.58
	June 30—By Royalties		254.21
	Jul. 2—To Cash	812.71	
30	Jul. 31—By Royalties		260.51
	Aug. 31—By Royalties		299.85
	Sept. 30—By Royalties		299.99
	Oct. 1—To Cash	860.35	
	Oct. 31—By Royalties		52.37
	Nov. 30—By Royalties		145.45

1904

Jan. 7—To Cash	197.82	
Jan. 31—By Royalties		113.90
Feb. 29—By Royalties		88.07
Mar. 31—By Royalties		123.97
Apr. 1—To Cash	325.94	
Apr. 30—By Royalties		99.26
May 31—By Royalties		61.71
Jun. 30—By Royalties		54.20
Jul. 1—To Cash	215.17	10
Jul. 31—By Royalties		81.47
Aug. 31—By Royalties		27.04
Oct. 1—To Cash	108.51	
Oct. 31—By Royalties		63.44
Nov. 30—By Royalties		61.24
Dec. 31—By Royalties		66.53

1905

Jan. 3—To Cash	191.21	20
Jan. 31—By Royalties		218.76
Feb. 28—By Royalties		351.70
Mar. 31—By Royalties		400.33
Apr. 1—To Cash	970.79	

Amounts Carried Forward	\$5,344.52	\$5,344.52
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Amounts Brought Forward	\$5,344.52	\$5,344.52
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1905

Apr. 30—By Royalties		469.18
May 31—By Royalties		434.34
June 30—By Royalties		408.75
Jul. 1—To Cash	1,312.27	

30

	Jul. 31—By Royalties	422.77
	Aug. 31—By Royalties	482.11
	Sept. 30—By Royalties	308.70
	Oct. 2—To Cash	1,213.58
	Oct. 31—By Royalties	420.08
	Nov. 30—By Royalties	716.90
	Dec. 31—By Royalties	795.77
1906		
10	Jan. 1—To Cash	1,932.75
	Jan. 31—By Royalties	940.68
	Feb. 28—By Royalties	716.75
	Mar. 31—By Royalties	741.21
	Apr. 1—.....	2,398.64
	Apr. 30—By Royalties	796.73
	May 31—By Royalties	882.19
	Jun. 30—By Royalties	866.51
	Jul. 1—To Cash	2,545.43
20	Jul. 31—By Royalties	870.27
	Aug. 31—By Royalties	519.77
	Sept. 30—By Royalties	415.57
	Oct. 1—To Cash	1,805.61
	Oct. 31—By Royalties	654.22
	Nov. 30—By Royalties	484.28
	Dec. 31—By Royalties	540.72
1907		
	Jan. 1—To Cash	1,679.22
30	Jan. 31—By Royalties	675.66
	Feb. 28—By Royalties	597.30
	Mar. 31—By Royalties	677.75
	Apr. 1—To Cash	1,950.71
	Apr. 30—By Royalties	589.68
	May 31—By Royalties	519.44

Copy of Accounts

57

Jun. 30—By Royalties		389.76
Jul. 1—To Cash	1,498.88	
Jul. 31—By Royalties		25.07
Oct. 31—To Minimum Royalty Paid	100.00	
Dec. 31—By Royalties		458.54

Amounts Carried Forward	\$21,781.61	\$22,165.22
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10

Amounts Brought Forward	\$21,781.61	\$22,165.22
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1908

Jan. 1—To Cash		383.61
Jan. 31—By Royalties		290.64
Feb. 29—By Royalties		185.06
Mar. 31—By Royalties		186.64
Apr. 1—To Cash	662.34	
Apr. 30—By Royalties		261.80
May 31—By Royalties		48.46
Jul. 1—To Cash	310.26	
Jul. 1—To Minimum Royalty Paid	100.00	
Dec. 31—By Royalties		21.35

1909

Jan. 1—To Cash	100.00	
Jan. 31—By Royalties		95.36
Feb. 28—By Royalties		3.19
Mar. 31—By Royalties		171.50
Apr. 1—To Cash	191.40	
Apr. 30—By Royalties		66.19
May 31—By Royalties		27.53

	Jul. 1—To Minimum Royalty		
	Paid	100.00	
	Jul. 31—By Royalties		5.57
	Aug. 31—By Royalties		111.77
	Sept. 30—By Royalties		221.50
	Oct. 1—To Cash	332.56	
	Oct. 31—By Royalties		133.28
	Nov. 30—By Royalties		128.02
	Dec. 31—By Royalties		237.74
10			
	1910		
	Jan. 1—To Cash	499.04	
	Jan. 31—By Royalties		23.88
	Feb. 28—By Royalties		20.57
	Mar. 31—By Royalties		134.98
	Apr. 1—To Cash	179.43	
	Apr. 30—By Royalties		342.14
	May 31—By Royalties		319.55
20	Jun. 30—By Royalties		238.48
	Jul. 1—To Cash	900.17	
	Jul. 31—By Royalties		326.68
	Aug. 31—By Royalties		305.70
	Sept. 30—By Royalties		209.97
	Oct. 1—To Cash	842.35	
	Oct. 31—By Royalties		224.06
	Nov. 30—By Royalties		155.76
		<hr/>	<hr/>
	Amounts Carried Forward	\$26,382.77	\$26,662.59
30			
	Amounts Brought Forward	\$26,382.77	\$26,662.59
	1910		
	Dec. 31—By Royalties		121.43

1911		
Jan. 2—To Cash	501.25	
Jan. 31—By Royalties		113.77
Feb. 28—By Royalties		80.35
Mar. 31—By Royalties		170.19
Apr. 1—To Cash	364.31	
Apr. 30—By Royalties		161.28
May 31—By Royalties		241.13
Jun. 30—By Royalties		226.64
Jul. 1—To Cash	629.05	10
Jul. 31—By Royalties		251.67
Aug. 31—By Royalties		235.26
Sept. 30—By Royalties		333.08
Oct. 2—To Cash	820.01	
Oct. 31—By Royalties		261.89
Nov. 30—By Royalties		151.27
Dec. 31—By Royalties		149.06
1912		
Jan. 2—To Cash	562.22	20
Jan. 31—By Royalties		257.72
Feb. 29—By Royalties		132.14
Mar. 31—By Royalties		20.87
Apr. 1—To Cash	410.73	
June 30—By Royalties		153.01
Jul. 1—To Cash	153.01	
Jul. 31—By Royalties		174.73
Aug. 31—By Royalties		191.91
Sept. 30—By Royalties		249.56
Oct. 1—To Cash	616.20	30
Oct. 31—By Royalties		208.56
Nov. 30—By Royalties		172.21
Dec. 31—By Royalties		172.42

1913			
	Jan. 2—To Cash	535.19	
	Jan. 31—By Royalties		246.13
	Feb. 28—By Royalties		82.95
	Mar. 31—By Royalties		49.43
	Apr. 4—To Cash	378.51	
	Apr. 30—By Royalties		105.13
	May 31—By Royalties		63.97
	Jun. 30—By Royalties		46.14
10		<hr/>	<hr/>
	Amounts Carried Forward	\$31,371.25	\$31,486.49

Amounts Brought Forward

\$31,371.25	\$31,486.49
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1913			
	Jul. 1—To Cash	215.24	
	Jul. 31—By Royalties		66.11
20	Aug. 31—By Royalties		105.61
	Sept. 30—By Royalties		78.82
	Oct. 1—To Cash	250.54	
	Oct. 31—By Royalties		121.94
	Nov. 30—By Royalties		90.09
	Dec. 31—By Royalties		146.19

1914			
	Jan. 2—To Cash	358.22	
	Jan. 31—By Royalties		67.33
30	Feb. 28—By Royalties		68.86
	Mar. 31—By Royalties		75.99
	Apr. 1—To Cash	212.18	
	Apr. 30—By Royalties		87.01
	May 31—By Royalties		89.11
	Jun. 30—By Royalties		37.00

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Jul. 1—To Cash	213.12	
Jul. 31—By Royalties		63.34
Aug. 31—By Royalties		69.51
Oct. 1—To Cash	132.85	

1915

Jan. 1—By Minimum Royalties Paid	100.00	
Apr. 1—By Minimum Royalties Paid	100.00	10
July 1—By Minimum Royalties Paid	100.00	
Oct. 1—By Minimum Royalties Paid	100.00	

1916

Jan. 1—To Minimum Royalties Paid	100.00	
Apr. 2—To Minimum Royalties Paid	100.00	20
Jul. 2—To Minimum Royalties Paid	100.00	
Oct. 31—To Minimum Royalties Paid	100.00	

1917

Jan. 1—To Minimum Royalties Paid	100.00	
Apr. 1—To Minimum Royalties Paid	100.00	30
Jul. 1—To Minimum Royalties Paid	100.00	
Oct. 2—To Minimum Royalties Paid	100.00	

	Oct. 31—By Royalties		98.56
	Nov. 30—By Royalties		200.57
	Dec. 31—By Royalties		46.36
	1918		
	Jan. 1—To Minimum Royalties		
	Paid	100.00	
	Apr. 1—To Minimum Royalties		
	Paid	100.00	
10	Jul. 1—To Minimum Royalties		
	Paid	100.00	
	Oct. 1—To Minimum Royalties		
	Paid	100.00	
	1919		
	Jan. 1—To Minimum Royalties		
	Paid	100.00	
		<hr/>	<hr/>
20	Amounts Carried Forward	\$34,453.40	\$32,998.89
	Amounts Brought Forward	\$34,453.40	\$32,998.89
	1919		
	Apr. 1—To Minimum Royalties		
	Paid	100.00	
	Jul. 1—To Minimum Royalties		
	Paid	100.00	
	Jul. 31—By Royalties		9.43
	Aug. 31—By Royalties		95.99
30	Sept. 30—By Royalties		12.55
	Oct. 1—To Minimum Royalties		
	Paid	100.00	
	Oct. 31—By Royalties		68.66
	Nov. 30—By Royalties		18.97
	Dec. 31—By Royalties		68.16

1920

Jan. 1—To Minimum Royalties			
Paid	100.00		
Jan. 31—By Royalties		73.66	
Feb. 29—By Royalties		31.53	
Mar. 31—By Royalties		74.31	
Apr. 1—To Minimum Royalties			
Paid	100.00		
Apr. 30—By Royalties		66.63	
May 31—By Royalties		74.12	10
May 31—By Royalties		12.67	
Jun. 30—By Royalties		80.10	
Jun. 30—To Cash	12.67		
Jul. 1—To Minimum Royalties			
Paid	100.00		
Jul. 26—By Royalties		8.35	
Jul. 26—To Cash	8.35		
Jul. 31—By Royalties		23.89	
Aug. 25—To Cash	23.89		20
Aug. 31—By Royalties		49.25	
Sept. 30—By Royalties		39.33	
Oct. 1—To Minimum Royalties			
Paid	100.00		
Oct. 31—By Royalties		85.53	
Oct. 31—By Royalties		10.15	
Nov. 30—By Royalties		67.84	
Dec. 24—To Cash	10.15		
Dec. 31—By Royalties		38.59	30

1921

Jan. 1—To Minimum Royalties			
Paid	100.00		
Jan. 31—By Royalties		197.79	

	Feb. 28—By Royalties		26.46
	Apr. 30—By Royalties		121.23
	May 1—To Minimum Royalties		
	Paid	100.00	
	May 31—By Royalties		139.61
	Jul. 6—To Minimum Royalties		
	Paid	100.00	
	Oct. 1—To Minimum Royalties		
	Paid	100.00	
10	Nov. 30—By Royalties		8.08
	Nov. 23—To Cash	8.08	

	Amounts Carried Forward	\$35,616.54	\$34,501.77
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	Amounts Brought Forward	\$35,616.54	\$34,501.77
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1922

20	Jan. 1—To Minimum Royalties		
	Paid	100.00	
	Apr. 1—To Minimum Royalties		
	Paid	100.00	
	Jul. 1—To Minimum Royalties		
	Paid	100.00	
	Oct. 1—To Minimum Royalties		
	Paid	100.00	

1923

30	Jan. 1—To Minimum Royalties		
	Paid	100.00	
	Apr. 1—To Minimum Royalties		
	Paid	100.00	
	May 31—By Royalties		476.80
	Jun. 30—By Royalties		611.05

Jul. 6—To Cash	1,087.85	
Jul. 31—By Royalties		579.38
Aug. 31—By Royalties		687.26
Sept. 30—By Royalties		323.69
Oct. 31—By Royalties		547.14
Nov. 30—By Royalties		496.75
Dec. 31—By Royalties		340.41
1924		
Feb. 28—To Cash	1,300.00	
Apr. 1—To Minimum Royalties		10
Paid	100.00	
Apr. 30—To Cash	251.34	
Apr. 30—By Royalties		251.34
Jun. 30—By Royalties		840.11
Jul. 1—To Minimum Royalties		
Paid	100.00	
Sept. 10—To Cash	22.25	
Sept. 30—By Royalties		22.25
Oct. 1—To Minimum Royalties		20
Paid	100.00	
1925		
Jan. 1—To Minimum Royalties		
Paid	100.00	
Apr. 1—To Minimum Royalties		
Paid	100.00	
Jul. 1—To Minimum Royalties		
Paid	100.00	
Oct. 1—To Minimum Royalties		30
Paid	100.00	
1926		
Jan. 2—By Minimum Royalties		
Paid	100.00	

Apr. 10—By Minimum Royalties		
Paid	100.00	
Jun. 1—By Excess of Payments		
Over Credits		100.03
	<hr/>	<hr/>
	\$39,777.98	\$39,777.98
	<hr/>	<hr/>

10

JOHN H. DAHLKE

IRON ORE TAILINGS SHIPPED AND NOT
CREDITED ON LEDGER ACCOUNT

	May, 1924	79.14 Gross Tons
	June, 1924	803.03 Gross Tons
	Sept., 1924	73.19 Gross Tons
20	Nov., 1924	122.02 Gross Tons
	Dec., 1924	93.13 Gross Tons
	June, 1925	719.19 Gross Tons
	July, 1925	364.00 Gross Tons
	Aug., 1925	171.02 Gross Tons
	Nov., 1925	154.05 Gross Tons
	Dec., 1925	473.16 Gross Tons
	Jan., 1926	107.15 Gross Tons
	Mar., 1926	114.07 Gross Tons
	Apr., 1926	750.18 Gross Tons
30	May, 1926	388.15 Gross Tons
		<hr/>
		4,417.08
		<hr/>

Exhibit C-2

<p>In the Matter of the controversy between BASIC IRON ORE COMPANY, a corporation of the State of New Jersey, and</p>	}	<p>SUBMISSION IN ARBITRATION.</p>
<p>JOHN H. DAHLKE.</p>		

Whereas a controversy exists between the undersigned the said Basic Iron Ore Company, a corporation of the State of New Jersey, and John H. Dahlke, in relation to a subject matter the nature of which is set forth in Exhibit "A" hereto annexed and made a part hereof;

10

Now, therefore, we do hereby voluntarily submit the same, and all matters concerning the same, to Borden D. Whiting, Esq., of Newark, N. J., and William C. Gebhardt, Esq., of Clinton, N. J., as arbitrators, and in case of their failure to agree, then to them and to a third arbitrator to be selected by them for decision, and we mutually covenant and agree to and with each other that the award to be made by said arbitrators, and two or the three of them as the case may be, shall in all respects by us and each of us and our respective legal representatives, successors and assigns, be deemed final and conclusive and be fully and faithfully kept, observed and performed.

20

It is understood that the said Borden D. Whiting, Esq., has been selected by said Basic Iron Ore Company, and his charges for services shall be paid by it; and the said William C. Gebhardt, Esq., has been selected by the said John H. Dahlke, and his charges shall be paid by him. In case said two arbitrators shall fail to agree they shall select a third arbitrator and the decision and findings of the majority of the arbitrators shall control and shall

30

constitute the award. The award shall be made in writing, signed by the arbitrators in duplicate, one copy thereof to be furnished to each party hereto. The charges of a third arbitrator shall be borne equally between the parties.

10 Either party shall be entitled to offer in evidence the originals of any instruments or exhibits forming a part of this submission, and shall be privileged to present to the arbitrators further evidence as to any pertinent or material facts having a bearing upon the controversy, and in the receipt thereof the arbitrators shall not be limited to technical rules of evidence. Either party will, upon the request of the other, produce the originals or copies in its or his possession of any letter, instrument, book of account or other paper or document. The parties hereto in their future dealings shall be bound by the principles involved in the findings of the arbitrators.

20 IN WITNESS WHEREOF the said Basic Iron Ore Company has caused this agreement to be signed by its officer thereunto duly authorized and its corporate seal to be hereto affixed, and the said John H. Dahlke has hereunto set his hand and seal this 6th day of February 1924.

BASIC IRON ORE COMPANY

By CHARLES E. HEWITT,
(Its President)

JOHN H. DAHLKE, L. S.

30 Attest:

GEORGE V. FAHRENBACH,
Secretary

Witness as to John H. Dahlke,
CHARLES A. DAHLKE.

Exhibit "A"

STATEMENT OF FACTS

THE AGREEMENTS: Said John H. Dahlke, being the owner of certain premises in the Township of Oxford, Warren County, New Jersey, on the 3rd day of October 1903, himself drafted and executed to Robert L. Ahles a lease of the mining rights for a term of twenty years, to commence on November 18, 1921 and to end on November 18, 1941. The lease was recorded. A true copy of it (exclusive of the acknowledgements, in due form) is hereto annexed marked Exhibit "B". 10

The said lease was in extension of a prior lease in substantially the same form, between the same parties relating to the same mining rights, dated November 18, 1901, duly acknowledged and recorded, for a term of twenty years, to commence on November 18, 1901, and to end on November 18, 1921. 20

Both said agreements of lease were on March 31, 1904 duly assigned by said Robert L. Ahles to the Basic Iron Ore Company, which became the owner thereof, and of all the rights and privileges of Ahles thereunder, and still continues to be the holder and possessor thereof.

By agreement between the parties hereto dated June 22, 1912, said agreements of lease were modified, in consideration of a cash payment of \$5,000. made to said Dahlke by the Basic Iron Ore Company, so as to provide that the royalty on all iron ore shipped on and after said date is reduced to 10 cents per ton for untreated ore and 12½ cents per ton for treated or refined ore. 30

THE OPERATIONS: Mining operations were carried on by Basic Iron Ore Company from March 31, 1904 to August 1914. The necessary equipment was installed,

shafts were sunk and the ore raised. By the 1st of September, 1914, about 134,000 tons of crude ore that had been raised were stored in bank upon the premises. In April 1913 a plant was installed for treating, washing and concentrating the crude ore and was operated until December 1914. In July 1919 a new concentrating plant was installed and was operated until May 1921, when operations ceased. No ore has been treated, washed or concentrated since the last mentioned date; nor has any ore
10 been raised since September 1, 1914.

The ore as taken from the ground is called crude or unwashed ore. By the treatment or process of washing or concentration the crude ore is broken and the ore proper is separated from the rock and other materials; the ore proper is then called treated, refined or washed ore, and the other material is called tailing; the tailings are of two sorts, refuse rock and a finer material, some of which has from time to time been used in the manufacture of paint.
20 During the period from January 1, 1915 to April 30, 1923 the Basic Iron Ore Company has from time to time sold and shipped from the premises both washed and unwashed ore in an aggregate amount of about 13,000 tons of washed ore and about 40,000 tons of unwashed ore, or 53,000 tons of both, and has rendered to the said Dahlke monthly in each month when any shipment was made a statement showing the weight of the daily shipments of each kind of ore. It has sold and shipped all ore for which purchasers could be found. Shipments were still
30 being made up to December 17, 1923.

Both parties have at all times been cognizant of the foregoing facts and neither has objected to the other with regard thereto.

ROYALTIES: All payments due under said agreements have been made in full to the said John H. Dahlke to

the first day of April 1923. The annual payments of \$100. as required by the provisions of said agreement of lease have been regularly made in quarterly instalments of \$100. each, on the first days of each January, April, July and October, to and including the first day of April, 1923. Such quarterly payments made up to and including the first day of April, 1923, were in excess of what would have been payable as royalties under the provision of the agreement based upon the ore shipped to that date. No ore was shipped during April 1923. During the 10 months of May and June 1923 the Basic Iron Ore Company sold and shipped 10,878.51 tons of unwashed ore. The Basic Iron Ore Company then taking as a basis the shipments of ore that had been made by it up to that time, including the shipments made during the months of May and June 1923, as well as the shipments made prior thereto, computed the total amount which would have been payable on all such shipments at the agreed rates per ton and has ascertained that such total was in excess of 20 the quarterly payments which it had theretofore made by \$526.92; and thereupon it made a tender of payment to said John H. Dahlke, but erroneously and inadvertently tendered him only \$458.31 instead of said sum of \$526.92, as the sum due him to that date under the agreements. The said John H. Dahlke rejected the amount so tendered, on the ground that the ore shipped during said months of May and June 1923 had been mined previous to the accrual of the quarterly payments and not subsequent thereto, and he demanded as the amount due him 30 the sum of \$1,087.85; the whole of which amount, inadvertently as to \$560.93 thereof as is claimed by the Basic Iron Ore Company, was thereupon on July 1, 1923 paid by it to the said John H. Dahlke.

COONTROVERSY: The Basic Iron Ore Company contends that no royalties are to be paid on account of ore shipped until the aggregate amount of such royalties shall exceed the amount of the quarterly instalments previously paid and then that such payment shall be only in the amount of the excess over the total of such quarterly instalment payments, and that from the "earned royalties" upon ore subsequently shipped there may be deducted the quarterly instalments previously paid, irrespective of whether such ore has been raised before or after the date when the quarterly instalment was paid. The said John H. Dahlke contends that the ore must have been mined and raised after and not before the accruing of the quarterly payments to entitle the lessee to deduct the "earned royalties" on subsequent shipments. If the decision is in favor of the Basic Iron Ore Company the arbitrators shall award a return to it of the sum of \$560.93 of the sum of \$1,087.85 paid to said John H. Dahlke on or about July 1, 1923; if the decision is in favor of said John H. Dahlke he shall retain said sum of \$1,087.85.

The fact that any payment has already been made to the said John H. Dahlke shall not be taken as prejudicing in any way the contention of the Basic Iron Ore Company.

Exhibit "B"

Articles of Agreement made and entered into the twenty third day of October, A.D. nineteen hundred and three, between John H. Dahlke, of the town of Belvidere, in the County of Warren and State of New Jersey, party of the first part, and Robert L. Ahles, of the town of Bay-side, Long Island, party of the second part.

Whereas the parties of the first and second part have heretofore entered into an article of agreement and lease, by which the party of the first part granted, bargained and sold to the party of the second part, for a term of twenty years, the exclusive right to mine and remove the iron-ore contained on, in and under all the lands and premises, situate lying and being in the township of Oxford, in the County of Warren and State of New Jersey, and particularly described in said article of agreement and lease, upon certain terms and conditions, said article of agreement and lease bears date on the eighteenth day of November, A. D. nineteen hundred and one, and the term of twenty years therein mentioned is to begin on the date of said article of agreement and lease. Said article of agreement and lease was duly acknowledged by the parties thereto before Nicholas Harris, Esq. a master in Chancery of the State of New Jersey, on the thirtieth day of December, A. D. nineteen hundred and one, and duly delivered to the party of the second part by the party of the first part, and is the same agreement and lease under which mining operations for iron-ore are now conducted on the said premises.

Now, therefore, witnesseth, that in consideration of the premises and the further consideration of the sum of one dollar, duly paid to the party of the first part by the party of the second part, and of the covenants and agreements, hereinafter set forth, to be kept on the part of the party of the second part, the party of the first part has and by these presents doth grant, bargain and sell to the party of the second part, for the further term of twenty years, from the eighteenth day of November, A. D. nineteen hundred and twenty one until the eighteenth day of November, A. D. nineteen hundred and forty one, the exclusive right to mine and remove all the remaining iron ore contained in, on and under all that tract of land and

premises situate, lying and being in the township of Oxford, in the County of Warren and State of New Jersey, owned by the party of the first part and being about two hundred and fifteen acres of land, adjoining land of John Sarson, Jacob Cummins, the "Hoagland Farm," the Hixon lot, the Cutzler lot, the Pittenger lot and the Raub Farm, together with all the necessary rights and privileges for exploring, mining and carrying away said ores, including the right of way for railroads and other roads to and
10 from any part thereof to the public highways, also to have the right of washing on the said premises such ores as shall require washing, and to use any creek and other water for such purposes; also to have the right and privilege to erect on the said premises the necessary buildings and machinery for mining and washing ores, and to enjoy every facility for mining, washing and carrying ores away as he would or could have if he was the real owner of the land, but not to do unnecessary damage and to pay the tenant for
20 crops that should be destroyed by him.

In consideration whereof the said party of the second part, agrees to pay to the party of the first part, for every ton of twenty two hundred and forty pounds in weight of merchantable iron-ore raised, mined and taken away from the said premises the sum of twenty five cents on washed iron ore the market value of which is four dollars per ton and over, f.o.b. at mines, and for washed iron ore the market value of which is less than four dollars per ton at the ratio in value of twenty-five cents to four
30 dollars, and on all unwashed iron ores shipped and used fifteen cents per ton, said royalties to be paid quarterly on the first day of April, July, October and January of each year for the quarter immediately preceding. The weights of ores to be ascertained from scales of railroad companies transporting the ore, and if not shipped by

railroad to be ascertained in any other reasonable manner; the party of the second part to furnish statement of ores shipped, to whom shipped and when shipped, and the prices and values thereof with payment of royalties, party of the first part to have the right at all reasonable hours to inspect the books or book in which weights and prices of ores are kept and to take statements therefrom.

It is further agreed that the party of the second part shall each and every year during the term of this lease and agreement pay unto the party of the first part the sum of four hundred dollars, to be paid in quarterly payments of one hundred dollars each quarter on the quarterly dates specified, which sum shall be credited against royalties on iron ore subsequently mined. In case of failure to pay such quarterly payments or royalties within twenty days after they are due and written demand has been made for the same then in that case this lease shall be null and void, at the option of the party of the first part, and the party of the first part, his heirs and assigns may enter.

This agreement and lease is however upon this express condition, that if the agreement and lease between the parties hereto for the mining &c. of the iron ore for twenty years from the eighteenth day of November, A. D. nineteen hundred and one, which lease and agreement has been herein before described, shall have been surrendered, cancelled, or avoided or forfeited in any way, then in that case this agreement and lease shall be absolutely void and of no effect, and the term therein granted shall be for nothing holden.

It is further agreed that this agreement and lease shall be subject to the lease for limestone made heretofore by the party of the first part to one Joseph H. Wilson.

It is further agreed that the party of the second part

may surrender this agreement and lease upon thirty days notice in writing to the party of the first part; but in case of the surrender of this lease the party of the party of the second part agrees to keep the shaft or shafts in operation, free from water as is usual, up to the date of such surrender, and the party of the second part, during the term of this lease and agreement, shall have the right to remove his property, including buildings and machinery, &c. by him erected, provided however that royalties and
10 payments to be made under this lease are first paid. Mining operations are not to be carried on within a hundred feet of any farm buildings now upon the premises, except by the written consent of the party of the first part.

It is further agreed, that the heirs, executors, administrators and assigns of the respective parties hereto are bound to the performance of all agreements, covenants and conditions and are also entitled to all the benefits and advantages arising from such agreements, covenants and
20 conditions the same as if each had every time been mentioned and bound to the performance of such agreements, covenants and conditions as are herein set forth.

In witness whereof the parties have set their hands and seals the day and year first above written.
Executed in duplicate.

JOHN H. DAHLKE, L.S.
ROBERT L. AHLES, L.S.

30 Signed, sealed and delivered in the presence of
L. TAYLOR

EXHIBIT C-3

October 16th, 1923.

Mr. John H. Dahlke,
Belvidere, N. J.

Dear Sir:—

Herewith we enclose check for \$960.79 drawn to your order as payment in full of all royalties due on shipments of Ahles Ore for July, August and September 1923 as per statements previously rendered by us. 10

We have carefully considered the provisions of the lease and are clearly of the opinion that by it we are entitled to deduct from the royalties on account of shipments made, the credits remaining on our books on account of the \$400.00 annual payments previously made by us.

I hope that upon further consideration you will agree with us on this construction. 20

When we sent you our check in July for \$1,087.85 following your rejection of our check for \$458.31, we acted on your opinion without the consideration of the matter we have since had opportunity to give it.

Very truly yours,

Enc.

(Snd) CHARLES E. HEWITT.

30

Belvidere, New Jersey,
October 17th, 1923.

Received from Basic Iron Ore Company Nine hundred sixty and seventy nine one hundredths (\$960.79) Dollars

in payment in full of amount due for earned royalties on Ahles Ore shipments for the months of July, August and September 1923 in excess of credit of minimum royalties paid in full to October 1st, 1923.

EXHIBIT C3-A

10

JOHN H. DAHLKE
COUNSELLOR AT LAW
Belvidere, New Jersey

October 17, 1923.

Pequest Company,
50 Church Street,
New York City.

Attention of Charles E. Hewitt:—

20 My Dear Sir:

I have your favor of the 16th. instant, enclosing check for \$960.79, for royalties as therein stated.

I am obliged to return this check to you as I am clearly entitled to the royalties upon the statements rendered to me monthly amounting to \$1590.33 from iron ore and to \$241.01 for shipments of paint material, because all this material was mined previous to the accruing of the quarterly payments and not subsequent thereto.

30 I do not see how you come to any other conclusion.
On lease dated Oct. 23, 1903 on the second page thereof you find the following paragraph on the subject—

“It is further agreed that the party of the second part shall each and every year during the term of this agreement pay unto the party of the first part the sum of four hundred dollars, to be paid in quarterly payments of one

hundred dollars each quarter on the quarterly dates specified, which sum shall be credited against royalties on iron ore subsequently mined.”

For the above reason I request the payment of the royalties in conformity with the lease.

Yours very truly,

JHD|CAD

Enc.1.

JOHN H. DAHLKE

10

EXHIBIT C3-B

October 22nd, 1923.

Mr. John Dahlke,
Belvidere, New Jersey.

Dear Sir,

We are in receipt of your letter of the 17th inst. 20

We had not overlooked the language in the lease which you quote but we think the words “credited against royalties on iron ore subsequently mined” are not entitled to the construction which you accord to them. Royalties are never earned on ore mined but only on ore shipped; and we think the intention of this clause, not merely on the basis of the actual words here used, but under the provisions of the entire agreement and the way in which both of us have construed them up to this time, is clearly to allow the credit which we have claimed. 30

We assume that your letter expresses your considered opinion, as does ours, and that there is a fair difference of opinion which must somehow be settled. We regret very much that there is any such difference of opinion and as we value the amicable relations which have always

existed between us we should be pleased to have you suggest some method of settling the question.

Yours very truly,
 BASIC IRON ORE COMPANY,
 (Snd.) By CHARLES E. HEWITT.

EXHIBIT C3-C

10

JOHN H. DAHLKE
 COUNSELLOR AT LAW
 Belvidere, New Jersey

October 24, 1923.

Pequest Company,
 50 Church Street,
 New York city.

Attention of Charles E. Hewitt:

20

My Dear Sir:—

I have your letter of the 22nd, instant in which you say among other things that the royalties are never earned on the ore mined but on ore shipped. That is very true but you must bear in mind that the quarterly payments provided for in the lease are not royalties; they are simply an arbitrary amount fixed to be paid for the use and occupation of the property but for the benefit of the holder
 30 of the lease may be deducted from ores subsequently mined, but as royalties are not paid until shipments are made it necessarily follows that they cannot be deducted until shipments of ores subsequently mined are made.

This I feel is a fair and just interpretation of the lease and so intended when it was written.

You ask for me to suggest some method of settling the question; I have firmly settled it in my own mind as to the legal interpretation thereof, and as you have doubtless some legal advisors in connection with your various companies suppose you submit the lease to one of them for his opinion upon this matter.

Yours very truly,

(Snd.) JOHN H. DAHLKE

JHD-CAD

10

EXHIBIT C3-D

October 27th, 1923.

Mr. John H. Dahlke,
Belvidere, N. J.

Dear Sir:—

We are in receipt of your letter of the 24th inst. 20

Having in mind the importance of the question, and not wishing to adopt an attitude which might be unreasonable or unjust, we submitted the question of the royalty credits to our counsel, Messrs. Parsons, Closson & McIlvane, before writing you our last letter, and that letter was based upon their opinion as to the proper construction of the lease. We have discussed the matter with them at great length and are inclined to believe no consideration based upon the language of the leases has been overlooked. As our counsel point out, however, we believe that the real intention is to be arrived at by considering all of the provisions of the entire lease and the manner in which we have construed and applied it up to this time. 30

If you were by chance expecting to be in New York we think it might be desirable to have you discuss the matter with our counsel. Or it might perhaps be preferable for us to submit the question in some manner for a disinterested decision.

Yours very truly,
 BASIC IRON ORE CO.
 (Snd.) By CHARLES E. HEWITT

10

EXHIBIT D-4

Buttville, N. J., Jan. 1, 1915.

Received of the Basic Iron Ore Company One hundred dollars, in payment of minimum royalty on ore lease for the months of October, November & December 1914.

JOHN H. DAHLKE

\$100.00/100

20

Buttville, N. J., April 1, 1915.

Received of the Basic Iron Ore Co. one hundred dollars, in payment of minimum royalty on ore lease for the months of January, February and March, 1915.

JOHN H. DAHLKE

\$100.00/100

Buttville, N. J., July 1, 1915.

Received of the Basic Iron Ore Co. one hundred dollars, in payment of minimum royalty on ore lease for the
 30 months of April, May and June, 1915.

JOHN H. DAHLKE

\$100.00/100

Buttville, N. J., Oct. 1, 1915.

Received of the Basic Iron Ore Co one hundred dol-

lars, in payment of minimum royalty on iron ore lease for the months of July, August and September, 1915.

JOHN H. DAHLKE

\$100.00/100

Buttville, N. J. Jan. 1, 1916.

Received of the Basic Iron Ore Co. one hundred dollars in payment of minimum royalty on iron ore lease for the months of October, November and December, 1915.

\$100.00/100

10

JOHN H. DAHLKE.

Buttville, N. J., April 1, 1916.

Received of the Basic Iron Ore Co. one hundred dollars in payment of minimum royalty on iron ore lease for the months of January, February and March, 1916.

\$100.00/100

JOHN H. DAHLKE.

20

Belvidere, N. J., July 1, 1916.

Received of the Basic Iron Ore Company one hundred dollars in payment of minimum royalty on iron ore lease for the months of April, May and June, 1916.

JOHN H. DAHLKE.

Belvidere, N. J., Oct. 2, 1916.

Received of the Basic Iron Ore Company one hundred dollars in payment of minimum royalty on iron ore lease for the months of July, August and September, 1916.

JOHN H. DAHLKE.

30

Belvidere, N. J., Jan., 1, 1917.

Received of the Basic Iron Ore Company one hundred dollars in payment of minimum royalty on iron ore lease for the months of October, November and December, 1916.

JOHN H. DAHLKE.

Belvidere, N. J., April 2, 1917.

10 Received of the Basic Iron Ore Company one hundred dollars in payment of minimum royalty on iron ore lease for the months of January, February and March, 1917.

JOHN H. DAHLKE.

Buttville, N. J., July 2, 1917.

20 Received of the Basic Iron Ore Company one hundred dollars in payment of minimum royalty on iron ore lease for the months of April, May and June, 1917.

JOHN H. DAHLKE.

Belvidere, N. J., Oct. 1, 1917.

Received of the Basic Iron Ore Company one hundred dollars in payment of minimum royalty on iron ore lease for the months of July, August and September, 1917.

JOHN H. DAHLKE.

30

Belvidere, N. J., Jan. 1, 1918.

Received of the Basic Iron Ore Company one hundred dollars in payment of minimum royalty on iron ore lease for the months of October, November and December, 1917.

JOHN H. DAHLKE.

Buttztville, N. J., April 1, 1918.

Received of the Basic Iron Ore Co. one hundred dollars in payment of minimum royalty on iron ore lease for the months of January, February and March, 1918.

JOHN H. DAHLKE.

Buttztville, N. J., July 1, 1918.

Received of the Basic Iron Ore Co. one hundred dollars in payment of minimum royalty on iron ore lease for the 10 months of April, May and June, 1918.

JOHN H. DAHLKE.

Buttztville, N. J., Oct. 1, 1918.

Received of the Basic Iron Ore Co. one hundred dollars in payment of minimum royalty on iron ore lease for the months of July, August and September, 1918.

JOHN H. DAHLKE.

20

Belvidere, N. J., Jan. 1, 1919.

Received of the Basic Iron Ore Company one hundred dollars in payment of minimum royalty on iron ore lease for the months of October, November and December, 1918.

JOHN H. DAHLKE.

Buttztville, N. J., April 1, 1919. 30

Received of the Basic Iron Ore Company one hundred dollars in payment of minimum royalty on iron ore lease for the months of January, February and March, 1919.

JOHN H. DAHLKE.

Buttzeville, N. J., July 1, 1919.

Received of the Basic Iron Ore Company one hundred dollars in payment of minimum royalty on iron ore lease for the months of April, May and June, 1919.

JOHN H. DAHLKE.

Belvidere, N. J., Jan. 1, 1920.

10 Received of the Basic Iron Ore Company one hundred dollars in payment of minimum royalty on iron ore lease for the months of October, November and December, 1919.

JOHN H. DAHLKE.

Belvidere, N. J., April 1, 1920.

20 Received of the Basic Iron Ore Company one hundred dollars in payment of minimum royalty on iron ore lease for the months of January, February and March, 1920.

JOHN H. DAHLKE.

Belvidere, N. J., July 1, 1920.

Received from Basic Iron Ore Company one hundred dollars in payment of minimum royalty on iron ore lease for the months of April, May and June, 1920.

JOHN H. DAHLKE.

30

Belvidere, N. J., Oct. 1, 1920.

Received from Basic Iron Ore Company one hundred dollars in payment of minimum royalty on iron ore lease for the months of July, August and September, 1920.

JOHN H. DAHLKE.

Belvidere, N. J., Jan. 1, 1921.

Received from Basic Iron Ore Company One hundred dollars in payment of minimum royalty on iron ore lease for the months of October, November and December, 1920.

JOHN H. DAHLKE.

Belvidere, N. J., April 1, 1921.

Received from Basic Iron Ore Company One hundred 10
dollars in payment of minimum royalty on iron ore lease
for the months of January, February and March, 1921.

JOHN H. DAHLKE.

Belvidere, N. J., July 6, 1921.

Received from Basic Iron Ore Company One hundred
dollars in payment of minimum royalty on iron ore lease
for the months of April, May and June, 1921.

JOHN H. DAHLKE.

20

Belvidere, N. J., October 1, 1921.

RECEIVED of the Basic Iron Ore Company One
Hundred Dollars (\$100) in payment of minimum royalty
on Iron Ore lease for the months of July, August and
September, 1921.

JOHN H. DAHLKE.

30

Belvidere, N. J., Jan. 2, 1922.

Received of the Pequest Company One hundred dollars
in payment of minimum royalty on Iron Ore lease for the
months of October, November and December, 1921.

JOHN H. DAHLKE.

Belvidere, N. J., April 1, 1922.

RECEIVED of the Basic Iron Ore Company One Hundred Dollars (\$100) in payment of minimum royalty on iron ore lease for the months of October, November and December, 1921.

JOHN H. DAHLKE.

Belvidere, N. J., July 1, 1922.

10 Received of the Pequest Company One hundred dollars in payment of minimum royalty on iron ore lease for the months of April, May and June, 1922.

JOHN H. DAHLKE.

Belvidere, N. J., Oct. 1, 1922.

20 Received of the Pequest Company One hundred dollars in payment of minimum royalty on iron ore lease for the months of July, August and September, 1922.

JOHN H. DAHLKE.

Belvidere, N. J., Jan. 1, 1923.

Received from Pequest Company One hundred dollars in payment of minimum royalty on iron ore lease for the months of October, November and December, 1922.

JOHN H. DAHLKE.

30

Belvidere, N. J., April 2, 1923.

Received from Pequest Company One hundred dollars in payment of minimum royalty on iron ore lease for the months of January, February and March, 1923.

JOHN H. DAHLKE.

Belvidere, N. J., July 6, 1923.

Received from the Basic Iron Ore Company Ten hundred, eighty-seven and 85/100 in payment in full of royalties on iron ore shipments for the quarter ending June 30, 1923.

\$1087.85/100.

JOHN H. DAHLKE.

C-5

10

In the Matter of the Arbitration
between

JOHN H. DALKE

and

BASIC IRON ORE COMPANY.

IT IS STIPULATED that the annexed are true copies of statements of shipments of ore made under the agree- 20
ments of lease dated respectively November 18, 1901 and
October 3, 1903, referred to in the submission herein,
which statements were submitted on behalf of the Basic
Iron Ore Company to John H. Dahlke on or about their
respective dates;

And Further, that the following payments, and no others, were made by the Basic Iron Ore Company to John H. Dahlke, pursuant to the term of said two leases respectively, between January 1, 1915, and December 31, 30
1922, both dates inclusive.

Date	Check No.	Amount
Jan. 1, 1915	207	One Hundred Dollars
Apr. 1, 1915	241	One Hundred Dollars

	July 1, 1915	253	One Hundred Dollars
	Oct. 1, 1915	262	One Hundred Dollars
	Jan. 1, 1916	273	One Hundred Dollars
	Apr. 1, 1916	280	One Hundred Dollars
	July 1, 1916	291	One Hundred Dollars
	Oct. 2, 1916	304	One Hundred Dollars
	Jan. 1, 1917	313	One Hundred Dollars
	Apr. 1, 1917	321	One Hundred Dollars
	July 2, 1917	334	One Hundred Dollars
10	Oct. 1, 1917	344	One Hundred Dollars
	Jan. 1, 1918	361	One Hundred Dollars
	Apr. 1, 1918	379	One Hundred Dollars
	July 1, 1918	390	One Hundred Dollars
	Oct. 1, 1918	396	One Hundred Dollars
	Jan. 1, 1919	434	One Hundred Dollars
	Apr. 1, 1919	489	One Hundred Dollars
	July 1, 1919	545	One Hundred Dollars
	Oct. 1, 1919	582	One Hundred Dollars

20

—2—

	Date	Check No.	Amount
	Jan. 1, 1920	631	One Hundred Dollars
	Apr. 1, 1920	685	One Hundred Dollars
	July 1, 1920	745	One Hundred Dollars
	Oct. 1, 1920	797	One Hundred Dollars
	Jan. 1, 1921	851	One Hundred Dollars
30	Apr. 1, 1921	894	One Hundred Dollars
	July 6, 1921	940	One Hundred Dollars
	Oct. 1, 1921	959	One Hundred Dollars
	Jan. 2, 1922	976	One Hundred Dollars
	Apr. 1, 1922	988	One Hundred Dollars

July 1, 1922	999	One Hundred Dollars
Oct. 1, 1922	1008	One Hundred Dollars

The only after payments made by said Basic Iron Ore Company to John H. Dahlke between said dates were for certain tailings upon an agreement supplemental to said leases, and having nothing to do with the submission herein, such payments being as follows :

Date	Check No.	Amount	10
June 25, 1920	744	Twelve & 67/100th Dollars	
July 26, 1920	765	Eight & 35/100th Dollars	
Aug. 25, 1920	783	Twenty-three & 89/100ths Dollars	
Nov. 24, 1920	834	Ten and 15/100ths Dollars	
Nov. 23, 1921	973	Eight and 08/100th Dollars	

Dated July 7th, 1926.

JOHN H. DAHLKE, 20

BASIC IRON ORE COMPANY,

By

CHARLES E. HEWITT,
Its Treasurer

Erskine Hewitt, Prest.

Furnace and Mines

George V. Fahrenbach, Sec'y.

Buttzville, N. J.

Charles E. Hewitt, Treas.

James P. Anderson, Gen'l. Mgr.

PEQUEST COMPANY

Telephone 27-R11

Belvidere, N. J.

Buttzville, N. J., October 31st, 1917.

C O P Y

10 John H. Dahlke, Esq.,
Belvidere, N. J.

Dear Sir:

During the month of October we shipped the following cars of Ahles Ore, and have credited your account with the proper royalties:

1917		Eastern Steel Company—Untreated Ore	
20	Oct. 11, C.R.R.	88390.....	76800 lbs.
	12 L.V.	56502.....	63700 "
	" L. V.	47249.....	71200 "
	13 D.L.&W.	68051.....	108000 "
	" D.L.&W.	66730.....	90300 "
	15 D.L.&W.	61185.....	87600 "
	" D.L.&W.	65761.....	89000 "
	16 D.L.&W.	66531.....	83500 "
	" D.L.&W.	66520.....	86600 "
	19 D.L.&W.	61411.....	81100 "
30	" D.L.&W.	68067.....	103600 "
	" D.L.&W.	66758.....	81700 "
	22 L.V.	52797.....	71800 "
	" D.L.&W.	66742.....	86000 "
	" D.L.&W.	67192.....	83600 "

Shipments

93

23	D.L.&W.	67260.....	83700 "	
"	D.L.&W.	65930.....	84600 "	
25	D.L.&W.	65953.....	87700 "	
"	D.L.&W.	61628.....	84700 "	
26	D.L.&W.	66750.....	78000 "	
"	D.L.&W.	66311.....	81700 "	
27	D.L.&W.	61219.....	90800 "	
"	D.L.&W.	66743.....	86100 "	
29	D.L.&W.	66415.....	89100 "	
31	D.L.&W.	61639.....	88300 "	10
"	D.L.&W.	66688.....	88500 "	

2207700 " or

985-12 gross tons at 10c

\$98.56

Yours truly,

PEQUEST COMPANY.

20

30

Erskine Hewitt, Prest.

Furnace and Mines

George V. Fahrenbach, Sec'y.

Buttville, N. J.

Charles E. Hewitt, Treas.

James P. Anderson, Gen'l. Mgr.

PEQUEST COMPANY

Telephone 27-R11

Belvidere, N. J.

Buttville, N. J., November 30, 1917.

C O P Y

10 John H. Dahlke, Esq.,
Belvidere, N. J.

Dear Sir:

During the month of November we shipped the following cars of Ahles Ore, and have credited your account with the proper royalties:

1917		Eastern Steel Company—Untreated Ore	
	Nov. 1	P & R	37803..... 68400 lbs.
20	"	P & R	27235..... 105500 "
	2	P & R	83572..... 112400 "
	5	P & R	23104..... 76200 "
	"	P & R	75125..... 122700 "
	6	P & R	77888..... 118100 "
	7	P & R	87321..... 120700 "
	"	P & R	87357..... 122500 "
	8	P & R	89490..... 114200 "
	"	P & R	86236..... 120600 "
30	9	P & R	78250..... 119500 "
	"	P & R	28732..... 70100 "
	12	P & R	86997..... 113300 "
	"	P & R	74552..... 118100 "
	13	P & R	74703..... 118400 "
	"	P & R	87221..... 120500 "

Shipments

95

"	P & R	78089.....	121000 "	
14	P & R	81695.....	104200 "	
"	P & R	78758.....	122800 "	
15	P & R	85149.....	103700 "	
"	P & R	78162.....	122400 "	
16	P & R	75425.....	123200 "	
17	P & R	82602.....	108700 "	
19	P & R	26998.....	100900 "	
"	P & R	74595.....	119700 "	
"	P & R	89898.....	122700 "	10
20	S. V. & E.	228291.....	124700 "	
21	D L & W	77089.....	86700 "	
"	D.L.&W.	76245.....	82000 "	
22	P & R	75926.....	120000 "	
23	P & R	77264.....	107000 "	
"	P & R	86694.....	106800 "	
24	P & R	83032.....	107100 "	
26	P & R	84340.....	104100 "	
27	P & R	85653.....	97300 "	20
"	P & R	84055.....	107200 "	
"	P & R	75531.....	108500 "	
Carried forward			4041900 "	

30

—2—

November 30, 1917.

C O P Y

John H. Dahlke, Esq.

10		Eastern Steel Company—Untreated Ore		
		Brought forward	4041900 lbs.	
	1917			
	Nov. 28,	P & R	77954.....	112000 "
	"	P & R	87263.....	114000 "
	30	P & R	77877.....	114800 "
	"	P & R	75925.....	110000 "
			<hr/>	
			4492700 lbs. or	
20	2005-13 gross tons at 10c			\$200.57

Yours truly,
PEQUEST COMPANY.

By

Erskine Hewitt, Prest.

Furnace and Mines

George V. Fahrenbach, Sec'y.

Buttzville, N. J.

Charles E. Hewitt, Treas.

James P. Anderson, Gen'l. Mgr.

PEQUEST COMPANY

Telephone 27-R11

Belvidere, N. J.

Buttzville, N. J., December 31st, 1917.

C O P Y

John H. Dahlke, Esq.,
Belvidere, N. J.

10

Dear Sir:

During the month of December we shipped the following cars of Ahles Ore, and have credited your account with the proper royalties:

Midvale Steel & Ordnance Co.—Untreated Ore				
1917				
Dec. 6	P. R. R.	705624.....	102000 lbs.	20
7	P.L.	739002.....	101600 "	
"	P.R.R.	185736.....	116000 "	
11	P.R.R.	162878.....	85100 "	
"	P. L.	720056.....	133800 "	
13	P.R.R.	731261.....	117100 "	
15	P.R.R.	922841.....	113000 "	
17	P.R.R.	721949.....	87300 "	
18	P.R.R.	685530.....	91900 "	
"	P.L.	702089.....	90700 "	
				30
				1038500 " or
463-12 gross tons at 10c				\$46.36

Yours truly,

PEQUEST COMPANY.

By

Erskine Hewitt, Prest.

Furnace and Mines

George V. Fahrenbach, Sec'y.

Buttville, N. J.

Charles E. Hewitt, Treas.

James P. Anderson, Gen'l. Mgr.

PEQUEST COMPANY

Telephone 27-R11

Belvidere, N. J.

Buttville, N. J., July 31st, 1919.

10

C O P Y

John H. Dahlke, Esq.,
Belvidere, N. J.

Dear Sir:

During the month of July we shipped the following cars of Ahles Concentrates, and have credited your account with the proper royalties:

20 1919 Thomas Iron Company, Alburtis, Pa.

July 23	Cambria & Indiana	635.....	83300 lbs.
"	P & R	87770.....	85700 "

 169000 " or

75-09 gross tons at 12-1/2c

\$9.43

Yours truly,

PEQUEST COMPANY.

By

30

Erskine Hewitt, Prest.

Furnace and Mines

George V. Fahrenbach, Sec'y.

Buttztville, N. J.

Charles E. Hewitt, Treas.

James P. Anderson, Gen'l. Mgr.

PEQUEST COMPANY

Telephone 27-R11

Belvidere, N. J.

Buttztville, N. J., August 31st, 1919.

C O P Y

10

John H. Dahlke, Esq.,
Belvidere, N. J.

Dear Sir:

During the month of August we shipped the following cars of Ahles Concentrates and have credited your account with the proper royalties:

Empire Steel & Iron Company, Oxford Furnace, N. J.				20
1919				
Aug. 1	C & O	61546.....	98000 lbs.	
"	B & O	223697.....	96300 "	
9	B & O	225316.....	100800 "	
"	D.L.&W.	80283.....	113400 "	
14	P & R	85597.....	107800 "	
"	W. M.	11530.....	103000 "	
15	P.R.R.	160320.....	101000 "	
"	W.P.T. Rwy.	58262.....	111600 "	
18	D. L. & W.	81024.....	112200 "	
19	C.C.C.&St.L.	79807.....	93000 "	30
"	D L. & W	81038.....	127500 "	
22	W. S. B.	7342.....	107600 "	
"	P.L.	7279995.....	93600 "	

100

Shipments

27	D.L.&W.	81143.....	148300 "
"	D.L.&W.	81273.....	115000 "

1720100 " or

767-18 gross tons at 12-1/2c

\$95.99

Yours truly,

PEQUEST COMPANY.

By

10

20

30

Erskine Hewitt, Prest.

Furnace and Mines

George V. Fahrenbach, Sec'y.

Buttville, N. J.

Charles E. Hewitt, Treas.

James P. Anderson, Gen'l. Mgr.

PEQUEST COMPANY

Telephone 27-R11

Belvidere, N. J.

Buttville, N. J., September 30th, 1919.

COPY

10

John H. Dahlke, Esq.,
Belvidere, N. J.

Dear Sir:

During the month of September we shipped the following cars of Ahles Concentrates and have credited your account with the proper royalties:

Alan Wood Iron & Steel Company, Swedeland, Pa.	20
1919	
Sept. 2 P & W V	57182..... 120300 lbs.
" P R R	166089..... 104700 "
	<hr/>
	225000 " or
100-09 gross tons at 12-1/2c	\$12.55

Yours truly,

PEQUEST COMPANY.

By

30

Erskine Hewitt, Prest.

Furnace and Mines

George V. Fahrenbach, Sec'y.

Buttzeville, N. J.

Charles E. Hewitt, Treas.

James P. Anderson, Gen'l. Mgr.

PEQUEST COMPANY

Telephone 27-R11

Belvidere, N. J.

Buttzeville, N. J., October 31st, 1919.

C O P Y

10 John H. Dahlke, Esq.,
Belvidere, N. J.

Dear Sir:

During the month of October we shipped the following cars of Ahles Concentrates and have credited your account with the proper royalties:

Empire Steel & Iron Co., Oxford Furnace, N. J.

Oct. 1	W.M.	14501.....	127800 lbs.
20 "	NY, NH & H	100774.....	142400 "
3	C & O	63504.....	119300 "
"	P R R	219117.....	115500 "
6	B & O	225374.....	127500 "
18	B R & P	46212.....	110500 "
20	N & W	54636.....	118900 "
22	B & O	224801.....	121600 "
24	C N J	62882.....	126800 "
27	D L & W	66525.....	120000 "

30

1230300 " or

549-05 gross tons at 12-1/2c

\$68.66

Yours truly,

PEQUEST COMPANY.

By

Erskine Hewitt, Prest.

Furnace and Mines

George V. Fahrenbach, Sec'y.

Buttville, N. J.

Charles E. Hewitt, Treas.

James P. Anderson, Gen'l. Mgr.

PEQUEST COMPANY

Telephone 27-R11

Belvidere, N. J.

Buttville, N. J., November 30th, 1919.

10

C O P Y

John H. Dahlke, Esq.,
Belvidere, N. J.

Dear Sir:

During the month of November we shipped the following cars of Ahles Concentrates and have credited your account with the proper royalties:

	Empire Steel & Iron Co., Oxford Furnace, N. J.	20
	1919	
Nov. 4	DL & W 66287.....	108000 lbs.
6	DL & W 61148.....	95000 "
12	L. V. 29887.....	136900 "
		<hr/>
		339900 " or
151-15 gross tons at 12-1/2c		\$18.97

Yours truly,

PEQUEST COMPANY.

30

By

Erskine Hewitt, Prest.

Furnace and Mines

George V. Fahrenbach, Sec'y.

Buttztville, N. J.

Charles E. Hewitt, Treas.

James P. Anderson, Gen'l. Mgr.

PEQUEST COMPANY

Telephone 27-R11

Belvidere, N. J.

Buttztville, N. J., December 31st, 1919.

10

C O P Y

John H. Dahlke, Esq.,
Belvidere, N. J.

Dear Sir :

During the month of December we shipped the following cars of Ahles Concentrates and have credited your account with the proper royalties :

Empire Steel & Iron Co., Oxford Furnace, N. J.

20 1919

Dec. 4, DL&W	69993.....	121900 lbs.	
5 DL&W	76123.....	100500 "	
" L. V.	27698.....	112000 "	
8 DL&W	81458.....	125600 "	
" DL&W	73310.....	106900 "	
10 I C	201315.....	155700 "	
12 P R R	162141.....	105700 "	
12 P R R	162141.....	105700 "	828300 lbs.

30

Midvale Steel & Ordnance Co., Coatesville, Pa.

Dc. 18, N Y C 409276..... 94500 lbs.

" P & R 87799..... 114600 "

23	P & R	88278.....	95000 "	
"	CCC&StL	73047.....	99000 "	403100 lbs.

1231400 lbs. or

\$68.16

549-15 gross tons at 12-1/2c

Yours truly,

PEQUEST COMPANY.

By

10

Erskine Hewitt, Prest.

Furnace and Mines

George V. Fahrenbach, Sec'y.

Buttville, N. J.

Charles E. Hewitt, Treas.

James P. Anderson, Gen'l. Mgr.

PEQUEST COMPANY

Telephone 27-R11

Belvidere, N. J.

Buttville, N. J., January 31, 1920. 20

C O P Y

John H. Dahlke, Esq.,
Belvidere, N. J.

Dear Sir:

During the month of January we shipped the following cars of Ahles Concentrates and have credited your account with the proper royalties:

30

Midvale Steel & Ordnance Co., Coatesville, Pa.

1920

Jan. 6,	P.R.R.	202327.....	123900 lbs.
"	B & O	225075.....	108000 "

Shipments

	9	PRR	289102.....	104500 "
	"	N & W	74082.....	111800 "
	16	URR	4771.....	112400 "
	"	WM	8389.....	111300 "
	21	LV	17186.....	106000 "
	"	NYC	403313.....	100600 "
	29	PRR	158769.....	104100 "
	"	PL	725966.....	99800 "
	30	GET	35238.....	120000 "
10	"	T & O C	28102.....	117600 "

 1320000 lbs. or

589-06 gross tons at 12-1/2c

\$73.66

Yours truly,

PEQUEST COMPANY.

By

20

Erskine Hewitt, Prest.

George V. Fahrenbach, Sec'y.

Charles E. Hewitt, Treas.

Furnace and Mines

Buttville, N. J.

James P. Anderson, Gen'l. Mgr.

PEQUEST COMPANY

Telephone 27-R11

Belvidere, N. J.

Buttville, N. J., February 29th, 1920.

C O P Y

John H. Dahlke, Esq.,

30 Belvidere, N. J.

Dear Sir:

During the month of February we shipped the following cars of Ahles Concentrated and have credited your account with the proper royalties:

Midvale Steel & Ordnance Co., Coatesville, Pa.

1920

Feb. 12	B & LE	40439.....	98000 lbs.
"	P L	727585.....	100800 "
19	B & O	223849.....	119500 "
"	P & R	87150.....	126500 "
"	P R R	152878.....	120200 "

 565000 lbs. or

252-05 gross tons at 12-1/2c

\$31.53 10

Yours truly,

PEQUEST COMPANY.

By

Erskine Hewitt, Prest.

Furnace and Mines

George V. Fahrenbach, Sec'y.

Buttzville, N. J. 20

Charles E. Hewitt, Treas.

James P. Anderson, Gen'l. Mgr.

PEQUEST COMPANY

Telephone 27-R11

Belvidere, N. J.

Buttzville, N. J., March 31st, 1920.

C O P Y

John H. Dahlke, Esq.,
Belvidere, N. J.

30

Dear Sir:

During the month of March we shipped the following cars of Ahles Concentrates and have credited your account with the proper royalties:

Musconetcong Iron Works, Netcong, N. J.

1920

Mar.	2,	NY NH & H	121261.....	130200 lbs.
	"	B & O	127581.....	117400 "
	"	PRR	161962.....	106800 "
	8	L V	24162.....	101360 "
	"	NYC	407305.....	102144 "
	"	Erie	26647.....	94528 "
	22	Y Y C	415663.....	121400 "
10	23	W M	8263.....	124300 "
	"	DL & W	78150.....	117200 "
	29	B & O	22738.....	117300 "
	30	DL & W	75710.....	97500 "
	"	DL & W	70332.....	101500 "

 1331632 " or

594-10 gross tons at 12-1/2c

\$74.31

.20

Yours truly,

PEQUEST COMPANY.

By

30

Erskine Hewitt, Prest.

Furnace and Mines

George V. Fahrenbach, Sec'y.

Buttzeville, N. J.

Charles E. Hewitt, Treas.

James P. Anderson, Gen'l. Mgr.

PEQUEST COMPANY

Telephone 27-R11

Belvidere, N. J.

Buttzeville, N. J., April 30th, 1920.

C O P Y

John H. Dahlke, Esq.,

10

Belvidere, N. J.

Dear Sir:

During the month of April we shipped the following cars of Ahles Concentrates and have credited your account with the proper royalties:

Musconetcong Iron Works, Netcong, N. J.

1920

April 9,	P L	683851.....	112000 lbs.	
"	D L & W	76272.....	96300 "	
"	D L & W	78194.....	116000 "	20
20	B & O	229421.....	126900 "	
23	L & N	83163.....	115700 "	
26	B & O	231331.....	123600 "	
29	D L & W	74242.....	101600 "	
"	D L & W	75588.....	98400 "	
"	D L & W	75388.....	99300 "	
30	C & O	61988.....	95300 "	
"	P R R	151610.....	108900 "	
			<hr/>	
			1194000 " or	30
533-01	gross tons at 12-1/2c			\$66.63

Yours truly,

PEQUEST COMPANY.

By

Erskine Hewitt, Prest.

Furnace and Mines

George V. Fahrenbach, Sec'y.

Buttville, N. J.

Charles E. Hewitt, Treas.

James P. Anderson, Gen'l. Mgr.

PEQUEST COMPANY

Telephone 27-R11

Belvidere, N. J.

Buttville, N. J., May 31st, 1920.

C O P Y

10 John H. Dahlke, Esq.,
Belvidere, N. J.

Dear Sir:

During the month of May we shipped the following cars of Ahles Concentrates and have credited your account with the proper royalties:

Musconetcong Iron Works, Netcong, N. J.

20	1920			
	May	3, B & O	128793.....	118700 lbs.
		4 G E T	38064.....	125700 "
		6 P R R	199956.....	108500 "
		" N Y C	400037.....	110600 "
		7 P R R	748396.....	108200 "
		8 D L & W	78513.....	116300 "
		11 P R R	250918.....	98100 "
		14 B & O	234691.....	120900 "
		" P McK & Y	62523.....	121500 "
30		21 D L & W	81103.....	117600 "
		" D L & W	77592.....	103800 "
		28 D L & W	70493.....	78400 "

 1328300 " or

Shipments

111

592-19 gross tons at 12-1/2c

\$74.12

Yours truly,
PEQUEST COMPANY.
By

Erskine Hewitt, Prest.

Furnace and Mines 10

George V. Fahrenbach, Sec'y.

Buttzeville, N. J.

Charles E. Hewitt, Treas.

James P. Anderson, Gen'l. Mgr.

PEQUEST COMPANY

Telephone 27-R11

Belvidere, N. J.

Buttzeville, N. J., May 31st, 1920.

COPY

John H. Dahlke, Esq.,
Belvidere, N. J.

20

Dear Sir:

We have credited your account as follows for Iron Ore Tailings used by the Berkleigh Manufacturing Co. during the month:

25328 lbs. or 12.669 net tons at \$1.00

(25% of \$4.00) \$12.67

Yours truly, 30
PEQUEST COMPANY.
By

Erskine Hewitt, Prest.

Furnace and Mines

George V. Fahrenbach, Sec'y.

Buttzville, N. J.

Charles E. Hewitt, Treas.

James P. Anderson, Gen'l. Mgr.

PEQUEST COMPANY

Telephone 27-R11

Belvidere, N. J.

Buttzville, N. J., June 30th, 1920.

C O P Y

10 John H. Dahlke, Esq.,
Belvidere, N. J.

Dear Sir:

During the month of June we shipped the following cars of Ahles Concentrates and have credited your account with the proper royalties:

Musconetcong Iron Works, Netcong, N. J.

1920

20	June 4,	DL & W	81415.....	125300 lbs.
	"	DL & W	75645.....	71800 "
	"	DL & W	75345.....	95600 "
	8	DL & W	79427.....	115900 "
	"	DL & W	80335.....	122000 "
	"	DL & W	75558.....	95000 "
	14	DL & W	75437.....	93700 "
	"	DL & W	76127.....	93000 "
	16	DL & W	81094.....	113500 "
	"	DL & W	78290.....	112500 "
30	19	DL & W	76887.....	86600 "
	"	DL & W	80074.....	108000 "
	22	DL & W	75650.....	93900 "
	"	DL & W	81119.....	108600 "

 1435400 " or

Shipments

113

640-16 gross tons at 12-1/2c

\$80.10

Yours truly,

PEQUEST COMPANY.

By

Erskine Hewitt, Prest.

Furnace and Mines

George V. Fahrenbach, Sec'y.

Buttville, N. J.

10

Charles E. Hewitt, Treas.

James P. Anderson, Gen'l. Mgr.

PEQUEST COMPANY

Telephone 27-R11

Belvidere, N. J.

Buttville, N. J., July 25th, 1920.

COPY

John H. Dahlke, Esq.,

Belvidere, N. J.

20

Dear Sir:

We have credited your account with the following royalties on Iron Ore Tailings used by the Berkleigh Manufacturing Company during June month:

16704 lbs. or 8.35 net tons at \$1.00

(25% of \$4.00) \$8.35

Yours truly,

PEQUEST COMPANY.

30

By

Erskine Hewitt, Prest.

Furnace and Mines

George V. Fahrenbach, Sec'y.

Buttville, N. J.

Charles E. Hewitt, Treas.

James P. Anderson, Gen'l. Mgr.

PEQUEST COMPANY

Telephone 27-R11

Belvidere, N. J.

Buttville, N. J., July 31st, 1920.

10

C O P Y

John H. Dahlke, Esq.,
Belvidere, N. J.

Dear Sir:

We have credited your account with the following royalties on Iron Ore Tailings used by the Berkleigh Manufacturing Co. during the month:

20 47777 lbs. or 23.888 net tons at \$1.00
(25% of \$4.00) \$23.89

Yours truly,
PEQUEST COMPANY.
By

30

Erskine Hewitt, Prest.

Furnace and Mines

George V. Fahrenbach, Sec'y.

Buttzville, N. J.

Charles E. Hewitt, Treas.

James P. Anderson, Gen'l. Mgr.

PEQUEST COMPANY

Telephone 27-R11

Belvidere, N. J.

Buttzville, N. J., August 31st, 1920.

C O P Y

John H. Dahlke, Esq.,
Belvidere, N. J.

10

Dear Sir:

During the month of August we shipped the following cars of Ahles Concentrates and have credited your account with the proper royalties:

Musconetcong Iron Works, Netcong, N. J.

1920

Aug. 17,	PRR	407885.....	122000 lbs.	
"	PRR	406028.....	113700 "	
"	NYC	420659.....	127500 "	
19	PRR	406409.....	115500 "	
28	WSB	7456.....	103600 "	
"	BR & P	43629.....	99000 "	
31	BR & P	55030.....	108400 "	
"	T & O	26330.....	92900 "	

20

882600 lbs. or

30

394-00 gross tons at 12-1/2c

\$49.25

Yours truly,

PEQUEST COMPANY.

By

Erskine Hewitt, Prest.

Furnace and Mines

George V. Fahrenbach, Sec'y.

Buttville, N. J.

Charles E. Hewitt, Treas.

James P. Anderson, Gen'l. Mgr.

PEQUEST COMPANY

Telephone 27-R11

Belvidere, N. J.

Buttville, N. J., September 30th, 1920.

C O P Y

10 John H. Dahlke, Esq.,
Belvidere, N. J.

Dear Sir:

During the month of September we shipped the following cars of Ahles Concentrates and have credited your account with the proper royalties:

Musconetcong Iron Works, Netcong, N. J.

20	1920			
	Sept. 8,	DL & W	75528.....	90600 lbs.
	"	DL & W	80568.....	114600 "
	14	LV	18815.....	90800 "
	"	PL	706601.....	100300 "
	23	DL & W	78612.....	102400 "
	"	DL & W	78670.....	113000 "
	30	DL & W.	77229.....	93000 "

 704700 " or

30 314-12 gross tons at 12-1/2c

\$39.33

Yours truly,

PEQUEST COMPANY.

By

Erskine Hewitt, Prest.

Furnace and Mines

George V. Fahrenbach, Sec'y.

Buttzville, N. J.

Charles E. Hewitt, Treas.

James P. Anderson, Gen'l. Mgr.

PEQUEST COMPANY

Telephone 27-R11

Belvidere, N. J.

Buttzville, N. J., October 31st, 1920.

C O P Y

10

John H. Dahlke, Esq.,
Belvidere, N. J.

Dear Sir:

During the month of October we shipped the following cars of Ahles Concentrates and have credited your account with the proper royalties:

Musconetcong Iron Works, Netcong, N. J.

20

1920			
Oct. 1,	P McK & Y	62276.....	124900 lbs.
"	D L & W	75709.....	76100 "
6	P & R	88155.....	121700 "
"	P & R	74467.....	119600 "
8	D L & W	79253.....	116200 "
"	D L & W	81309.....	109800 "
13	D L & W	78534.....	102100 "
"	D L & W	78512.....	94600 "
22	D L & W	81281.....	115600 "
"	D L & W	80162.....	104900 "
26	D L & W	79174.....	123100 "
"	D L & W	80046.....	114200 "

30

29	C R R of N J	66851.....	113200 "
"	D L & W	76215.....	96800 "

 1532800 " or

684-06 gross tons at 12-1/2c

\$85.53

Yours truly,

PEQUEST COMPANY.

By

10

Erskine Hewitt, Prest.

Furnace and Mines

George V. Fahrenbach, Sec'y.

Buttville, N. J.

Charles E. Hewitt, Treas.

James P. Anderson, Gen'l. Mgr.

PEQUEST COMPANY

Telephone 27-R11

Belvidere, N. J.

Buttville, N. J., October 31, 1920.

20

C O P Y

John H. Dahlke, Esq.,
Belvidere, N. J.

Dear Sir:

Your account has been credited with the following royalties on Iron Ore Tailings used by the Berkleigh Manufacturing Co. during the month:

30	20305 lbs. or 10.152 net tons at \$1.00	
	(25% of \$4.00)	\$10.15

Yours truly,

PEQUEST COMPANY,

By

Erskine Hewitt, Prest.

Furnace and Mines

George V. Fahrenbach, Sec'y.

Buttville, N. J.

Charles E. Hewitt, Treas.

James P. Anderson, Gen'l. Mgr.

PEQUEST COMPANY

Telephone 27-R11

Belvidere, N. J.

Buttville, N. J., November 30th, 1920.

C O P Y

John H. Dahlke, Esq.,
Belvidere, N. J.

10

Dear Sir :

During the month of November we shipped the following cars of Ahles Concentrates and have credited your account with the proper royalties :

Musconetcong Iron Works, Netcong, N. J.

1920				
Nov. 4,	DL & W	79295.....	116700 lbs.	20
"	DL & W	80035.....	113100 "	
9	DL & W	76070.....	94400 "	
"	DL & W	78890.....	103200 "	
15	P & R	72602.....	110200 "	
18	DL & W	80059.....	117600 "	
26	DL & W	76390.....	85500 "	
"	DL & W	76940.....	70100 "	
27	DL & W	79501.....	107100 "	
"	DL & W	77218.....	92300 "	30
30	DL & W	80222.....	106500 "	
"	DL & W	79049.....	99000 "	
			1215700 " or	

542-14 gross tons at 12-1/2c

\$67.84

Yours truly,
 PEQUEST COMPANY,
 By

10 Erskine Hewitt, Prest.
 George V. Fahrenbach, Sec'y.
 Charles E. Hewitt, Treas.

Furnace and Mines
 Buttzville, N. J.
 James P. Anderson, Gen'l. Mgr.

PEQUEST COMPANY

Telephone 27-R11
 Belvidere, N. J.

Buttzville, N. J., December 31st, 1920.

C O P Y

John H. Dahlke, Esq.,
 20 Belvidere, N. J.

Dear Sir:

During the month of December we shipped the following cars of Ahles Concentrates and have credited your account with the proper royalties:

Musconetcong Iron Works, Netcong, N. J.
 1920

30	Dec. 9, DL&W	81706.....117300 lbs.	
	15 DL&W	80115.....108700 "	
	" DL&W	78873.....114200 "	
	16 DL&W	81654.....119500 "	459700 lbs.

E & G Brooke Iron Co., Birdsboro, Pa.
1920

Dec. 16	P R R	911335.....122900 lbs.	
"	B & O	223781.....109000 "	231900 "

691600 " or

308-15 gross tons at 12-1/2c

\$38.59

Yours truly,

PEQUEST COMPANY, 10

By

Erskine Hewitt, Prest.

Furnace and Mines

George V. Fahrenbach, Sec'y.

Buttzville, N. J.

Charles E. Hewitt, Treas.

James P. Anderson, Gen'l. Mgr.

PEQUEST COMPANY

Telephone 27-R11

Belvidere, N. J.

20

Buttzville, N. J., January 31st, 1921.

C O P Y

John H. Dahlke, Esq.,
Belvidere, N. J.

Dear Sir:

During the month of January we shipped the following cars of Ahles Concentrates and have credited your account with the proper royalties:

30

Musconetcong Iron Works, Netcong, N. J.
1921

Jan. 15	DL&W	81407.....121500 lbs.
"	DL&W	70359..... 94300 "
"	DL&W	75595..... 89000 "

Shipments

	17	SV&E	228320.....113000 "	
	"	P&R	74165.....119600 "	
	22	DL&W	77592..... 98300 "	
	"	DL&W	78895.....116400 "	
	"	DL&W	81395.....127600 "	
	24	DL&W	80527.....128200 "	
	"	DL&W	75269..... 97700 "	
	"	DL&W	80138.....124700 "	
	25	DL&W	81206.....119000 "	
10	"	DL&W	77175..... 89200 "	
	"	DL&W	78964.....103000 "	
	26	DL&W	80693.....112600 "	
	"	DL&W	77024..... 91000 "	
	"	DL&W	77156..... 88600 "	
	27	DL&W	79066.....114400 "	
	"	DL&W	78053.....102000 "	
	"	DL&W	79942.....103400 "	
	28	DL&W	79203.....112500 "	
20	"	DL&W	81234.....115000 "	
	31	DL&W	75046..... 84000 "	
	"	DL&W	77574..... 86700 "	
	"	DL&W	78222..... 99600 "	2651300 lbs.

E & G Brooke Iron Co., Birdsboro, Pa.
1921

	Jan. 21,	B&LE	42094..... 98700 lbs.
	"	PRR	159880.....111100 "
30	22	LV	23032.....111500 "
	24	N&W	80881.....127400 "
	25	SV&E	226517.....129000 "
	"	PRR	154818.....100000 "
	"	P&LE	50012.....117000 "

Shipments

123

28 PRR	204990.....	98500 "	893200 "
			3544500 " or
1582-07 gross tons at 12-1/2c			\$197.79

Yours truly,
 PEQUEST COMPANY,
 By

10

Erskine Hewitt, Prest.

Furnace and Mines

George V. Fahrenbach, Sec'y.

Buttzville, N. J.

Charles E. Hewitt, Treas.

James P. Anderson, Gen'l. Mgr.

PEQUEST COMPANY

Telephone 27-R11

Belvidere, N. J.

Buttzville, N. J., February 28th, 1921.

20

COPY

John H. Dahlke, Esq.,
 Belvidere, N. J.

Dear Sir:

During the month of February we shipped the following cars of Ahles Concentrates and have credited your account with the proper royalties:

	Musconetcong Iron Works, Netcong, N. J.	30
1921		
Feb. 3,	D L & W	80780..... 118300 lbs.
"	D L & W	79558..... 115200 "
"	D L & W	80867..... 120500 "

Shipments

" DL & W	80527.....	120200 "
		<hr/>
		474200 " or
211-14 gross tons at 12-1/2c		\$26.46

Yours truly,
 PEQUEST COMPANY.
 By

10

Erskine Hewitt, Prest.
 George V. Fahrenbach, Sec'y.
 Charles E. Hewitt, Treas.

Furnace and Mines
 Buttzville, N. J.
 James P. Anderson, Gen'l. Mgr.

PEQUEST COMPANY

Telephone 27-R11
 Belvidere, N. J.

Buttzville, N. J., April 30th, 1921.

20

C O P Y

John H. Dahlke, Esq.,
 Belvidere, N. J.

Dear Sir:

During the month of April we shipped the following cars of Ahles Concentrates and have credited your account with the proper royalties:

Musconetcong Iron Works, Netcong, N. J.

1921

30	April 1	DL & W	79421.....	75500 lbs.
	"	DL & W	76879.....	82300 "
	5	DL & W	68073.....	98800 "
	"	DL & W	80843.....	116400 "
	"	DL & W	77151.....	88300 "

Shipments

125

8	DL & W	79656.....	116100 "
"	DL & W	80927.....	115500 "
11	DL & W	80586.....	118200 "
"	DL & W	79558.....	116500 "
"	DL & W	81491.....	117400 "
"	DL & W	80658.....	116800 "
15	DL & W	81231.....	112000 "
"	DL & W	80837.....	110200 "
22	DL & W	81449.....	112700 "
"	DL & W	75410.....	86700 "
27	DL & W	75717.....	84700 "
"	DL & W	79200.....	115400 "
28	DL & W	75596.....	89000 "
"	DL & W	75404.....	89100 "
29	DL & W	79288.....	111000 "
"	DL & W	78441.....	99900 "

10

2172500 " or

969-16 gross tons at 12-1/2c

\$121.23 20

Yours truly,

PEQUEST COMPANY.

By

30

Erskine Hewitt, Prest.

Furnace and Mines

George V. Fahrenbach, Sec'y.

Buttville, N. J.

Charles E. Hewitt, Treas.

James P. Anderson, Gen'l. Mgr.

PEQUEST COMPANY

Telephone 27-R11

Belvidere, N. J.

Buttville, N. J., May 31st, 1921.

C O P Y

10 John H. Dahlke, Esq.,
Belvidere, N. J.

Dear Sir:

During the month of May we shipped the following cars of Ahles Concentrates and have credited your account with the proper royalties:

Musconetcong Iron Works, Netcong, N. J.

	1921			
20	May 2,	DL & W	81551.....	117500 lbs.
	"	DL & W	81539.....	124100 "
	4	DL & W	79492.....	115500 "
	"	DL & W	78739.....	111000 "
	6	DL & W	81621.....	124300 "
	"	DL & W	79463.....	107000 "
	10	DL & W	81631.....	125900 "
	"	DL & W	79800.....	118800 "
	13	DL & W	75616.....	77700 "
30	"	DL & W	78423.....	80200 "
	16	DL & W	76829.....	94500 "
	"	DL & W	79709.....	121400 "
	18	DL & W	79760.....	116700 "
	"	DL & W	81495.....	114800 "

Shipments

127

19	DL & W	81298.....	123700 "
"	DL & W	75486.....	100200 "
23	DL & W	81209.....	126100 "
"	DL & W	81257.....	120900 "
24	DL & W	80617.....	121800 "
"	DL & W	79847.....	111300 "
27	DL & W	81352.....	128300 "
"	DL & W	80914.....	120100 "

2501800 " or 10

1116-18 gross tons at 12-1/2c

\$139.61

Yours truly,

PEQUEST COMPANY.

By

20

30

Erskine Hewitt, Prest.

Furnace and Mines

George V. Fahrenbach, Sec'y.

Buttville, N. J.

Charles E. Hewitt, Treas.

James P. Anderson, Gen'l. Mgr.

PEQUEST COMPANY

Telephone 27-R11

Belvidere, N. J.

Buttville, N. J., Nov. 30, 1921.

10

C O P Y

John H. Dahlke, Esq.,
Belvidere, N. J.

Dear Sir:

Your account has been credited with the following royalties on Iron Ore Railings used by the Berkleigh Manufacturing Co.:

20	16160 lbs. or 8.08 net tons at \$1.00	
	(25% of \$4.00)	\$8.08

Yours truly,
PEQUEST COMPANY,
By

30

EXHIBIT D-1

IN CHANCERY OF NEW JERSEY

Between

BASIC IRON ORE COMPANY,
Complainant,

and

JOHN H. DAHLKE,
Defendant.

10

1923		
May 31st.	4767-19/100 tons @ 10c	\$476.80
June 30th.	6110-10/100 tons @ 10c	611.05

1087.85

July 9th.	By Check	\$1087.85
	Submitted to arbitration.	

20

1923		
July 31st.	5345-19/100 tons @ 10c	534.59
" "	358-06/100 " 12½c	44.79
Aug. 31st.	6872-12/100 " 10c	687.26
Sept. 30th.	3236-17/100 " 10c	323.69

Quarter ending Sept. 30th. \$1590.33 1590.33 30

Oct. 31st.	5407-71/100 tons @ 10c	547.14
Nov. 30th.	4967-09/100 " 10c	496.75
Dec. 31st.	3404-02/100 " 10c	340.41

Quarter ending Dec. 31st.	\$1384.30	1384.30
		<hr/>
		\$2974.63

Cr.

1924. Mar. 6th. By check on a/c	1300.00	1300.00
		<hr/>
		\$1674.63

10 No quarterly payments made until
1924

Apr. 4.	100.00
July 9th.	100.00
Oct. 3rd.	100.00

20

30

New Jersey Court of Errors and Appeals

BETWEEN

BASIC IRON ORE COMPANY,
Complainant-Respondent,

AND

JOHN H. DAHLKE,
Defendant-Appellant.

On Appeal
from Court 10
of Chancery.
A p p e l -
lant's Brief.

STATEMENT OF FACTS

Complainant, Basic Iron Ore Company, filed a bill of complaint praying for the construction of an iron ore mining lease made by defendant, John H. Dahlke and one Ahles, who later assigned his interest therein to complainant, and praying further for an injunction against a threatened forfeiture, and lastly for "an accounting under the construction of the lease of the amount due from complainant to defendant," which the complainant in its bill of complaint alleged its willingness to pay. A temporary injunction was granted, and hearing had, and after the Vice Chancellor filed his conclusions, on notice, a decree was entered, July 9, 1929. This decree was entitled "final decree," and decreed, first, a construction of the lease adverse to the contention of Dahlke, the defendant-appellant, second, a permanent injunction restraining forfeiture, third, a reference to a Master for a statement of an account in accordance with the construction of the lease, lastly, an allowance of counsel fee and costs.

The appellant appeals only from the part of the

decree construing the lease and that part of the decree directing a statement of the account from November 18, 1921.

Concisely, the dispute arises from the portion of the mining lease which provides:

10 "It is further agreed that the party of the second part shall, each and every year during the term of this lease and agreement, pay unto the party of the first part the sum of four hundred dollars, to be paid in quarterly payments of one hundred dollars each quarter on the quarterly dates specified, which sum shall be credited against royalties on iron ore subsequently mined."

20 The complainant, Basic Iron Ore Company, contended that no royalties are to be paid on account of ore *shipped* until the aggregate amount of such royalties exceed the amount of quarterly installments previously made, and that from earned royalties on ore subsequently shipped there may be deducted the quarterly installments previously paid irrespective of whether such ore has been raised to the surface before or after the date of the quarterly minimum payment of \$100.

The lessee mined and raised to the surface, storing it "in bank" on the premises, 134,000 tons of crude ore prior to September 1, 1914. No ore has been mined and raised to the surface since September 1, 1914.

30 Mr. Dahlke, the lessor contends that the words of the lease are clear that the iron ore must have been mined and raised after (subsequent to) the quarterly payments to entitle the lessee to deduct the "earned royalties" (i. e. the royalty per ton due on ore shipped.)

There was no dispute as to the facts.

ARGUMENT

THE MOTION TO DISMISS THE APPEAL
SHOULD BE DENIED BECAUSE THE DECREE
40 APPEALED FROM IS A FINAL DECREE.

The decree appealed from is entitled and endorsed in the record "Final Decree." (State of case p. 43).

In *Ellison v. Gray*, 55 N. J. E. 581, this Court said:

"An order which determines the whole controversy between the parties without reserving anything for further consideration is a final order."

A decree is final when it fully decides and disposes of the whole merits of the cause, and leaves no further questions therein for the future judgment of the court, although ministerial or administrative action may be necessary in order to settle the details of the litigation, or in the course of the execution of of the decree, and although there are express orders or reservations in this regard. 10

21 C. J. 643.

Karst v. Black Diamond Range Co., 82 N. J. E. 231; *McGourkey v. Toledo R. Co.*, 146 U. S. 536; *West v. East Coast Cedar Co.*, 113 Fed. 742; *Gray v. Cook*, 24 How. Pr. 432; *Cain v. Jennings*, 2 Tenn. Case 209; *Thornton v. Fitzhugh*, 4 Leigh Va. 209; *Harvey v. Branson*, 1 Leigh (Va.) 108. 20

Chancellor Walker has said "the purpose to be accomplished by a decree in equity is to finally settle the rights of all persons interested in the subject matter of the suit." *Beall v. N. Y. & N. J. Water Co.* 87 N. J. E. 390. 30

The fact that other proceedings may be necessary to carry into effect the rights of the parties or that other matters may be reserved for consideration, the decision of which, one way or another, cannot have the effect of altering the decree by which the rights of the parties have been declared, does not necessarily prevent the decree from being considered final:

2 R. C. L. 40 n. 10.

In re Higgins Estate, 15 Mont. 474; 28 L. 40

R. A. 116; Carsatt v. Mitchell Coal Co., 150 F. 32; 10 L. R. A. 99; Mills v. Hoag, 7 Paige N. Y. 18; Moulton v. Cornish, 38 N. Y. 133; 20 L. R. A. 370; Gray v. Ames, 220 Ill. 251; 5 Am & Eng Ann Cases; 174, and exhaustive note.

Gray v. Ames is clearly in point holding:

10 "A decree is final even where, as a mere incident to relief, it directs a reference to a master to state an account."

So in *McGourkey v. Toledo R. Co., 146 U. S. 536*, the court says:

20 "It may be said in general that if the court make a decree fixing the rights and liabilities of the parties, and thereupon refer the case to a master for a ministerial purpose only, and no further proceedings in court are contemplated the decree is *final*. But even if an account be ordered taken, if such accounting be not asked for in the bill, and be ordered simply in execution of the decree and such decree be final as to all matters within the pleadings, it will still be regarded as *final*."

Again in *French v. Shoemaker, 79 U. S. 86, 206 Fed. 270*, the court held:

30 "Where a decree passed determines the whole law applicable to the case and in terms or by necessary implication disposes of every claim presented, it will be deemed a final decree, with- in an act authorizing appeals, notwithstanding it reserves leave to either party to apply for such further order as may be necessary to the due execution of the decree."

In *Mills v. Hoag, 7 Paige (N. Y.) 18*, the court ruled:

40 "Although some further proceedings are to be had before a master to carry into effect the decree, all the consequential directions depending upon the result of those proceedings are given in the present decree. It is true there

may be exceptions to the master's report; and in that case a further order of the court will be necessary to dispose of those exceptions. But a decree is not the less final in its nature because some future order of the court may possibly become necessary to carry such final decree into effect."

Wright v. Miller, 3 Barb. Ch. (N. Y.) 382, the court held:

"A decree declaring void a transfer of real estate held by a trustee, directing a reference to a master to ascertain value of portions thereof sold to bona fide purchasers, and what sum, if any, should be paid to reimburse the trust estate and to report a proper person and appoint him a trustee, giving all the consequential directions, so as finally to determine the whole controversy upon the coming in and confirmation of the master's report, without the necessity of bringing the cause again before the court for any other decree or further directions, and which also disposes of the question of costs, is a final decree." 10 20

In *Bank of Mobile v. Hall*, 6 Ala. 141; 41 Amer. Decisions 41, the plaintiff, Hall, purchased lots from one Andrews in the city of Mobile at \$20,000, payable in four installment notes. First note was paid and Andrews, becoming insolvent, absconded. At the time of the purchase there was an encumbrance on the land amounting to \$10,220 secured by trust deeds. The land was sold under a trust deed and was bought in by complainant for \$8,600, the amount due. The Bank of Mobile and one Hallet became holders of the second and third notes, with notice of complainant's equity. The prayer of this bill was that the Bank and Hallet be enjoined from suing on or negotiating notes for general relief. 30

The Chancellor determined complainant had paramount equity and referred cause to master to state account between them. Relying on the case of 40

Weatherford v. James, 2 Ala. 170, the court said:

“Decree is final when it ascertains all the rights of the parties in litigation, although there may be a reference to the master to ascertain facts for an account between the parties. They are ministerial acts and do not affect the decree.”

The Keystone Iron Company v. Martin, 132 U. S. 93, is easily distinguished from the present case
 10 since the relief sought was a money decree and the facts relating to the amount of iron ore and the value of the same taken from the defendant's land had to be determined judicially and evidence taken with reference thereto in order to finally decide the matter in issue.

In the present case there is no such dispute of facts. There was no money relief prayed for. The money relief was incidental and amounted solely to a tender on the part of the complainant of the
 20 amount found to be due the defendant, as will be seen from numerous United States cases distinguishing this case.

The New York cases in the brief of counsel for the motion to dismiss are all based upon the peculiar language of the New York Code.

The Court of Errors and Appeals held in *Martin v. Beach*, 56 N. J. E. 791;

“A decree in Chancery made upon the reading
 30 of the pleadings, the evidence of witnesses and the argument of the respective counsel is made upon the final hearing and determination of the cause within the meaning of the 11th section of the Chancery Act.”

It is submitted that the decree appealed from comes clearly within the definition of final decree.

The issues to be determined between the parties, as raised by the pleadings are: (1) the proper construction of the lease. (2) the permanent injunction against forfeiture. (3) An account of money due
 40 under the construction of the lease.

The decree finally and completely determines all of these matters:

- (a) It construes the lease. p. 44 lls. 9-26.
- (b) It decrees a permanent injunction p. 44 l.27.
- (c) It directs a stating of the account by parties or if not by a master in accordance with the rule of construction. p. 45 lls. 4-18.

It should be noted that the phrase "state their account" is used in the decree. 10

Counsel for the complainant-appellee, in his brief for the motion of dismissal, refers to a number of United States Supreme Court cases but he omits reference to the leading case of *McGourkey v. Toledo Railroad Co.*, 146 U. S. 536, a leading case which reviews all of the decisions cited in his briefs.

It is urged that the present decree comes clearly within the rule. The accounting prayed for is not against the defendant but to arrive at a determination of the amount the complainant expresses itself ready and willing to pay. (p. 9—1.31). The stating of an account is merely a ministerial act, since it is entirely controlled by the decree in the construction of the lease and the time within which the account is to be stated. 20

It is as ministerial as the duties of a sheriff or master in foreclosure where the report of the master or sheriff of sale may be objected to and it may require subsequent order of the court to dispose of the questions which may arise. The stating of the account by the master is merely mathematical calculation, the figures of payments are equally within the knowledge of the parties, there was no dispute as to them. The only issue raised was the construction of the lease in applying credits for quarterly payments. 30

How else can a decree construing a mining lease be classified if not a final decree? What more final determination can be had of a prayer for a perman- 40

ent injunction than a decree of a court of equity granting it?

It is respectfully urged that the decree appealed from determines the issues raised by the pleadings, and the merits of the controversy finally and that the reference is merely ministerial and not judicial.

10 THE CONSTRUCTION OF THE LEASE AS DETERMINED BY THE COURT OF CHANCERY IS CONTRARY TO THE PLAIN WORDING AND INTENT THEREOF.

The court of Chancery construed the words of the lease:

“Which sum (quarterly payments of \$100) shall be credited against royalties on iron ore subsequently mined” (p. 14 State of Case) to mean:

“Crediting to royalties accruing due on subsequent shipments of ore.” (p. 40 State of case).

20 It is submitted that the words “subsequently mined” are plain and unambiguous. The word “mined” throughout the lease is never used so as to include “shipping,” “washing,” or “taking away” of ore.

Thus the grant in the lease (p. 13) is of

30 “the exclusive right to mine and remove all the remaining iron ore in, on and under the premises, . . . together with all the necessary rights and privileges for exploring, mining and carrying away said ores, . . . also to have the right of washing on the premises such ores as shall require washing, . . . and to enjoy every facility for *mining*, washing and carrying ores away.”

Clearly the parties distinguished these operations; there is in each case a distinct use of the phrase “mining”, and “carrying away,” and “washing.”

40 The royalties (p. 14) are also payable on iron ore “raised, mined and taken away,” and for “washed iron ore,” and “on all unwashed iron ores shipped or used.”

The defendant-appellant, John H. Dahlke, is a member of this bar, and the use of these several phrases, carefully chosen, indicates the intention of the parties to use language sufficiently broad to give to the lessee all the necessary rights for his benefit.

The lessee would not have entered into the lease unless the right of "washing" ore was included, nor unless the right to build railroads or other roads was granted.

10

Now under the construction placed upon the lease by the court of Chancery, the words "subsequently mined" are enlarged so as to mean, "subsequently mined, raised, washed and shipped."

If such were the intent of the parties the words used elsewhere in the lease should have been inserted. The parties in providing for a minimum quarterly payment intended to protect the lessor against spasmodic mining operation. The regular operation of a mine would insure a shaft free from water, with mine props and roofing well maintained a provision of regular income to meet the taxes payable by the lessor. The royalty rates were based upon regular mining operation, throughout the entire period of the lease. Thus, in case of surrender the lessee agreed "to keep the shaft or shafts in operation free from water as is usual, up to the date of such surrender." That was the reason why the lessor limited the credit of quarterly royalties or ore *subsequently mined*.

20

30

"In all contracts the plain meaning of words shall be used." *Proprietors Realty Co. v. Wohltman*, 95 N. J. L. 303.

What is meant by the phrase "subsequently mined"?

As a verb "mine" means to "dig a pit or mine; to dig in the hill to get ore, metals, coal or precious stones." "*Webster's National Dictionary: Krep v. Brady*, 37 Okl. 754, 762, 133 P. 216, 47 L. R. A. (n. s.) 106.

40

In its primary and restricted form, the word "mine" as a noun standing alone, denotes an underground excavation made for the purpose of getting minerals. *40 C. J. 733, Bell v. Wilson, L. R. A. 1 Ch. 303-308, 17 Erc. 422.*

It has been further defined as a pit or excavation in the hill from which metallic ores are taken by digging. *Shaw v. Wallace, 25 N. J. L. 453-469, Black's Law Dictionary Webster's dictionary, 10 Marble v. Merritt, 116 U. S. 11-12, Kreps v. Brady, 37 Okl. 754-761, 133 P. 216, 47 L. R. A (n. s.) 106.*

The rules relating to the construction and operation of contracts in general, particularly those relating to the construction and operation of ordinary leases, control as a rule, in the construction of mining leases and to determination of the rights and liabilities of the parties thereunder. *40 C. J. 1003, and cases cited.*

20 The defendant therefore contends that the words of the lease "iron ore subsequently mined" means iron ore subsequently dug or taken from the earth, and that when the iron ore was raised and placed in bank ready to be shipped as crude ore or ready for further treatment by washing or concentrating, the ore was in the ordinary and practical sense of the word, "mined". The lease itself, as heretofore argued, indicates the difference between the right to mine and the other process. The parties to the lease were
30 careful enough to insert in the lease in addition to the phrase "to mine," the additional terms "and remove," "and carry away said ore," "right of washing", "erect buildings for mining and washing," "every facility for mining, washing and carrying ores away."

From this it is clear that concentrating process by washing or other means was not deemed to be the mining process, nor was removal and carrying away deemed to be a mining process, and the lease
40 clearly indicates that the parties, at the time that the

lease was made, used the word "mine" in the sense of sub-surface operation or digging or taking the ore from the earth to a place where it could be shipped or further treated.

If the complainants' contention that the phrase "mining" included washing and concentration of ore, would it not be necessary for them to say logically that if crude ore were shipped by them to another point and there concentrated and treated by crushing or by washing, that the ore would still be in the process of being mined? 10

It will be argued on the other hand that the parties to the agreement have otherwise construed this contract, but it has been frequently held in New Jersey that although the parties to the agreement have otherwise construed it does not preclude either party from proclaiming their legal rights under it according to its true intent and meaning, particularly if in doing so would be making a new contract into which the parties have not entered. *Stewart v. Lehigh Valley Railroad Company*, 37 N. J. L. 53. 20

It has been held that:

"When the parties to a contract have expressed their meaning by plain words, there is nothing to construe, and in such a case all the court has to do is to enforce the contract." *Hower v. The Hadden Blue Stone Company and Daniel M. Lyon*, 30 N. J. E. 171.

In *Briggs v. United Shoe Machinery Corporation*, 92 N. J. E. 277, Vice-Chancellor Buchanan was affirmed unanimously, without opinion, in this court. There a contract was sought to be interpreted which would have necessitated the inserting of words into the contract. This case is particularly in point for the reason that it was based upon royalties to be paid complainant by the defendant for the use of a patent. The learned Vice Chancellor held: 30

"Where the words are plain the intention must be gathered from its language and there should be no resort to any of the rules for con- 40

struction.”

In *Weinstein v. Sheer*, 98 L. 510-511, this court said:

10 “The rule is indubitable that where the parties have by written contract freely chosen their own unambiguous verbal formula, to define their rights and duties, they are bound by the plain terms of their contract; and the court cannot in the absence of fraud or like recognized equitable ground, reconstruct the contract, for the purpose of making its terms accord with a post contractual conception more suitable to the situation of the parties.”

The practical construction of a contract becomes evidential only when the writing is ambiguous and the acts done were those of the parties hereto and in pursuance and by reason of it. *Reed v. Inhabitants of the City of Trenton*, 80 N. J. E. 503.

20 In the court below the learned Vice Chancellor, referred to the fact that the defendant-appellant had, during a short period of time, accepted minimum quarterly payments and permitted them to be accredited against the royalties due on shipments of ore.

30 It is insisted that this, however, cannot be used against the defendant-appellant, first, for the reason that there was a settlement of account between the two parties to the lease as it is alleged in the bill of complaint (p. 711.4) that all payments due under said lease have been made in full to the defendant to the 1st day of April, 1923.

Furthermore it also appears from the evidence that on July 6, 1923, the complainant-appellee paid \$1087.85, which was the full amount due for royalties on ore, so that before the court at the time of the hearing in 1927, there was evidence of a performance of a contract in accordance with the intention of the defendant-appellant.

Attention is also called to the payment on April 40 30, 1924 of the sum of \$251.34 (p. 65- 1.12).

The protest of the complainant was made several months after the check was sent in July, 1923. (p. 77), and Mr. Dahlke consistently refused to accept payments less than the amount which he claims to be due.

It is, therefore, respectfully argued that the construction of the lease by the court of Chancery was contrary to the plain meaning of the words used and expressed in the lease itself, and that the lease should be construed so as to allow credits of quarterly payments solely against ore subsequently mined, that is, taken from the ground and placed "in bank" after the payment of said quarterly installments. Any other construction adds to and varies the written instrument. 10

IRRESPECTIVE OF THE CONSTRUCTION OF THE LEASE, THE DECREE IS INEQUITABLE IN SO FAR AS IT DIRECTS A SETTLEMENT OF ACCOUNT FROM NOVEMBER 18, 1921, WHEREAS ACCORDING TO THE PLEADINGS IT SHOULD BE DETERMINED FROM JULY 1, 1923. 20

The bill of complaint specifically avers (p. 7) that all payments due on said lease have been made in full to the defendant to the 1st day of April, 1923. This was also stipulated and agreed to in the arbitration agreement (exhibit A, page 70, line 34).

The defendant, Dahlke, in his answer sets up that all payments due under the said lease have been made in full to him until July 1, 1923, and this is shown by the statement (Exhibit D- p. 129). 30

The Courts' attention is also called to the letter of October 16, 1923, (p. 77) where the payment of \$1087.85 is referred to by the complainant, and no protest is made against this payment, and the receipt (p. 89), offered by the complainant, reciting that the same is in "payment in full of royalties on iron ore shipments for the quarter ending June 30, 1923."

It is, therefore, respectfully urged that irrespec- 40

tive of the construction of the lease the decree could only legally and equitably require a settlement of the account from July 1, 1923.

For these reasons, it is contended these parts of the decree of the Court of Chancery are inequitable and should be reversed.

JOHN H. DAHLKE,
Attorney and Counsel Pro Se

10 SYLVESTER C. SMITH,
of Counsel.

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No. 32, May Term, 1930.

**New Jersey Court of Errors
and Appeals.**

BASIC IRON ORE COMPANY,
Complaint-Appellee,
vs.
JOHN H. DAHLKE,
Defendant-Appellant.

On Appeal
From The
Court Of
Chancery.

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BRIEF FOR APPELLEE-RESPONDENT.

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Introduction.

This is an appeal from a decree of the Court of Chancery of New Jersey rendered by Vice-Chancellor Buchanan, on July 9, 1929, in a suit prosecuted by the Basic Iron Ore Company, a mining corporation of New Jersey, the lessee of certain mining property owned by the defendant, John H. Dahlke, and situate in Warren County. The purpose of the suit was to enjoin a threatened forfeiture of a mining lease, obtain a construction of the lease and an accounting between the parties pursuant to the construction put upon the lease by the Court.

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By the terms of the decree, the Court enjoined the forfeiture of the lease, construed it, and directed an accounting pursuant to the construction. The accounting was not completed and consequently no decree was entered by the Court

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of Chancery completely terminating the litigation. The respondent reserved the right to move to dismiss the appeal prior to final argument on the ground that the appeal was taken from an interlocutory decree and was not filed within the forty days allowed by the statute. This question came before the Court on a motion to dismiss, argued on the opening day of the May Term of the Court of Errors and Appeals, in the year 1930, and a separate brief and printed record was presented by the respondent's counsel in support of this contention. The Court decided to permit this question to be submitted for consideration, together with briefs on the merits of the appeal, and counsel for the appellant has submitted a brief to the Court discussing both the motion to dismiss and the merits of the appeal.

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Statement of Facts.

Vice-Chancellor Buchanan, in his conclusions filed in the Court below (See Case page 32), has stated the facts, which were not disputed at the final hearing, the determination of the cause involving only questions of law. The learned Vice-Chancellor's statement of these facts is as follows:

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"Complainant's bill is to restrain defendant from the threatened forfeiture of complainant's rights as lessee of mining rights for iron ore on defendant's premises in Warren County; and for a judicial accounting between the parties,—tendering payment of any amount found due.

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"The case turns on the determination of the true interpretation of the terms of the mining lease held by complainant. Defendant leased the mining rights to one Ahles in 1901 for a term of twenty years, and again in 1903 for a further term of twenty years: the provisions of the two leases be-

ing substantially similar. In 1904 complainant took the place of Ahles, by assignment from him. In 1912 by due agreement between complainant and defendant the rate of royalty in the leases was modified.

“The two paragraphs of the lease which are particularly pertinent to the present consideration (as modified by the later agreement changing the royalty rate), are substantially as follows (designated “A” and “B” for convenience):— 10

A. “In consideration whereof the said lessee agrees to pay to the lessor for every ton of twenty-two hundred and forty pounds in weight of merchantable iron ore raised, mined and taken from the said premises the sum of twelve and one-half cents on washed iron ore, and on all unwashed ores shipped and used ten cents per ton, said royalties to be paid quarterly on the first day of April, July, October and January of each year for the quarter immediately preceding. 20
The weights of ores to be ascertained from scales of railroad companies transporting the ore, and if not shipped by railroad to be ascertained in any other reasonable manner; the lessee to furnish statement of ores shipped, to whom shipped and when shipped, and the prices and values thereof with payments of royalties, lessor to have the right of all reasonable hours to inspect the books or book in which weights and prices of ores are kept and to take statements therefrom. 30

B. “It is further agreed that the lessee shall each and every year during the term of this lease and agreement pay unto the lessor the sum of four hundred dollars, to be paid in quarterly payments of one hundred dollars each quarter on the quarterly dates specified, which sum shall be credited against royalties on iron ore subsequently mined. In case of failure to pay such quarterly payments or royalties within twenty 40
days after they are due and written de-

mand has been made for the same, then in that case this lease shall be null and void, at the option of the lessor, and the lessor, his heirs and assigns may enter."

10 "Complainant, prior to September 1st, 1914, mined and brought to the surface more ore than it shipped, and thus accumulated a large bank of ore on the surface. Since September 1st, 1914, it has brought no ore to the surface; all of its subsequent shipments have been made of ore from the bank theretofore accumulated.

20 "From the middle of 1914 to the middle of 1919, complainant shipped practically no ore (because it could find no customers). From January 1st, 1915 to April 1st, 1923, inclusive, it paid the minimum quarterly payments, but no royalties calculated on ore shipped, because during that period the royalties due for ore shipped did not amount to the sum of the minimum quarterly payments required by the lease.

30 "Subsequently the amount of royalty computed on ore shipped (hereinafter called the "earned royalty") has exceeded the minimum quarterly payment. Complainant claims the right to credit the minimum quarterly payments previously made, against the earned royalties subsequently accruing. Defendant denies that complainant has such right, because the earned royalties have accrued only from shipments of ore which was brought to the surface prior to September 1st, 1914; he contends that under the terms of the lease providing for the crediting of the minimum payments "against royalties on iron ore subsequently mined," the minimum payments can be credited by complainant only against royalties accruing in respect of ore brought to the surface subsequent to the making of such minimum payments.

40 "Complainant has made payments or tenders of earned royalties computed according to his contention. Defendant, claiming

that these are less than he is entitled to under the lease, has demanded additional payments, and has threatened that if they be not made he will exercise a right claimed by him under the lease to declare the lease null and void."

POINT I.

Complainant Was Entitled to a Permanent Injunction Against the Threatened Forfeiture. 10

The learned Vice-Chancellor, in his conclusions, stated that:—

"It seems clear that complainant is entitled to permanent injunction against the threatened forfeiture; first, because defendant has no right under the lease to such forfeiture; and, secondly, because assuming that he ever had such a right, he has waived it; thirdly, because complainant is not in default." (See page 35, lines 7 to 12.) 20

FIRST: DEFENDANT HAD NO RIGHT UNDER THE LEASE TO A FORFEITURE.

In discussing this phase of the question the learned Vice-Chancellor said in his conclusions (see page 35, line 14, to page 36, line 17):— 30

"The alleged right to declare a forfeiture rests on the second quoted paragraph of the lease, wherein it is conditioned upon failure of the lease "to pay such quarterly payments or royalties within twenty days," etc. The subject matter of this paragraph is the requirement that the lessee pay a minimum rental or compensation, quarterly, even though no ore be mined and shipped. The subject matter of the preceding paragraph ("A"), is the requirement that the lessee pay a rental or royalty per ton on all ore taken away. The clause as to forfeiture 40

is not a separate paragraph, but is a part of paragraph "B," which tends to indicate that the right to forfeiture is only for default in the minimum quarterly payments. It is true that the royalties on the ore mined are referred to earlier in that paragraph, and that the clause in question says "such quarterly payments or royalties," but it is also clear that the word "royalties" may be construed as being an alternative designation of the "quarterly payments" equally as well as it may be construed as referring to the royalties on mined ore. That it should be interpreted as a mere alternative designation of the "quarterly payments" is supported by that fact that in each of the receipts given by defendant and accepted by complainant, for all these \$100.00 payments down to the time that controversy first arose between them in 1923, such payments are designated payments of "minimum royalty."

"Considering the respective main subject matter of the two paragraphs; and the rule that construction is to be made against, rather in favor of, a forfeiture; and the further rules that construction is to be made against, rather than in favor of, the lessor and the draftsman—it is concluded that the lease does not give the lessor the right to forfeit for failure to pay the earned royalties on ore mined. There is no contention that there has been any default in payment of the minimum quarterly payments."

An examination of pages 82 to 89 inclusive, of the printed case, will reveal to the Court that the receipts mentioned by the Vice-Chancellor, which were signed by the defendant and appellant, used the expression "minimum royalty" with relation to the payment acknowledged.

It is urged for the respondent that the view expressed above by the Vice-Chancellor was correct.

SECOND: IF DEFENDANT HAS ANY RIGHT TO FORFEIT THE LEASE, HE HAS WAIVED IT.

In discussing this phase of the question, the learned Vice-Chancellor said (see page 36, line 19, to page 37, line 3, inclusive):

“Furthermore, if any such right to declare a forfeiture had existed in favor of defendant, it was waived by him. In an arbitration agreement made two or three years before the commencement of this suit, defendant, together with complainant, submitted to arbitrators the determination of a controversy between them as to the amount at that time due from complainant to defendant (or vice versa), involving the very same question as to whether or not complainant was entitled to credit minimum royalties against earned royalties thereafter accruing on shipments of ore brought to the surface before September 1st, 1914; and agreed that in their future dealings they should be bound by the principles involved in the findings of the arbitrators. 10 20

“It would seem that this impliedly constitutes a waiver of any right defendant might otherwise have claimed, to penalize complainant for alleged default in payments by forfeiture of the leasehold rights—at least unless, and until, the arbitrators should find in favor of defendant.” 30

The Court’s attention is respectfully invited to the submission in arbitration which was Exhibit C-2 below, and is set forth on pages 67 to 76 inclusive, of the printed case, including a statement of facts relating to the controversy and copies of leases. This is of particular interest because it set forth the facts in detail.

It is undisputed that while this arbitration was pending the defendant threatened to forfeit the lease as will appear from the correspondence 40

between complainant and defendant and complainant's counsel set forth on pages 16 to 19 of the printed case.

It is respectfully contended that the learned Vice-Chancellor's finding that the right to forfeit had been waived was entirely proper.

10 THIRD: DEFENDANT HAD NO RIGHT TO FORFEIT THE LEASE BECAUSE COMPLAINANT WAS NOT IN DEFAULT.

In discussing this phase of the question the learned Vice-Chancellor, in his conclusions set forth at pages 37 to 41 inclusive of the printed case, said, at line 4:—

20 “In the third place, there has been no default by complainant. Concededly the question as to whether there was or was not such default, rests solely upon the determination of the true interpretation of the lease. If complainant has the right, under the lease, to credit minimum quarterly payments against earned royalties subsequently accruing on shipments of ore raised to the surface prior to the making of the minimum payments, then complainant is not in default. To hold that complainant had not that right, it would be necessary to ascribe to the word “mined,” in the quoted paragraph “B”, an extremely limited and special meaning; and for this, no justification can be found either in the lease itself, or the surrounding circumstances, or the subsequent acts of the parties.

30 “Defendant contends that “mined” means “dug and taken from the earth”; that the ore already in bank on the surface previous to the time of the quarterly payment, had then already been “mined” and was not ore “subsequently mined”; and that the parties intended by the lease that complainant could credit against the quarterly payments royalties only on ore “dug

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and taken from the ground" subsequent to the quarterly payments.

"There is nothing whatever to indicate that the parties, or either of them, ever had any such intention. On the contrary, consideration of the whole lease, and all the attendant circumstances, makes it clear that the clause "royalties on iron ore subsequently mined" is to be interpreted as if it read "royalties subsequently accruing due on iron ore." 10

"In a mining lease the lessor compensation fulfills a two-fold character—(1) rent, or interest on his capital invested in the ownership of the tract; and (2) royalty, or payment for the ore taken out of and away from his ground. If the lease provided for compensation to the lessor solely by a royalty on the ore, then unless there were a covenant by the lessee to mine and pay royalty on at least a minimum fixed amount, the lessee might refrain from mining and thus deprive the lessor of any compensation whatever, at the same time depriving the lessor of the right to mine for himself. 20

"In the present lease, instead of a covenant to mine a certain minimum amount, there is the covenant to pay the minimum quarterly payment of \$100.00 each quarter. This was a fair provision to protect the lessor. In order to make it fair for the lessee as well, and to make it substantially as beneficial to the lessee as a covenant to mine a minimum quantity, the clause providing that the minimum quarterly payments should be credited on subsequent royalties, was inserted. 30

"There was no reason in the nature of things nor in the circumstances of the parties why this credit should not be allowed on all subsequent royalties earned—no reason why it should be limited to royalties on or subsequently taken from the earth. The defendant has been unable to suggest any 40

such reason: at any rate none has been suggested by him. There was of course an obvious reason for limiting the crediting to royalties subsequently accruing (instead of allowing it as well on royalties previously paid)—but there was no reason for such meticulous refinement of limitation as allowing it only on royalties subsequently accruing on ore subsequently taken from the ground.

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“The thing which was important to the lessor was not to secure at least a minimum amount of operation by the lessee; but to secure at least a minimum constant income; the thing which was important to the lessee was to avoid, as far as possible, having to pay the minimum yearly payments without itself deriving any benefit.

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“It seems fairly obvious that neither party contemplated the contingency which has now arisen. The natural and normal course of mining would be the mining, concentrating, and shipping to be carried along contemporaneously, and at approximately the same rate. Any considerable accumulation of ore on the surface would not be contemplated by either party. It would do the lessee harm rather than good—for it could not get back any of the cost of mining until it sold and shipped; it would do the lessor good rather than harm—for any ore raised to the surface and not shipped prior to the expiration of the lease, would enure entirely to his benefit without expense, and in the meantime the minimum quarterly payment assured him a constant income.

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“The provisions in this lease reflect precisely the circumstances of the parties and the intentions naturally to be expected under those circumstances. The lessor’s compensation is fixed primarily on a sale basis—a royalty per ton on ore taken away;—with a “rent” or minimum yearly payment provision for protection in case the lessee did

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not operate. The royalty is payable only when the ore is removed from the lessor's lands—(on the ore “raised, mined and taken away from said premises,” and on the ore “shipped and used,”)—until it was removed from the premises it would still remain the lessor's, with the added benefit of whatever work had been done on it by the lessee.

“Not only does the general situation disclosed by the lease and the attendant circumstances tend to refute defendant's contention—there are specific provisions and indications in the lease which disprove his claim. 10

“That ore was not “mined” when it had been raised to the surface is shown by the words in the preceding quoted paragraph (“A”), “iron ore raised, mined, and taken away”—indicating clearly that it was to be “mined” after it was “raised.”

“Again, the lease provides no means for ascertaining the amount or tonnage of ore “mined” or “raised to the surface”—as would be expected if this operation were in any wise material under any provision of the lease. The provision is only for ascertaining the weight of ore “shipped”; the same is true as to the provision for lessee's furnishing statements of ores “shipped,” not for ore “mined” or “raised.” 20

“The rules as to construction most strongly against the lessor and the draftsman also would operate against defendant; although it seems unnecessary in this case to call them into operation. 30

“For these reasons it is concluded that complainant had, and has, the right under the lease, to credit the minimum quarterly payments upon royalties accruing due on subsequent shipments of ore, whether such ore was raised from the ground before or after the making of the quarterly payments.

“Moreover, there is a further cogent reason for this determination; namely the 40

10 construction by defendant himself, as evidenced by his own admissions. The evidence shows that from January 1st, 1915 down to October 1st, 1917, the lessee shipped no ore, but made the minimum quarterly payments aggregating \$1,200.00. In the quarter October 1st, 1917 to January 1st, 1918 it shipped ore which was raised from the ground before 1915, and on which the royalties would have amounted to about \$345.00, but made no payment of tonnage royalty, obviously because it had the \$1,200.00 credit of the minimum quarterly payments. The same thing happened in six or seven other quarters in 1919, 1920, and 1921—the lessee shipped, in each of said quarters, ore raised from the ground before 1915, on which the tonnage royalty would have exceeded the \$100.00 minimum quarterly payment, but made no payment of any tonnage royalty because of the aggregate amount of minimum quarterly payments standing to its credit. This was no accident—eight different occasions covering four years. The defendant accepted simply the minimum quarterly payments, and made no demand for additional payments because of tonnage royalty. He acquiesced in the construction now contended by complainant; he made no contention for the construction now argued by him. More than that he made the specific admission, in the arbitration agreement, on February 6th, 1924, that all payments due under the lease “have been paid in full to the said John H. Dahlke to the first day of April, 1923”; and still further, he makes a similar specific admission in his own answer (drawn by himself), in the present suit.”

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POINT II.**The Construction Put Upon the Lease by the Court of Chancery was Correct.**

In the excerpt from the conclusions filed in the Court of Chancery set forth above, the learned Vice-Chancellor has, with great skill, pointed out that the construction put upon the lease by the complainant was entirely proper and was adopted by him as the solution of the difficulties existing between the parties. In other words, it was properly decided that the complainant had the right, under the mining lease, to credit minimum quarterly payments against earned royalties subsequently accruing on shipments of ore raised to the surface prior to the making of the minimum payments. It has been contended by the appellant, in his brief on appeal, that the accounting should relate back only to April 1st, 1923 and not to November 18th, 1921. There is no force in this because the construction put upon the lease relates to the entire period of it, beginning November 18th, 1921 when it became effective.

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POINT III.**The Decree Below Should be Affirmed.**

Vice-Chancellor Buchanan directed that an account be taken in the decree of July 9th, 1929, filed in the Court of Chancery. (See page 43 of the printed case.)

An examination of the actual record of the Court of Chancery will indicate that the expression "final decree" used in the printed case is not correct and that this decree was merely

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captioned "decree" because it was not final until the equities reserved by this decree had been determined upon the coming in of the account.

It is contended that this appeal should be dismissed because it was taken from an interlocutory decree as had been argued in an accompanying brief. It is further contended that
10 should the Court consider the merits of the controversy that the decree should be affirmed, for the reasons so ably stated in the conclusions of the learned Vice-Chancellor.

Respectfully submitted,

EDGAR W. HUNT,
Solicitor for Appellee-Respondent.

BESSON & PELLET,
20 Of Counsel.

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