Arthur W. Cross, Law Printer, 243 Market Street, Newark, N. J.

New Jersey Court of Errors and Appeals

THE ATLANTIC PEBBLE COMPANY, Limited, *Plaintiff-Appellant,* *vs.* LEHIGH VALLEY RAILROAD COMPANY, *Defendant-Respondent.*	*Action at Law.* *On Appeal from the Supreme Court. (Somerset County.)*

Brief for Defendant-Respondent.

Preliminary Statement.

The statement of facts contained in the brief in behalf of the appellant is substantially correct, as is also the statement of the issue raised upon this appeal. The present argument will require a reference to some parts of the testimony not referred to in the brief for the appellant but such references will only amplify the general statement of facts therein contained.

The court below, upon motion in behalf of the respondent, entered a judgment of non-suit upon the ground that the testimony adduced on the part of the appellant failed to establish a legal contract supported by a valuable consideration (p. 69, l. 28). The appellant now insists that the court below erred in directing the entry of a judgment of non-suit because (1) "a contract supported by a valuable consideration was proven" (appellant's Point I) and (2) because "defendant received all the benefits for which it contracted and cannot now plead any invalidity in

the contract" (appellant's Point II). The present argument will be directed first to a refutation of the two points thus relied upon by the appellant and will then proceed to show that the court below might properly have granted the respondent's motion for non-suit upon several other grounds urged at the trial besides the ground of lack of consideration upon which the court in fact granted the motion (p. 68, l. 34 to p. 69, l. 23).

Point I.

The testimony disclosed no consideration for the alleged promise of the respondent.

The alleged promise upon which the appellant sought to recover is set forth in the complaint in the following terms:

> "On or about the 29th day of September, 1910, plaintiff and defendant entered into an agreement whereby it was agreed that the plaintiff should ship and transport from New Foundland and bring into the United States at Philadelphia in the State of Pennsylvania, one or more shiploads of small stones, commonly called pebbles to be offered for sale to customers of plaintiff in the United States for grinding purposes and that upon the arrival of the said pebbles in Philadelphia and until such time as the plaintiff should receive orders from its customers for the sale thereof, the defendant agreed to provide plaintiff with pier facilities at Philadelphia for the storage of said pebbles, free of charge, in consideration that plaintiff, upon receiving orders for the sale thereof from its customers in the United States would ship and transport the said pebbles from Philadelphia over the line of defendant's rail-

road; the defendant being then and there a common carrier by railroad, engaged in interstate commerce." (P. 1, l. 34 to p. 2, l. 15.)

Without considering whether an agreement as thus set forth would constitute a valid contract binding upon the respondent, it is sufficient to say that no such agreement was proved. At no time did the appellant ever agree with the repondent to ship and transport to the United States at Philadelphia any pebbles. In the case of each of the three cargoes which form the subject of the present controversy, the respondent simply offered to procure for the appellant a free place of storage in consideration of the appellant's promise to ship the pebbles over the respondent's railroad lines "when they could do it on an equal basis with any other railroad. The points on which they could not get as cheap a rate to handle it, it was understood that they were not to get the business" (p. 13, ll. 24-30). Such was the entire fabric of the alleged agreement as testified to by the witness James A. Quigley and evidenced by all the correspondence so freely quoted in the brief for the appellant. There is no suggestion, either in the oral testimony or in the voluminous correspondence which was introduced in evidence, that the appellant was at any time bound to the respondent to ship any of the pebbles in question to Philadelphia; and it is positively testified by Mr. Quigley that the alleged agreement did not contemplate binding the appellant to ship over the railroad of the respondent any pebbles which actually arrived at Philadelphia, because the orders which the appellant might receive from its customers might require the pebbles to be shipped to such parts of the country as would altogether preclude their passing over the rail-

road of the respondent. Upon this point, Mr. Quigley testified as follows (p. 40, ll. 20-31):

"Q When the pebbles arrived in Philadelphia, they were liable, such parts as were not ordered shipped, were liable to be shipped to any part of the country, according as your business might require, were they not?

A Yes.

Q And that might have required a shipment, perhaps to the south or the southwest?

A That is right.

Q Or it might have required a shipment up here, perhaps, direct from Philadelphia?

A Yes.

Q And not passing over any railway lines at all?

A No."

If there was any agreement at all, therefore, it amounted to nothing more than this, namely, that if the respondent should find free storage in Philadelphia for several cargoes of pebbles shipped by the appellant from New Foundland, then the appellant promised to ship over the respondent's railroad such of those pebbles as could conveniently and cheaply be thus shipped to reach their ultimate destination when sold to the appellant's customers scattered throughout the United States and Canada. If the arrangement thus consummated by the conferences and correspondence of the parties bound either of them, it bound the appellant to ship the pebbles over the respondent's railroad *after the respondent had provided free storage* and thus performed its part of the agreement. If the respondent failed to provide the offered storage, of course, the appellant could not be bound to ship over the respondent's railroad, but unless and until the free storage was provided, nothing in the nature of a contract existed

at all but merely an offer on the part of the respondent valid only until revoked. The case presents at most an example of what is often referred to in the books as a unilateral contract which does not ripen into a legal obligation until executed by one of the parties, thereby rendering the other party liable to perform a promise made conditional upon such execution. Thus in the present case it might well be that after the respondent had provided free storage for the pebbles, the appellant would have been bound to perform its promise to ship the pebbles over the respondent's railroad, but the infirmity of the appellant's claim lies in the fact that it did not even positively promise to ship the pebbles over the respondent's railroad after the free storage had been enjoyed. Its promise in that regard was conditional upon destination and upon rates.

Another way of looking at the transaction, which perhaps throws some light upon its true legal effect, is to suppose that the pebbles had been stored free of charge and that thereafter, in pursuance of an absolute promise, the appellant had shipped the pebbles over the respondent's railroad. Doubtless the respondent could not then present to the appellant a bill for storage. To that extent the respondent would have been bound by its offer of free storage and the acceptance of its offer by performance on the part of the appellant of a promise to ship over its railroad. But that is a very different thing from saying that the appellant could insist upon a contractual obligation on the part of the respondent to provide free storage before the respondent had enjoyed the performance of the appellant's promise to ship over the respondent's railroad.

We do not, however, have to bring the present case within the strict definition of even a unilat-

eral contract, unperformed by one party at the time the offer of the other party was revoked. The facts of the present case do not even measure up to the requirements of such a contract, because the alleged promise of the appellant was not a promise at all. The appellant did not promise to ship *any* pebbles over the respondent's railroad and in fact would have been justified under its own view of the transaction in shipping the entire three cargoes of pebbles by water without their traveling over a single foot of the respondent's railroad (see testimony of Mr. Quigley quoted, *supra*). There was, therefore, absolutely no benefit to the respondent or detriment to the appellant which could have supported a promise on the part of the respondent to provide free storage for the pebbles at Philadelphia. The real motive which induced the respondent to procure free storage for the pebbles was undoubtedly the hope that thereby it would be enabled to obtain a certain part of the business of transporting the pebbles from time to time, but it is not conceivable that when the respondent offered to provide such storage it intended legally to obligate itself to do so when it might never receive a dollar's worth of benefit from its action in that regard. The mere motive on which the respondent provided the storage must be distinguished from an alleged consideration. *Philpot* v. *Gruninger,* 14 Wall. 570, 20 Law. Ed. 743.

The only testimony which really helps us to determine the imperfectly expressed intentions of the parties is that of Mr. Quigley, who negotiated the transaction on the part of the appellant. The following excerpts are pertinent (p. 13, ll. 16-30):

> "Q What was the agreement that you finally reached with the representatives of the Lehigh Valley Railroad Co.? A They

were to store the Atlantic pebbles at Philadelphia, furnish a covered pier, free of storage charges, pending shipment to the interior.

"Q What, if anything, was stated to the representatives of the Lehigh Valley Railroad Company about the movement of these pebbles or shipment of these pebbles? A It was understood, in consideration of their arranging free storage, that they were to handle all the business, when they could do it on an equal basis with any other railroad. The points on which they could not get as cheap a rate to handle it, it was understood that they were not to get the business."

The subsequent letters of Mr. Moore, who took part in the transaction as agent for the respondent, simply confirm the understanding thus testified to by Mr. Quigley (see letter of September 29, 1910, p. 17, l. 22; letter of October 26, 1911, p. 20, l. 17; letter of October 27, 1911, p. 21, l. 26).

Counsel for the appellant propounds the somewhat surprising theory that the respondent became bailee of the pebbles for hire and was therefore not justified in committing a breach of the bailment by having the pebbles removed from the place of storage. It seems hardly necessary to say that there is nothing in the testimony which remotely suggests the creation of the relationship of bailor and bailee, and indeed such testimony would be totally irrelevant and inadmissible under the pleadings in the case. Throughout the transaction the appellant understood that the respondent never contemplated taking charge of the pebbles but only contemplated procuring for them a place of storage on the property of the Philadelphia & Reading Railway Company.

The letter of Mr. Moore dated September 29, 1910 (p. 17, l. 23) says:

"Confirming our conversation today, we have agreed to handle a full cargo of say about 2,000 tons Flint Pebbles in bags to arrive from New Foundland during November with the understanding that the Philadelphia & Reading Railway is to provide a suitable berth to discharge the pebbles on a covered Pier where they are to be held free of storage pending shipment to the interior. We shall expect you to arrange with the Stevedore to unload the cargo according to the custom of the port which includes trucking on the pier to within about the ship's length of the ship's tackles and piling four tiers high."

Again the letter of Mr. Moore, dated December 3, 1910, reads as follows (p. 18, l. 4):

"I have before me your favor 2nd inst., received this morning and note the S. S. 'Molina' sailed yesterday morning. I presume she is due to arrive at this port 8th or 9th inst. and arrangements have been made for a suitable berth at one of the covered piers of Philadelphia & Reading Railway at Port Richmond."

Upon cross examination Mr. Quigley testified upon this point as follows (p. 43, l. 39 to p. 44, l. 32):

"Q At the time that you and Mr. Moore had your conversation and began your correspondence, which finally culminated in making arrangements for the first cargo, the steamship 'Molina,' you were personally aware, at that time, that the storage was to be done on the pier of the Philadelphia & Reading Railroad Company, were you not?

A Yes, the P. & R., they told me with whom they would make the arrangement.

"Q It wasn't on the property of the Lehigh Valley Railroad Company, that these pebbles would be stored? A I understood the Lehigh Valley Railroad Company had no property in Philadelphia.

"Q Then they could not be stored there if they had none. You are familiar with the railroad of the Lehigh Valley, where it runs? A No, I could not say that I am.

"Q That does not run to Philadelphia, does it? A From New Jersey? No, it does not.

"Q Nor from anywhere else? A They have a branch line that runs from Bethlehem in there; that is they ship via Bethlehem to New York.

"Q Has the Lehigh Valley any terminal facilities down there? A No.

"Q That you know of? A No, not that I am aware of.

"Q You were fully aware that the pebbles, when deposited, would be deposited on property of the Philadelphia & Reading? A Yes."

In view of such testimony it does not seem worth while to discuss any further the totally irrelevant question of bailment which has no true bearing upon the sole issue of the case, viz., whether or not a contract was proved by which the respondent became bound to provide free storage for the pebbles upon which the appellant has paid storage charges.

It remains to deal with the cases cited on pages 19 to 22 of the brief in behalf of the appellant, tending to show that an uncertain consideration

may support a promise. The difficulty with those cases, as applied to the contention of the appellant, is that they would be apposite only if relied upon by the respondent in a suit for damages for failure to ship over respondent's railroad *after free storage had been granted.* When analyzed, it will be found that each of the so-called promises which were held enforcible in those cases were in reality offers which had been accepted by performance on the part of the offeree.

A diligent search has disclosed no decisions which the writer has thought really helpful as precedents to be followed in this case. The only difficulty inherent in the case is not one of law, but rather in determining from the testimony what the true nature of the transaction was. Once a conclusion has been reached upon that point, the case requires only an application of the most elementary principles of the law of contracts, namely, (1) that a promise must be supported by adequate consideration involving either detriment to the promisee or benefit to the promisor; (2) that a promise may be supported by the consideration of another promise; (3) that a promise may be supported by the consideration of an act done at the request of the promisor. It is submitted that such legal contract as can be spelled out of the somewhat disorderly business transaction which gave rise to the present controversy, consisted of a promise on the part of the appellant given in consideration of *acts* to be performed by the respondent. No promise was ever made by the respondent supported by an adequate consideration moving from the appellant, either by way of a counter-promise or an executed act done at the request of the respondent. As to the pebbles which arrived by the first two cargoes and were in fact given free storage and were there-

after in fact transported over the railroad of the respondent, it is possible that an executed contract arose after such transportation. But upon no theory can any contractual obligation on the part of the respondent have arisen as to the pebbles that were removed by the Philadelphia & Reading Railway Company from their place of free storage and shipped over the respondent's railroad only after the entire arrangement had been cancelled by the respondent's refusal further to provide free storage (see letter of Mr. Moore, p. 32, l. 34; p. 23, l. 28; and testimony of Mr. Wirtz, p. 49, l. 35 *et seq*). The inevitable conclusion is that the trial judge properly granted the motion for non-suit upon the ground assigned by him, namely, that it did not appear from the testimony that a legal contract, supported by a valuable consideration and binding upon the defendant (respondent) had been established.

Point II.

If there was an outstanding offer by the respondent, it was revoked and cancelled before any performance by the appellant.

Counsel for the appellant in Point II of his brief argues that because large quantities of the pebbles in question were, in fact, shipped over the respondent's railroad, the latter cannot deny its obligation to provide free storage. It has already been pointed out that it might well be that such an obligation would attach to the respondent as to pebbles which had been granted free storage and had thereafter been shipped over the respondent's railroad; that in such a case the respondent could not afterwards seek to charge the appellant with storage. But the recovery sought by the appellant in the present

case concerns storage charges for pebbles which had been removed from free storage at the instance of the owner of the property. As to these pebbles, therefore, there could have been no obligation on the part of the appellant to ship them over the respondent's railroad. That these pebbles were, in fact, subsequently shipped over the respondent's railroad cannot raise any contractual obligation in favor of the appellant since the latter shipped the pebbles by such a route without being under any obligation to do so.

An interesting hypothetical case is put by Brett, *J.*, in *Great Northern Railway Co.* v. *Witham,* L. R. 9 C. P. 16 (quoted in the brief for appellant at p. 27). The learned English judge said (p. 19):

> "If I say to another, 'If you will go to York I will give you 100£,' that is in a certain sense a unilateral contract. He has not promised to go to York, but if he goes it cannot be doubted that he will be entitled to 100£. His going to York at my request is a sufficient consideration for my promise. So, if one says to another, 'If you will give me an order for iron or other goods, I will supply it at a given price;' if the order is given, there is a complete contract which the seller is bound to perform. There is in such case ample consideration for the promise."

Applying such unilateral forms to the facts in the present case, we would have a contract something like this: "If you will provide free storage for my pebbles, I will ship such of them as I conveniently and cheaply can over your railroad." But counsel for the appellant inverts the form to fit an entirely new theory of the case, one which is not even suggested in the complaint. Finding the original contract as alleged in the

complaint not supported by the testimony in the case, counsel has recourse to a transaction which took place over a year after the original arrangement was made, and claims that when the respondent refused to accept the third cargo unless at least six hundred tons of the pebbles then in storage were removed, the subsequent removal of the six hundred tons by the appellant in October, 1911, bound the respondent to store the new cargo for the same length of time as the preceding cargoes. It is difficult, if not impossible, to follow the reasoning of this claim, but it is happily unnecessary further to deal with it for it has no bearing upon the cause of action relied upon in the complaint, which is specifically founded upon the breach of an agreement alleged to have been entered into on or about the 29th day of September, 1910 (p. 1, l. 25).

Suppose a hypothetical defendant set out on a journey to York, relying upon the promise of a hypothetical plaintiff to pay him 100£ for completing the journey. Before reaching York, the defendant found it impossible to continue and complete the journey. The plaintiff, however, who was very desirous that the defendant should go to York, *voluntarily* sent him the 100£, and upon the defendant's continued failure to go to York, sued him for breach of his contract to do so, claiming that he had had the benefit of the 100£. Could it possibly be contended that such a defendant was liable for any breach of contract, or, indeed, that any contractual obligation on his part had ever arisen? No obligation could arise on the part of such a defendant, because he did not receive the 100£ *as payment for going to York.* Such was precisely the situation of the parties to the present action. The respondent had said that it would not go on with the under-

taking to provide free storage, and thereby of course lost its right to have the appellant ship the pebbles over its railroad. At such a stage the appellant could not suddenly call into being a contractual obligation on the part of the respondent by voluntarily shipping the pebbles over the respondent's railroad when it was under no legal obligation to do so. The action of the appellant in this regard cannot be said to have raised a consideration which would require the respondent to do something which it had never promised to do. Viewed in this light, the position of the respondent is stronger even than that of the defendant who failed to complete the journey to York, for the latter could have returned the 100£ voluntarily sent to him, but the respondent, being a common carrier, was obliged to carry the appellant's pebbles when offered for transportation. From whatever angle the case is viewed, it is impossible to perceive in the transactions between these parties any facts upon which can be predicated a contractual obligation on the part of the respondent to provide free storage for the pebbles which the Philadelphia & Reading Railway Company removed to the warehouse. There is, therefore, no virtue in the claim made by counsel for the appellant in Point II of his brief, that because the respondent received the benefits of transporting the pebbles, it could not plead any invalidity in the alleged contract. The answer is that there was no contract.

Point III.

The minds of the parties did not meet and consequently the transaction could not constitute a contract.

One of the first essentials to the formation of the contractual relation is that the minds of the parties shall have met. "There is no contract unless the parties thereto assent; and they must assent to the same thing in the same sense." (1 Parsons on Contracts, p. *475). The minds of the parties to the alleged contract in this case never really met upon any terms. Mr. Quigley, who negotiated for the appellant, testified that there was no specific time within which the pebbles were to be removed from the pier (p. 13, l. 31). On the other hand, Mr. Moore, who conducted the negotiations for the respondent, wrote to Mr. Quigley on October 26, 1911 (p. 20, ll. 22, *et seq.*):

> "It was not expected at the time of the original arrangement that the property would be held for so long a period and the space available for this purpose on terminals of the Philadelphia & Reading Railway is largely occupied."

Again, on October 27, 1911, Mr. Moore wrote as follows (p. 21, ll. 34 *et seq.*):

> "As stated in my letter yesterday, you are holding these pebbles beyond the time originally contemplated, and we shall expect you to handle them more freely in the future."

In reply to this letter Mr. Quigley wrote, under date of October 28th, 1911, as follows (p. 22, ll. 15 *et seq.*):

> "In your letter you state that we are holding the goods beyond the time originally contemplated, and that you will expect us to handle

more freely in the future. To this we can only reply that we have never tried to create a false impression. At no time have we specified how quickly the goods would move."

On January 27, 1912, Mr. Quigley wrote as follows(p. 30, ll. 34 *et seq.*):

"Had you made arrangements with the P. & R. the same as arrangements made with you, that the pebbles would be held until ordered, this question would not have come up, but as above stated, we can only repeat that we have no orders on hand."

Again early in February, 1912, Mr. Moore wrote direct to the appellant, as follows (p. 33, ll. 9 *et seq.*):

"There is no written agreement with the Philadelphia & Reading Railway. But the trend of conversation with yourself and Mr. Quigley of the John W. Higman Co., was to the effect that the property would be moved by you with reasonable promptness. * * * It was never contemplated that these pebbles would be held indefinitely free of storage and a point was finally reached where the Philadelphia & Reading Railway was obliged to provide more space for its regular trade."

In reply to this letter, on February 5, 1912, Mr. Quigley wrote a long letter (p. 33, l. 38 to p. 35, l. 15) which reviews the whole misunderstanding. From this latter letter alone, it is clear that the parties never really came to any agreement on the all-important question as to the time within which the pebbles were to be shipped from the pier. Upon this point there was very clearly such confusion that no agreement could possibly have been reached. The disorderly way in which the negotiations were carried on by both parties and the failure to reduce their intentions to writing are

the elements out of which the present controversy arose. From such confused and contrary intentions it is not possible to find material for the first essential of a contract, viz., that the minds of the parties shall have met.

It may be suggested that it was at least a jury question whether or not the minds of the parties met. But the testimony is all to the effect that they did not meet. There is not a disputed question of fact disclosed by the appellant's case. On the contrary, it is established as a fact that neither party understood the terms which the other party was proposing. Upon the issue of whether or not the parties understood each other, the answer could only be in the negative. There was therefore no question of fact upon this point for the jury to decide, and the court below would have been amply justified in granting the respondent's motion for non-suit upon this ground, which was duly urged in support thereof (p. 68, ll. 34-40). It is hardly necessary to add that such an additional ground may properly be considered by this Court if the conclusion should be reached that the judgment of non-suit cannot be supported upon the theory adopted by the trial judge. *Solomon* v. *Public Service Ry. Co.*, 87 N. J. L. 284.

Point IV.

If any contract was entered into between the parties, the agreement on the part of the respondent was only to procure for the appellant a revocable license.

It was well known to the appellant at the time of entering into negotiations with the respondent that the pier upon which the pebbles were to be stored was the property of the Philadelphia &

Reading Railway Company. Mr. Quigley testified upon this point as follows (p. 43, ll. 39 *et seq.*):

"Q At the time that you and Mr. Moore had your conversation and began your correspondence, which finally culminated in making arrangements for the first cargo, the steamship 'Molina,' you were personally aware, at that time, that the storage was to be done on the pier of the Philadelphia & Reading Railroad Company, were you not? A Yes, the P. & R., they told me with whom they would make the arrangement.

* * * * * * * * * * * *

(P. 44, l. 28):

"Q You were fully aware that the pebbles, when deposited, would be deposited on property of the Philadelphia & Reading? A Yes.

"Q What did they tell you about the arrangement being made with the Philadelphia & Reading? A Told me nothing about the arrangement with the Philadelphia & Reading; I made my arrangement with the Lehigh Valley."

Mr. Moore's letter of September 29, 1910 (p. 17, ll. 22 *et seq.*) says:

"Confirming our conversation today, we have agreed to handle a full cargo of say about 2,000 tons Flint Pebbles in bags to arrive from New Foundland during November with the understanding that the Philadelphia & Reading is to provide a suitable berth to discharge the pebbles on a covered pier where they are to be held free of storage pending shipment to the interior."

Again on December 3, 1910, Mr. Moore wrote (p. 18, ll. 11 *et seq.*):

"Arrangements have been made for a suitable berth at one of the covered piers of the

Philadelphia & Reading Railway at Port Richmond."

On September 13, 1911, Mr. Moore wrote (p. 19, ll. 23 *et seq.*):

"Referring to our conversation Monday last, we can arrange with the Philadelphia & Reading Railway Company to provide a berth for a steamer to unload a cargo of about 1400 tons Flint Pebbles in bags and space on a covered pier free of storage pending shipment to the interior."

Throughout the subsequent correspondence, it was constantly reiterated by Mr. Moore that it was the Philadelphia & Reading Railway Company which was providing the storage. The following excerpts from Mr. Moore's letters will indicate that the appellant must have understood that the respondent was acting on behalf of the Philadelphia & Reading Railway Company:

(p. 20, l. 25):

"The space available for this purpose on terminals of the Philadelphia & Reading Railway is largely occupied."

(p. 24, ll. 9 *et seq.*)

"Will thank you to advise exact date of sailing of the steamer so that arrangements may be made in advance for the necessary facilities to discharge at pier of the Philadelphia & Reading Railway."

(p. 25, ll. 33 *et seq.*)

"Confirming my wire date, the Philadelphia & Reading Railway has given notice of urgent need of the space now occupied on their Pier D by pebbles from New Foundland."

(p. 27, ll. 19 *et seq.*)

"The present situation is unsatisfactory and will not be continued by the Philadelphia &

> Reading Railway Company. * * * Unless something is done promptly in this direction I have reason to believe the Philadelphia & Reading Railway Company will adopt some measures to remove them."

Mr. Quigley again recognized the part which the Philadelphia & Reading Railway Company played in the matter in his letter of December 27, 1911, in which he said (p. 28, ll. 29 *et seq.*):

> "However, if the Philadelphia & Reading will be a little patient we think ere long they will be satisfied that the goods are moving freely enough."

On February 2, 1912, Mr. Moore wrote direct to the appellant as follows (p. 32, ll. 34 *et seq.*):

> "In accordance with the notice previously sent the Philadelphia & Reading Railway has commenced to transfer the New Foundland pebbles from Pier D Port Richmond to Port Richmond stores for the account of the owners. It is their expressed intention to move 1,000 tons or more as may be necessary to provide room for handling the current through traffic at this terminal. We have advised you fully of the situation from time to time and also prevailed upon the Philadelphia & Reading Railway to postpone this action as long as possible so as to give you every opportunity to dispose of the pebbles and thus avoid any extra expenses for handling and storage. There is no written agreement with the Philadelphia & Reading Railway. But the trend of conversation with yourself and Mr. Quigley of the John W. Higman Co. was to the effect that the property would be moved by you with reasonable promptness. * * * It was never contemplated that these pebbles would be held indefinitely free of storage and a point was finally reached where the Philadelphia & Read-

ing Railway was obliged to provide more space for its regular trade."

Mr. Quigley wrote on February 5, 1912, in answer to the foregoing as follows (p. 34, ll. 22 *et seq.*):

> "If you will refer to your letter of September 29, 1910, you will note there was nothing said about time limit but that the P. & R. Railway were to provide a suitable berth to discharge the pebbles on a covered pier to be kept for free storage pending shipment to the interior. * * * Surely you must have had some correspondence with P. & R. before trying to arrange to hold goods on their dock and it would please us very much to know what kind of an arrangement you made with the Philadelphia & Reading."

The letter of the appellant to Mr. Moore, dated December 28, 1911, says in part (p. 50, ll. 32 *et seq.*):

> "We cannot see that the Philadelphia & Reading people have any grounds for writing a letter such as they have. This, however, will not in any way cause us to relax our endeavors to get this stock moving even if we have to make some concessions in the matter of settlement. You may assure the P. & R. people that every effort is being made to see that this cargo moves promptly."

The conclusion to be drawn from the testimony of Mr. Quigley and from the foregoing correspondence, is that if the respondent in fact promised anything at all to the appellant, it promised to procure for it a mere license from the Philadelphia & Reading Railway Company to store the pebbles on the latter company's pier D at Port Richmond. Such a license, granted without consideration moving to the Philadelphia & Reading Railway Company, was, of course, revocable at

any time. Such was the necessary legal effect of the transaction. If the appellant did not know that the license was revocable, that was its misfortune and certainly not the fault of the respondent. The nature of such an interest is matter of law and ignorance of the legal limits of the license granted by the Philadelphia & Reading Railway Company cannot be made the ground for a claim against the respondent. All that the respondent ever agreed to do was to arrange with the Philadelphia & Reading Railway Company to provide a suitable berth for the free storage of these pebbles pending shipment to the interior. The respondent has performed that agreement. The fact that the Philadelphia & Reading Railway Company subsequently chose to revoke the license thus granted cannot constitute a breach of the respondent's contract to procure the license for the appellant.

A license to keep and maintain personal property on the land of another is valid only until revoked.

Despeaux v. *Delano,* 71 N. J. L., 280.

A parol license to enter upon land and use it for any given purpose must be exercised within a reasonable time, and if the licensee fails to exercise his rights within such time the license may be revoked.

Hill v. *Cutting,* 113 Mass. 103.

The appellant can hardly claim that the respondent did not procure from the Philadelphia & Reading Company the license which it agreed to procure. Nor can the appellant justly claim that because the license was revoked after a reasonable time the respondent is chargeable with a breach of its agreement. In that connection it may perhaps be important to note that no expenditures made by the appellant in bringing the pebbles to Pier D

could operate to change a mere revocable license into a right to retain the pebbles on the pier for an indefinite time. It has been held that where one verbally grants the use of his land to another, it matters not that when the permission was given the parties contemplated that the privilege would be permanent or that the licensee enters on the land and expends money thereon to facilitate the enjoyment of the privilege. The transaction creates only a revocable license.

Huber v. *Stark,* 124 Wis. 359; 102 N. W. 12.

Since any agreement made by the respondent was fully executed by its procuring for the appellant a revocable license from the Philadelphia & Reading Railway Company to store the pebbles on the latter company's pier at Port Richmond, the subsequent revocation of such license constituted no breach of the respondent's agreement, and the trial judge might properly have granted the motion for non-suit upon this ground, duly urged in the court below (p. 69, ll. 8 *et seq.*)

Point V.

Other grounds of non-suit urged in the court below.

In moving that a judgment of non-suit be entered in the court below, counsel for the respondent urged as further grounds in support of the motion (1) that the facts tending to show consideration were so uncertain as not to be sufficient to constitute a binding contract; (2) that if any contract was created by the acts and statements of the parties it must be construed to be limited to an agreement to permit the appellant to store its pebbles on the dock in question for a reasonable time only; and (3) that the respondent in entering into the arrangement and in making the contract, if any, was acting only as agent for the Philadelphia &

Reading Railway Company, which agency was well known to the appellant at the time of making the contract. All of these grounds have been treated in this brief as incident to the matters already discussed, and therefore no further argument upon them seems necessary or desirable (p. 68, l. 34; p. 69, l. 24).

Point VI.

Conclusion.

Upon the following grounds it is submitted that the judgment of non-suit entered in the Supreme Court should be affirmed:

(1) The evidence showed no contract because there was no consideration for any alleged promise on the part of the respondent. Such an arrangement as may have existed was entirely unilateral in its nature, and the appellant was at no time bound to furnish a consideration.

(2) The evidence failed to show that any contract was ever entered into because there was no meeting of the minds of the parties or any definite terms agreed upon.

(3) The evidence showed that if any contract was entered into between the parties, the agreement on the part of the respondent was only to procure for the appellant a mere revocable license; that such license was procured and its revocation constituted no breach of the respondent's agreement.

Respectfully submitted,

CHARLES B. BRADLEY,
Of Counsel with the Respondent.

Collins & Corbin,
Attorneys.

New Jersey Court of Errors and Appeals.

10

THE ATLANTIC PEBBLE COMPANY, *Limited,* *Plaintiff-Appellant,* *vs.* LEHIGH VALLEY RAILROAD COMPANY, *Defendant-Appellee.*	Action at Law. Brief of Appellant.

20

The complaint filed in this case alleged a contract between plaintiff and defendant and claimed damages for its breach. The evidence produced by plaintiff at the trial supported the allegations of the complaint and showed that in September, 1910, it was agreed between plaintiff and defendant that plaintiff should ship and transport from New Foundland and bring into the United States at Philadelphia one or 30 more shiploads of pebbles to be sold for grinding purposes, and that upon the arrival of these pebbles and until plaintiff should receive selling orders for them from its customers, defendant should provide plaintiff with pier facilities for the storage of the pebbles at Philadelphia in consideration that plaintiff upon receiving orders for the sale of the pebbles would place all orders for their transportation through defendant's office.

The complaint further charged and the proofs 40

supported the charge that in pursuance of this agreement plaintiff at different times shipped and transported from New Foundland to the United States three shiploads of pebbles aggregating about 5,000 tons, and unloaded them on a pier at Philadelphia, provided by defendant, and that the defendant in violation of the said agreement without the consent of plaintiff and before plaintiff had received selling orders for the pebbles, removed or permitted to be re-
10 moved a large quantity of the pebbles from their place of storage on the pier to warehouses where they became subject to storage charges; and that plaintiff was subsequently obliged to pay, and did pay these storage charges in order to get them out of storage.

Defendant in its answer denying the contract as alleged in the complaint admitted that there was an "arrangement" between the parties for "pier facilities," but alleged that this arrangement was
20 "merely a gratuitous accommodation procured by the defendant for plaintiff to last only for a reasonable time."

The trial judge held that the agreement proven was without consideration and granted defendant's motion for a non-suit, and from this judgment of the trial court plaintiff appeals.

Under the issues framed by the complaint and answer, and under the evidence presented in support of the allegations of the complaint, plaintiff insists
30 that certain questions of fact were presented and should have been submitted to the jury, viz:

1. Was there such an agreement for storage as alleged, supported by a valuable consideration?

2. For how long a time was defendant required to store the pebbles in question?

3. Did defendant remove them or permit them to be removed in violation of its agreement ?

40 The testimony presented by plaintiff showed that

in 1910 plaintiff began picking pebbles on the beaches of New Foundland and shipping them to the United States. After one or more shiploads had been brought to this country, representatives of the defendant, Lehigh Valley Railroad Company, opened up negotiations with the plaintiff's agents, the John W. Higman Company, of New York, with a view of obtaining this heavy freight transportation business for its road. By appointment one or more conferences were held in New York at the office of the John 10 W. Higman Company, between Mr. James A. Quigley, of that Company, and Mr. Walter T. Moore and Samuel Emlin representing the Lehigh Valley Railroad Company. During these conferences the agreement was reached which forms the basis of this suit. By the terms of the agreement arrived at in these conferences and subsequently confirmed by letters, and re-stated as each shipload was to be transported, the defendant was to provide free storage at Philadelphia for the pebbles to be brought from New 20 Foundland until plaintiff should order them shipped to its customers in the course of its business. In consideration of this free storage, defendant was to handle all the business except such as it could not handle at as low a rate as other railroads.

James A. Quigley referring to the conferences in New York testified as follows:

Q. Was there a discussion at these meetings relative to the shipment of pebbles from New Foundland 30 to the United States and their shipment to points in the United States? A. Yes.

Q. What was the result of these negotiations? A. We brought a carload of flint pebbles in 1910 to Philadelphia, and the Lehigh Valley Road stored the pebbles at the P. & R. pier at Port Richmond.

Q. When was that arrangement made? A. During 1910; I could not just say without referring to my correspondence.

Q. Was this arrangement made by correspon- 40

dence? A. Correspondence and telephone conversations and verbal conversations both at my office and at their office.

Q. What was the agreement that you finally reached with the representatives of the Lehigh Valley Railroad Co.? A. They were to store the Atlantic pebbles at Philadelphia, furnish a covered pier, free of storage charges, pending shipment to the interior.

Q. What, if anything, was stated to the represen-
10 tatives of the Lehigh Valley Railroad Company about the movement of these pebbles or shipment of these pebbles? A. It was understood, in consideration of their arranging free storage, that they were to handle all the business, when they could do it on an equal basis with any other railroad. The points on which they could not get as cheap a rate to handle it, it was understood that they were not to get the business.

Following the conferences in New York the agreement there reached was confirmed by letters, the first
20 of which was dated August 16, 1910, and reads as follows: (Page 16).

> "Your letter of the 13th inst. was delayed in delivery owing to misdirection as per envelope attached. Referring to our conversation yesterday we can arrange with the Philadelphia & Reading Railway Co. to provide a berth for a vessel to unload say 1,000 to 2,000 tons Flint Pebbles in bags on to a covered pier free of storage, pending shipment to the interior. I
> 30 understand you expect the vessel to arrive during October or November next. It is understood that the Stevedore in discharging the cargo is to place it on the Pier in the customary manner. If you will give me a list of the points to which you desire rates from Philadelphia, I shall be glad to furnish them.
>
> Walter T. Moore."

The second letter dated September 29th, 1910,
40 reads as follows: (Page 17).

"The John W. Higman Co., New York.—Confirming our conversation today we have agreed to handle a full cargo of say about 2,000 tons Flint Pebbles in bags to arrive from Newfoundland during November with the understanding that the Philadelphia & Reading Railway is to provide a suitable berth to discharge the pebbles on a covered Pier where they are to be held free of storage pending shipment to the Interior. We shall expect you to arrange with the Stevedore to unload the cargo according to the custom of the Port which includes trucking on the pier to within about the ship's length of the ship's tackles and piling four tiers high. You will please advise as soon as known the name of vessel and date of sailing from Newfoundland. All routing orders to be placed through this office.

Walter T. Moore."

As a result of the agreement reached in the conferences and confirmed by the letters above quoted, plaintiff in December following chartered the steamship Molina and brought to this country about 2,000 tons of Flint Pebbles. These pebbles in accordance with the agreement were unloaded and stored on Pier D, Port Richmond, Philadelphia, and during the year that followed, plaintiff from time to time, as it received orders from its customers, ordered them shipped in such quantities as were ordered, placing each routing order with the Lehigh Valley Railroad Company as agreed, and that company arranged the transportation.

The arrangement seems to have been mutually satisfactory, for one year after the agreement was made, another conference was held in New York between Mr. Moore and Mr. Quigley and arrangements were made for the storage of another cargo upon the same conditions. This is evidenced by a letter written by Walter T. Moore and addressed to the John

W. Higman Company, dated September 13, 1911, which is as follows: (Page 19).

"The John W. Higman Co., New York.—Referring to our conversation Monday last, we can arrange with the Philadelphia & Reading Railway Co. to provide a berth for a steamer to unload a cargo of about 1,400 tons Flint Pebbles in bags and space on a covered pier free of storage,
10 pending shipment to the Interior. The steamer is expected to arrive the latter part of this month, and it is understood that the Stevedore employed by the steamer is to place the cargo on the pier and pile five high according to marks. This proposal is submitted subject to your prompt acceptance.

WALTER T. MOORE."

Accordingly another cargo of about 1,400 tons
20 brought in the steamer "Flora" was unloaded and stored.

Soon after this plaintiff desired to bring another cargo and its agents again took the matter up with Mr. Moore of the defendant company who suggested that before another cargo be brought the stock on hand be reduced. His letter to that effect is dated October 26, 1911, and is as follows: (Page 20).

"The John W. Higman Co., New York.—Re-
30 ferring to our conversation yesterday, we find from our records that there still remains at Pier D, Port Richmond, about 487 tons Flint Pebbles, ex. S. S. "Molina," and 1,237 tons ex. S. S. "Flora." It was not expected at the time of the original arrangemnt that the property would be held for so long a period and the space available for this purpose on terminals of the Philadelphia & Reading Railway is largely occupied. I do not see any prospect of providing accom-
40 modations for the next cargo until the stock now

on hand is materially reduced and some reasonable assurance given as to the future movement.

P. S.—I think sufficient space can be reserved at Pier D, Port Richmond, for the next cargo, provided you remove one-half of the present stock, or say about 800 tons before the steamer arrives.

WALTER T. MOORE."

On October 27, 1911, Mr. Moore again wrote as follows: (Page 21). 10

"The John W. Higman Co., New York.—Confirming telephone conversation today, we have arranged to accommodate another cargo of Flint Pebbles in bags, say 1,500 to 2,000 tons per Steamer due to arrive from Newfoundland about November 15th, provided you mail tomorrow orders for shipping about 600 tons of the stock now remaining on Pier D, Port Richmond. As stated in my letter yesterday, you are holding these pebbles beyond the time originally contemplated and we shall expect you to handle them more freely in the future. It is understood that the cargo, if required is to be landed on the second floor of Pier D, and stowed on the Pier according to marks. 20

WALTER T. MOORE." 30

To this letter Mr. Quigley replied as follows: (Page 22).

"We are in receipt of yours of the 27th inst., and note that you have arranged for the next steamer of Newfoundland Pebbles, which we expect to arrive early next month, at Philadelphia. In your letter you state that we are holding the goods beyond the time originally contemplated, 0

and that you will expect us to handle more freely in the future. To this we can only reply that we have never tried to create a false impression. At no time have we specified how quickly the goods would move. We have every hope that we will ship a large quantity of these pebbles as the present orders would indicate, but if the business does not turn out as we expect and orders do not come in rapidly, we, of course, cannot order
10 you to ship them. In arranging for this cargo that is to come forward, *it is to be understood that the goods are to be placed at Philadelphia, Pier D, Port Richmond, and to be kept in store until we order shipped—or the same as the preceding cargoes.* We enclose herewith Atlantic Pebble Co.'s delivery order against 6,608 bags of size No. 3, ex. the S. S. 'Flora.' Please ship this lot to the Canada Cement Co., plant 1, Kilbourn Siding, Pointe-aux-Trembles, Montreal,
20 care Canadian Northern Ry. We understand there are only 6,000 bags of size No. 3 on the dock, so you will therefore take 8 bags of No. 2, and mark them No. 3 to complete this lot. Also enclosed please find Atlantic Pebble Co.'s delivery order against 2,000 bags of No. 4, ex. the S. S. 'Flora.' Ship these to the Canada Cement Co., plant No. 2, Longue Pointe, Montreal, care C. P. R. and C. N. Ry. Enclosed you will please find Canadian Manifests necessary for
30 both shipments. We have an order for another shipment, but the order we are now sending you cleans up all of the size No. 3 and No. 4 on the dock. You will, therefore, have to wait the arrival of the S. S. 'Ella' which steamer is chartered to bring down the next cargo from Newfoundland. We would again remind you to please keep the destination of these pebbles from every one, excepting those directly interested. Trusting these shipments receive your prompt
40 attention, and that you send us Bs/L with rate,

weight and car number inserted thereon as quickly as possible. We are

THE JOHN W. HIGMAN CO.
Per JAS. A. QUIGLEY."

The orders contained in this letter complied with the request contained in Mr. Moore's letter of October 27th, 1911, that about 600 tons be ordered shipped from the pier. It will be noted that Mr. Quigley in his letter expressly states that "In arranging for this cargo that is to come forward it is to be understood that the goods are to be placed at Philadelphia, Pier D, Port Richmond, and to be kept in store until we order shipped—or the same as the preceding cargoes." 10

In this connection it will be observed that the first cargo remained in storage for a year or more before all of it had been ordered shipped.

Mr. Moore took no exception to the conditions in Mr. Quigley's letter of October 28th above quoted. On the contrary he replied on November 1, 1911, asking that he be advised of the exact date of the sailing of the steamer in order that arrangements might be made for discharging the cargo thereby assenting to the conditions imposed by Mr. Quigley's letter relative to the storage of the cargo. Mr. Moore's letter is as follows: 20

"I have received your 28th ult., and due attention will be given to the shipment as ordered of Flint Pebbles now in stock at Pier D, Port Richmond. We note that the S. S. 'Ella' with a full cargo, about 1,500 and 2,000 tons Flint Pebbles in bags is due to arrive at this port about 10th to 15th inst., and will thank you to advise exact date of sailing of the Steamer so that arrangements may be made in advance for the necessary facilities to discharge at Pier of the Philadelphia & Reading Railway. 30

WALTER T. MOORE."

(Page 23 and 24). 40

The steamer "Ella" arrived in December following and was unloaded on Pier D as had been the previous cargoes.

Within two or three weeks after this last cargo of pebbles was unloaded defendant began insisting that they be moved, claiming that the Philadelphia & Reading Railway Company needed the space on the pier.

When it is remembered that the principal item in 10 the cost of pebbles, which may be had for the picking, is in their transportation and movement, it is obvious that to move them the second time after storing them on the pier would deprive plaintiff of any profit derived from their sale. It is equally obvious that plaintiff could not order them shipped to customers until it had received orders for them. All through the correspondence it is apparent that it was the understanding that plaintiff was to order the pebbles shipped only so fast as it received orders 20 from its customers.

Defendant was reminded of its agreement to afford storage privileges and was told that if any expense was incurred it must be borne by defendant, and that plaintiff could not be responsible for any failure by defendant to make satisfactory arrangements with the Philadelphia & Reading Railway Co. (See letter of Atlantic Pebble Co. to Walter T. Moore dated January 30, 1912, page 53). Plaintiff agreed however to order them shipped as soon as orders were 30 received. Defendant's attention was also called to the fact that the cement plants were closed in winter and trade was dull. Notwithstanding these protests and explanations defendant removed or permitted the Philadelphia & Reading Railway Company to remove the pebbles to a warehouse where they became subject to excessive storage charges.

Before the pebbles were removed Mr. Quigley on December 27, 1911, wrote the defendant as follows: (Page 28).

40

"Lehigh Valley Railroad Co., Philadelphia, Pa.—We are in receipt of yours of the 26th inst., and can only repeat that at present we cannot order any pebbles out, as we, ourselves, have no orders on hand. The present time is the poorest season of the year. Two-thirds of the cement plants are closed down entirely and those that are operating will not buy, as they take inventory the first week in January and do not want to have too much stock on hand. We can assure you that we are trying very hard to secure some orders for shipment, and if we receive same you will be advised. We do not know what kind of an arrangement you made with the P. & R. for storing these Newfoundland Pebbles, but you were fully advised of the circumstances. When you wrote us under date of October 27th that we would be expected to handle shipments more freely than previous cargoes, we advised you under date of October 28th, that we could not make any promises, and if orders did not come in for these goods, we could not order them shipped. However, if the P. & R. will be a little patient we think ere long they will be staisfied that the goods are moving freely enough. This, however, must not be taken as a promise. In regard to straightening out the pebbles, now on dock, we received a letter from the Atlantic Pebble Co., this morning advising us of having received a copy of a letter from you regarding the condition of the pebbles and that they had attended to the matter in the meantime.

THE JOHN W. HIGMAN COMPANY.
Per JAMES A. QUIGLEY."

Again on December 29th, 1911, Mr. Quigley wrote as follows: (Page 29).

"Lehigh Valley Railroad Co., Philadelphia, Pa.—Yours of the 27th inst. containing as en-

closure copy of letter received from the P. & R. to hand, contents noted. We have nothing to add to our letter of the 27th inst., any more than to say that we have offered Newfoundland Pebbles to several of the large users, making them strong inducements to take pebbles in within the next ten days. Should we receive any orders, we will send them on to you.

THE JOHN W. HIGMAN COMPANY.

10 Per JAMES A. QUIGLEY."

While the first lot of pebbles were being moved Mr. Quigley again protested and called defendant's attention to its agreement and referred to the previous correspondence. This letter dated February 5, 1912, was as follows: (Page 33).

"Lehigh Valley Railroad Co., Philadelphia, Pa.—We received a copy of your letter to the Atlantic Pebble Co., and note that copies were also sent to Mr. R. L. Russell and Mr. O. H. Hagerman of the Philadelphia & Reading Ry. In your letter you state: 'There is no written agreement with the Philadelphia & Reading Ry., but the trend of conversation with yourself and Mr. Quigley of the John W. Higman Co., was that the property would be moved by you with reasonable promptness.' We must say that every time your Mr. Emlin discussed the question of arranging cargoes he was fully advised that there was no time limit for the storing of Newfoundland Pebbles. In fact, this is the reason why it was so hard for him to arrange the last cargo. We told him we could not make any different arrangements, or make any more promises than we did on the two preceding cargoes. When Mr. Moore first approached us on this subject, we fully explained that the Newfoundland Pebble, being a new one on the market, we could not say just what it was going to do, but that we

thought it was a very good pebble. If you will refer to your letter of September 29th, 1910, you will note there was nothing said about time limit, but that the P. & R. Ry. were to provide a suitable berth to discharge the pebbles on a covered pier to be kept for free storage, pending shipment to the Interior. Again on September 13th, 1911, when you arranged for the second cargo, you wrote us a similar letter, and under date of October 27th, 1911, you stated that the 10 goods were being held beyond the time originally contemplated and that the goods would be expected to move more freely in the future, to which we replied under date of October 28th, that we never tried to create a false impression and that we could only repeat what we previously said, that we could not send you orders to ship the goods, if we, ourselves, did not have them. It was up to you at that time to state whether the goods could be kept on the pier or 20 not. We think if you sent copies of the correspondence to the P. & R. under which the arrangements were made with you for the storing of Newfoundland Pebbles, there could be no misunderstanding. Your Mr. Moore and Mr. Emlin know full well that Newfoundland Pebbles are the property of the Atlantic Pebble Co., and anything the writer did for the storing of these goods was for the benefit of the Atlantic Pebble Co., and had Mr. Wirts's approval. Surely you 30 must have had some correspondence with the P. & R. before trying to arrange to hold goods on their dock, and it would please us very much to know what kind of an arrangement you made with the P. & R.

THE JOHN W. HIGMAN COMPANY.
Per JAMES A. QUIGLEY."

Notwithstanding these protests in the latter part of January, 1,000 tons of the pebbles were moved and 40

placed in a warehouse (p. 53) and early in February an additional 500 tons were likewise moved and placed in storage (page 55). Subsequently the remainder of them was moved. (Page 61).

In April following, with the opening of the cement plants, the plaintiff began receiving orders which orders in accordance with its agreement were transmitted to defendant, and defendant arranged to get the pebbles out of the warehouse, requiring plain-
10 tiff, however, first to pay the storage charges.

This plaintiff did under protest as is shown by the following letter written by the Atlantic Pebble Co. to Walter T. Moore, dated April 8, 1912: (Page 57).

> "April 8th, 1912, Mr. Walter T. Moore, Philadelphia, Pa.—We understand from Mr. Quigley, of the John W. Higman Co., that they are about to order some pebbles to be shipped out of store, and they also advise us that a check will have
> 20 to be sent for storage charges for the material as it is removed. We have agreed with Mr. Quigley to pay these charges under protest, and will reserve our claim until all the material has been removed from store and will then take legal action to have the matter straightened out. We wish that our position shall be clearly understood in the matter, and that any payments we make without any further formal notice are made on this basis until the entire amount of ma-
> 30 terial has been removed from store.
>
> The Atlantic Pebble Co.
>
> M. F. Wirtz, Treas."

During the year from the time the pebbles were placed in storage plaintiff gave to defendant shipping orders for approximately 1,500 tons and paid storage charges thereon amounting to $2,739.70. (Page 60, line 39).

40 The items going to make up this amount are em-

bodied in the bill of particulars attached to the complaint and are as follows:

Date		
April 10, 1912	$112	50
May 10	52	
May 17	93	20
May 22	66	
June 4	38	50
June 26	226	
July 13	47	
July 17	94	
Aug. 2	188	
Aug. 15	336	
Aug. 16	221	75
Aug. 21	40	
Sept. 3	109	96
Sept. 18	29	50
Oct. 11	72	20
Oct. 23	80	60
Nov. 12	161	20
Dec. 3	97	40
Dec. 12	42	49
Dec. 16	97	40
1913.		
Jan. 22	89	
Jan. 30	445	
	$2,739	70

It will be recalled by referring to the letter of the John W. Higman Co. to the Lehigh Valley R. R. Co., under date of October 28, 1911, (page 22) that the last cargo brought down by the steamship Ella, was accepted by defendant with the express understanding that the goods were to be placed on the pier and kept in store the same as the preceding cargoes. The language of the letter on that point is as follows:

"In arranging for the cargo that is to come forward it is to be understood that the goods

are to be placed at Philadelphia, Pier D, Port Richmond, and to be kept in store until we order shipped—or the same as the preceding cargoes."

The first cargo remained in storage for about a year before it was all ordered shipped; for the steamer Molina which brought the first cargo arrived early in December, 1910, (page 18) and 487 tons of its cargo was still on the pier on October 26, 10 1911. (See letter of Walter T. Moore, page 20).

Under the defense set up in defendant's answer to wit, that the agreement was for the storage of pebbles for only a reasonable time, the jury should have been permitted to say whether plaintiff might not have been reasonably entitled to the storage of the last cargo for a period of at least one year the same as the previous cargo, and the jury should have been permitted to say also whether defendant was liable for all the storage charges or was liable only for the 20 storage charges paid during the year which elapsed after the pebbles had been first placed in the warehouse.

The last cargo brought by the steamship Ella was unloaded early in December, 1911, (page 26, line 10), and on December 23rd the first request for its removal was made, and on January 30th, 1912, about six weeks after the unloading of the last cargo word was received that the pebbles were being placed in a store house. (Page 32). This, too, after plaintiff 30 had given large orders to defendant for shipments of 600 tons to make room for this new cargo. (Pages 22 and 23).

Plaintiff insists that the Court erred in directing a non-suit for the following reasons:

POINT I.

A contract supported by a valuable consideration was proven.

40 Defendant agreed to store the pebbles for plain-

tiff. Plaintiff agreed to give defendant the business of transporting them. The defendant became the bailee of the pebbles and as compensation was to receive and did actually receive the freight charges for the subsequent transportation of them. It was a bailment for hire.

The learned author of the article on "Bailments" in the new Encyclopedia, 3 Ruling Case Law, Par. 22, in discussing the subject of gratuitous and lucrative bailments says: 10

The general rule, of course, is clear that a person becomes a bailee for hire when he takes property in his care for a compensation. * * * In determining whether a bailment is gratuitous or lucrative,—a bailment without compensation or benefit to the bailee, or from which he is to derive benefit or profit, —the inquiry is not directed to the character or certainty of the benefit or profit, but to whether the bailment was accepted for the purpose of deriving the one or the other. And as a general proposition 20 it may be stated that if the bailment was made at the instance or on the invitation of the bailee because of benefits, direct or contingent, expected to accrue, or on a contract, express or implied, having a legal consideration, it is not gratuitous.

3 R. C. L., Par. 22.

All bailments, whether with or without compensation to the bailee, are contracts founded on a sufficient consideration. To constitute a sufficient con- 30 sideration, it is not necessary that the bailee should derive some benefit from the bailment, it being sufficient, if the bailor on the faith of the bailee's undertaking parts with some present right, delays the present use of some right, suffers some immediate prejudice or deteriment, or does some act at the bailee's request.

5 Cyc., p. 168.
Story on Bailments, Sec. 171a.
McCauley vs. Davidson, 10 Minn. 418. 40

A right of action accrues to the bailor where the subject matter of the bailment has been used differently from what was intended or the bailee fails to deliver over or deliver in accordance with his contract; where the bailee has been guilty of such a want of care with respect to the subject-matter of the bailment that the bailor is damaged thereby; *where the bailee has departed from the terms of the bailment or the instructions of the bailor;* or where ser-
10 vices to be performed by the bailee have not been sufficiently performed.

5 Cyc., page 212.

A bailee of any kind cannot as a general rule part with the possession of property without the consent of the bailor.

Colyar, Trustee, vs. Taylor, 1 Coldw. (Tenn.) 372.

20 In case of bailment where the contract is indefinite as to the time of its continuance the bailee has not the arbitrary and exclusive right to determine at what time a bailment shall terminate.

Cobb v. Wallace, 5 Coldw. (Tenn.) 539, 98 Am. Dec. 435.

On October 27, 1911, Mr. Moore wrote The John W. Higman Co. as follows:

30 "Confirming telephone conversation today we have arranged to accommodate another cargo of Flint Pebbles, say 1,500 to 2,000 tons per steamer due to arrive from New Foundland about November 15th, provided you mail tomorrow orders for shipping about 600 tons of the stock now remaining on Pier D, Port Richmond."

Orders were accordingly sent by the John W. Higman Co. for the required number of tons, and plain-
40 tiff's agent, upon the assurance that defendant would

"Accommodate another cargo," arranged for another ship to come forward, stipulating as follows: In arranging for this cargo that is to come forward it is to be understood that the goods are to be placed at Philadelphia, Pier D, Port Richmond, and to be kept in store until we order shipped—or the same as the preceding cargoes."

See letter of the John W. Higman Co., page 22.

10

There was clearly an acceptance of the pebbles by the bailee for the same time as the preceding cargoes, and when defendant removed them, or permitted them to be removed within six weeks, it was a clear violation of the terms of the bailment, and defendant is answerable for the resulting damage to plaintiff.

It was urged on the motion for non-suit and will doubtless be urged again that the facts tending to prove consideration were uncertain and lacked definiteness because there was no certainty as to whether or not plaintiff would receive and transmit orders for the sale of the pebbles. 20

The answer to this argument is that plaintiff did receive such orders and did transmit them to defendant. Defendant received the consideration and was benefited by getting the transportation business. Having reaped the benefit and the contract having been executed, it cannot now be declared void, and the defendant held absolved from liability for its defaults. Nor was it, we submit, void in the first instance. Contracts of a similar nature have frequently been upheld. 30

In National Furniture Co. vs. Keystone Mfg. Co., 110, Ill. 427, the plaintiff agreed to sell to the defendant all the iron needed in its business during the three ensuing years at $22.35 per ton. The defendant agreed to take its year's supply at that price. The court says: "We do not regard the contract void on the ground stated. It is true that appellee 0

was only bound by the contract to accept of appellant the amount of iron it needed for use in its business; but a reasonable construction must be placed upon this part of the contract, in view of the situation of the parties. Appellee was engaged in a large manufacturing business, necessarily using a large quantity of iron in the transaction of its business. It is not to be presumed that appellee would close its business, and need no iron; but, on the contrary, the
10 reasonable presumption would be that the business would be continued, and appellee would necessarily need the quantity of iron which it had been in the habit of using in previous years. It cannot be said that appellee was not bound by the contract. It had no right to purchase iron elsewhere for use in its business. If it had done so, appellant might have maintained an action for a breach of the contract. It was bound by the contract to take of appellant, at the price named, its entire supply of iron for the year;
20 that is, such a quantity of iron, in view of the situation and business of appellee, as was reasonably required and necessary in its manufacturing business."

A contract by one who has a quantity of straw on hand, to sell all he has to spare, not exceeding three tons, is not void for uncertainty, in not expressing the quantity of straw contracted to be sold; the quantity agreed to be sold can be ascertained by
30 extrinsic evidence.

Parker vs. Pettit, 14 Vr., p. 512.

A decision to accept an offer in answer to an advertisement for proposals to supply a railroad company with certain goods at a specifid rate in such quantities *"as the company's store-keeper may order from time to time,"* is, when accepted, binding on the seller although the other party is not bound to order any quantity.

Great Northern R. Co. v. Witham, Law Re-
40 ports, 9 C. P. 16.

A contract to furnish a hotel proprietor with all the ice he may require for the use of the hotel at a certain price, and that payments in excess of that shall be refunded, is sufficiently definite to bind him to take all that will necessarily be required for such use, and therefore he may recover payments for ice in excess of the contract price.

Smith v. Morse, 20 La. Ann. 220.

See also Wells vs. Alexandre, (N. Y.) 15 L. R. A. 218. **10**

130 N.Y. 642.

A contract for its "requirements" of coal for a certain season, made by a lumber company, is not void for uncertainty and for want of mutuality, when it is evidently meant to call for the amount of coal which the corporation should need in its business for such season, and not merely what it might choose to require of the other party.

Minnesota Lumber Co. v. Whitebreast Coal Co., 160 Ill. 85, 31 L. R. A., p. 529. **20**

An accepted offer to furnish or deliver such articles of general property as shall be needed, required or consumed by the established business of the acceptor during a limited time is binding, and may be enforced, because it contains the implied agreement of the acceptor to purchase all the articles required by his business during this time, from the party who makes the offer.

Cold Blast Transportation Company v. Kansas City Bolt & Nut Co., 57 L. R. A., p. 696. **30**

In the case of Erie Forge Co. vs. Penna. Iron Works, 22 Pa. Superior Court, p. 555, it was held that resumption of business relations between two parties was a sufficient consideration to support a contract to mark off a disputed account.

See also East v. Cayuga Lake Ice Line, 50 N. Y. S. R. 365, 21 N. Y. Supp. 887, holding accepted offer to furnish all ice needed in party's business, not **40**

to exceed a certain amount for one year at price specified, valid contract.

Warden Coal Washing Co. v. Meyer, 98 Ill. App. 640, holding that acceptance of offer to supply coal at specified price with understanding of having acceptor's trade until specified date, obligates offerer to furnish amount required by acceptor's trade.

Manhattan Oil Co. v. Richardson Lubricating Co., 113 Fed. 923, holding valid agreement between parties to respectively sell and buy all specified oil required for purchaser's use for twelve months from date.

Burgess Sulphite Fibre Co. v. Broomfield, 180 Mass. 287, 62 N. E. 367 holding acceptance of offer to pay specified price for all iron in mill or on premises which acceptor desires to sell, valid.

Excelsior Wrapper Co. v. Messinger, 116 Wis. 549, 93 N. W. 459, upholding contract to furnish all roll-rag paper needed by party during year.

Hickey v. O'Brien, 123 Mich. 615, 49 L. R. A. 596, 81 Am. St. Rep. 227, 82 N. W. 241, which sustains contract by sellers of ice to purchase all ice necessary to carry on business for five years.

Boden v. Maher, 105 Wis. 543, 81 N. W. 661, holding that meaning of stipulation to perform all work desired to have done before given time may be shown by parol.

Hayes vs. O'Brien (Ill.) 23 L. R. A. 555, holding that an agreement in a lease that the lessee shall have the privilege of purchasing the premises upon such terms and at the same price per acre as any other person is not ~~incompetent~~ incomplete or indefinite.

The first cargo was held by the defendant on the pier for about a year, the second cargo was accepted by it upon the same condition and the last cargo upon the same condition as the previous cargoes.

Assuming that the contract was indefinite as to the time for which the cargoes were to be held, the defendant nevertheless as bailee under its agreement

was obligated to hold them for a reasonable time, and what would have been a reasonable time under the circumstances was a question for the determination of the jury and the non-suit should not have been granted.

At the time defendant accepted the last cargo, it knew with reasonable certainty, because of its experience with the first cargo, that it would take a year for plaintiff to sell the cargo; and it must then have anticipated holding this cargo for a considerable time; for, before arranging for its storage, plaintiff was requested to place orders for the removal of 600 tons of the stock then remaining on the pier. Plaintiff in response to this request did order moved approximately 600 tons and thereby exhausted all its orders. In spite of this defendant in about six weeks permitted a large quantity of the pebbles to be placed in the store house and required plaintiff to pay the storage charges as the stock was needed for its customers.

Plaintiff was bound by its engagements why was not defendant also bound? Under its agreement plaintiff could not have given any other railroad this business. Had plaintiff failed to keep its agreement to give defendant the transportation business it would have been answerable to defendant in damages and defendant might have recovered from plaintiff what the storage privileges were reasonably worth together with such loss of profits on the transportation business as were susceptible of proof.

Defendant was given orders for the movement of the 600 tons which it required as a condition precedent to the storage of the last cargo, and having gotten that business for which it contracted was bound to a performance of the contract for the storage.

POINT II.

Defendant received all the benefits for which it contracted and cannot now plead any invalidity in the contract.

Plaintiff performed its agreement in every respect.

All orders for the shipment of the pebbles were placed with defendant and defendant's agents undoubtedly arranged the shipments by such routes as were most advantageous to defendant.

It agreed when the last cargo was under consideration that if plaintiff would at once place with it orders for the shipment of 600 tons, (almost half a cargo) that it would accept the last cargo. Plaintiff
10 accepted the condition thus imposed, gave the required orders for the 600 tons and stipulated that the last cargo should be stored for the same period as the preceding cargoes.

Even after the last cargo had been placed in storage and it became necessary to order them out of the storehouse, the orders were given to defendant, thus showing a complete and strict performance by plaintiff of its agreement. The bailment was never terminated by plaintiff.

20 The extent to which defendant profited may be gathered from an examination of the abstracts of the routing orders which were admitted in evidence as Exhibit P 23, and which abstracts are printed in the case after the testimony. An examination of these orders will disclose that about 3,180 tons were shipped by routes which gave defendant a part of the haul. That this heavy freight traffic was very profitable to defendant may fairly be assumed else the business would not have been solicited. Counsel of
30 defendant at the trial admitted that Mr. Moore and Mr. Emlin representing the defendant did solicit the business in the first instance.

Where one acting on the faith of a promise performs the condition upon which the promise was made, the promise attaches to the consideration so performed and renders the promisor liable; for after he has had the benefit of the consideration for which he bargained, it is no defense to say that the
40

promisee was not bound by the contract to do the act.

Beach on Modern Law of Contracts, Vol. 1, Par. 5.

White vs. Baxter 71. N.Y. 254.

Again where one promises to pay another a certain sum of money for doing a particular thing which is to be done before the money is paid and the promisee does the thing upon the faith of the promise, the promise which was before a mere revocable offer 10 thereby becomes a complete contract upon a consideration moving from the promisee to the promisor.

Ibid.

Where the defendant has actually received the consideration of an agreement for a voluntary performance of an act by the other party upon his proposition or suggestion, such performance constitutes a consideration which will uphold defendant's promise. 20

Marie et al, vs. Garrison, 83 N. Y. 14, at page 26.

It is not essential to the existence of a consideration for a promise that mutuality of obligation should exist between the parties at the time of the making of the promise.

Ibid, page 15.

Where a proposition is made by one party accom- 30 panied by a promise, a voluntary performance by another to whom the proposition was made of the requirements in consideration of the promise, constitutes a consideration which will uphold the promise and make it binding.

Ibid.

A promissory note given in consideration of future services to be rendered by the payee, upon the rendition of the services in reliance thereon, becomes 40

valid and binding, although there was no agreement at the time of the giving of the note upon the part of the payee to render them, and although the amount of the note be much greater than their value.

Miller vs. McKenzie, et al, 95 N. Y. 575.

It has been declared that a contract for gratuitous service is not invalid for want of consideration, if the person promising to render such service re-
10 ceives all the material benefits which were anticipated when the promise was made, as where his property or business is incidentally benefited, or the performance of the act affords him pleasure gratifies his ambition, pleases his fancy, or is an expression of his appreciation of the service another has done him.

6 R. C. L., page 655.

Accordingly, where one makes a promise condi-
20 tioned upon the doing of an act by another, and the latter does the act, the contract is not void for want of mutuality, and the promisor is liable though the promisee did not at the time of the promise engage to do the act; for upon the performance of the condition by the promisee, the contract becomes clothed with a valid consideration which relates back and renders the promise obligatory.

6 R. C. L., page 687.

30 If a contract, although not originally binding for want of mutuality, is nevertheless executed by the party not originally bound, so that the party asserting the invalidity of the contract has actually received the benefit contracted for, the latter will be estopped from refusing performance on his part on the ground that the contract was not originally binding on the other, who has performed.

6 R. C. L., page 690.

See also 6 Amer. & Eng. Ency. of Law, page
40 689.

In the case of Fontaine vs. Baxley, 90 Ga. 416, it was held that a contract was not lacking in mutuality which stipulated that one party should go to a distant city and openly conduct its business for the sale of a commodity which the other party agreed to sell and deliver to him at a specified price, in such monthly quantities as he should sell, where there had been a part performance by such party going to the city and opening business, pursuant to the contract.

Fontaine v. Baxley, 17 S. E. 1015.

A consideration is a benefit to the promisor or a detriment to the promisee or both.

Drake vs. Lanning, 49 N. J. Eq. 452.
Conover vs. Stillwell, 34 N. J. L. 54.
Tulane vs. Clifton, 47 N. J. Eq. 351.
Day vs. Gardner, 42 N. J. Eq. 199.
Traphagen vs. Voorhees, 17 Stew., p. 21.

In the case of The Great Northern Railway Co. vs. Witham, Law Reports, 9 C. P. 16, Brett, J., said: (P. 19). "The objection made to the plaintiff's right to recover is that the contract is unilateral. Many contracts are obnoxious to the same complaint. If I say to another, 'If you will go to York I will give you 100 l.,' that is in a certain sense a unilateral contract. He has not promised to go to York. But, if he goes it cannot be doubted that he will be entitled to receive the 100 l. His going to York at my request is a sufficient consideration for my promise. So, if one says to another, 'If you will give me an order for iron or other goods I will supply it at a given price;' if the order is given there is a complete contract which the seller is bound to perform. There is in such case ample consideration for the promise."

So in the case now under examination, when the defendant said to plaintiff, in effect, if you will give me orders to ship 600 tons of pebbles, and orders for the shipment of the others as you receive them, I will store the new cargo for the same length of

time as the preceding cargoes; then upon giving such orders, there was an ample consideration for the contract.

See Empire Rubber Co. vs Morris 73 NJL 602

It was also urged in the court below that the defendant in making the contract was acting as agent for the Philadelphia & Reading Railway Company, and that the agreement on the part of the defendant was only to procure for the plaintiff a mere revocable license. If there were any ground for that contention it was a matter of defense and was not a ground to support a motion for a non-suit. The burden rested upon defendant to present proofs of any facts tending to show such agency or such an agreement. There is nothing in the evidence offered by plaintiff to support such a theory. Under the evidence offered, plaintiff had a right to expect and believe, and did expect and believe, that defendant before making the contract with it, had protected itself by a contract with the Philadelphia & Reading Railway Company for the use of its pier, and there is absolutely nothing in the testimony or in the correspondence offered on behalf of plaintiff which shows that the storage privilege granted was revocable at the will and pleasure of the defendant or the will and pleasure of the Philadelphia & Reading Railway Company.

The judgment of non-suit should be reversed and a venire de novo awarded.

John F. Reger,
Attorney for Plaintiff-Appellant.

New Jersey Supreme Court

10

ATLANTIC PEBBLE COMPANY, LIMITED, *vs.* LEHIGH VALLEY RAILROAD COMPANY.	Judgment Record. Judgment of Non-Suit.

Collins & Corbin,
Attorneys. 20

Lehigh Valley Railroad Company, a corporation, the defendant in this cause was summoned to answer unto The Atlantic Pebble Company, Limited, the plaintiff therein, in an action at law upon the following complaint:

Plaintiff, a corporation organized and existing under the laws of New Foundland and duly authorized to transact business in the State of New Jersey 30 and having its principal place of business at Lincoln in the County of Middlesex, and State of New Jersey, says that:

1. On or about the 29th day of September, 1910, plaintiff and defendant entered into an agreement whereby it was agreed that the plaintiff should ship and transport from New Foundland and bring into the United States at Philadelphia in the State of Pennsylvania, one or more shiploads of small stones, commonly called pebbles to be offered for sale to cus- 40

New Jersey State Library

tomers of plaintiff in the United States for grinding purposes and that upon the arrival of the said pebbles in Philadelphia and until such time as the plaintiff should receive orders from its customers for the sale thereof, the defendant agreed to provide plaintiff with pier facilities at Philadelphia for the storage of said pebbles, free of charge, in consideration

10 that plaintiff, upon receiving orders for the sale thereof from its customers in the United States would ship and transport the said pebbles from Philadelphia over the line of defendant's railroad; the defendant being then and there a common carrier by railroad, engaged in interstate commerce.

2. In pursuance of the said agreement between the said 29th day of September, 1910, and the 1st day of December, 1911, plaintiff shipped and transported from New Foundland to Philadelphia in the State

20 of Pennsylvania three ship loads of pebbles containing in the aggregate about five thousand tons of pebbles and delivered the same to defendant at Pier D, Port Richmond, Philadelphia, and defendant then and there accepted the same under the terms of said agreement and placed the same in storage on the said Pier D, at Port Richmond, Philadelphia.

3. On or about the 1st day of February, 1912, defendant, in violation of said agreement, without the consent of plaintiff and before plaintiff had received

30 orders from its customers for the sale of said pebbles, removed the said pebbles from the said Pier D, Port Richmond, Philadelphia, and placed the same in storage in the warehouse of the Pennsylvania Warehousing and Safe Deposit Company where they became subject to storage charges.

4. Subsequently, between the said 1st day of February, 1912, and the 10th day of February, 1914, plaintiff received orders from its customers for the sale of quantities of said pebbles from time to time

40 and in order to obtain possession thereof and to

make delivery thereof to its customers plaintiff was obliged to pay and did pay to the said Pennsylvania Warehousing and Safe Deposit Company the storage charges thereon, amounting in the aggregate to the sum of $5,657.12.

5. An itemized statement of the moneys paid by plaintiff to the said Pennsylvania Warehousing and Safe Deposit Company for said storage charges is 10 hereto annexed.

6. Plaintiff has demanded of defendant the said sum of $5,657.12 paid by it for such storage charges, but defendant has neglected and refused to pay the same. Plaintiff demands as damages the said sum of $5,657.12 with interest thereon from February 10th, 1914, besides costs.

JOHN F. REGER,
Attorney of Plaintiff.

20

The defendant answered as follows:

Defendant, a corporation organized and existing under the laws of the State of Pennsylvania, having its principal office in the City of Philadelphia, State of Pennsylvania, says that:

FIRST DEFENCE.

1. As to paragraph 1 of the complaint, it denies any such agreement as is therein alleged, the ar- 30 rangement for pier facilities being merely a gratuitous accommodation procured by the defendant for plaintiff to last only for a reasonable time.

2. As to paragraph 2 of the complaint, it denies that it accepted any pebbles under such agreement as is alleged in paragraph 1, or placed the same in storage as stated in said paragraph 2. It admits that the pebbles mentioned in paragraph 2 were placed in storage on Pier D at Port Richmond, Philadelphia; but says that the same were so placed by 40

or for the plaintiff, and that the pier belonged to the Philadelphia & Reading Railway Company, and that the plaintiff knew that the pier belonged to said last named company and that the pebbles could be gratuitously stored there for only a reasonable time.

3. As to paragraph 3 of the complaint, it denies that it removed the pebbles from Pier D, Port Richmond, Philadelphia, or placed the same in storage in the warehouse of the Pennsylvania Warehousing & Safe Deposit Company, the fact being that the same were removed and placed in storage by the Philadelphia & Reading Railway Company and became subject to storage charges after due notice to the plaintiff, more than a reasonable time for shipment having elapsed. It has no knowledge or information sufficient to form a belief as to whether such removal and placing in storage was before plaintiff had received orders from its customers for the sale of said pebbles.

4. As to paragraph 4 of the complaint, it admits that the plaintiff was obliged to pay and did pay to the Pennsylvania Warehousing & Safe Deposit Company storage charges on such pebbles, but it does not know to what amount nor when payment was made.

5. As to paragraph 5 of the complaint, it has no knowledge or information thereof sufficient to form a belief.

6. It admits paragraph 6 of the complaint.

SECOND DEFENCE.

The agreement in paragraph 1 of the complaint was without consideration, and therefore void.

Collins & Corbin,
Attorneys of Defendant.

The plaintiff replied as follows:

1. Plaintiff denies that its agreement with defend-

ant for pier facilities for storage purposes as set out in its complaint was merely a gratuitous accommodation procured by defendant for plaintiff to last only for a reasonable time.

2. Plaintiff admits that it had knowledge that Pier D, Port Richmond, on which the pebbles mentioned in said complaint were stored, belonged to the Philadelphia & Reading Railway Company, but 10 says that at the time the agreement set out in said complaint was made defendant represented to plaintiff that an agreement had been made by the said defendant with the said Philadelphia & Reading Railway Company under which the said pebbles could remain stored on said Pier until such time as plaintiff should receive orders from its customers for the sale thereof, and it was by reason of the representations made by defendant as aforesaid in reference to said pier facilities that plaintiff entered 20 into its said agreement with defendant. It denies that it knew that the said pebbles placed in storage on said pier under and by virtue of its agreement with defendant could be stored there for only a reasonable time, but alleges the fact to be that by the terms of its agreement with defendant, the said pebbles were to remain stored on said pier until plaintiff should receive orders from its customers for the sale thereof.

3. Plaintiff denies that the agreement alleged in 30 paragraph I of its complaint was without consideration and therefore void.

4. Plaintiff denies each and every of the other allegations of defendant's answer

John F. Reger,
Attorney for plaintiff.

The defendant rejoined as follows:

First rejoinder to second reply.

Defendant denies that at the time the agreement 40

set out in the complaint was made, the defendant represented to the plaintiff that an agreement had been made by the defendant with Philadelphia & Reading Railway Company under which the said pebbles could remain stored on said pier until such time as plaintiff should receive orders from its customers for the sale thereof.

10 Third rejoinder to second reply.

Defendant denies that plaintiff entered into its said agreement with the defendant by reason of alleged representations made by defendant in reference to said pier facilities.

Third repoinder to second reply.

Defendant denies that by the terms of the agreement between the plaintiff and the defendant the sai pebbles were to remain stored on said pier until plaintiff should receive orders from its customers

20 for the sale thereof.

Collins & Corbin,
Attorneys of Defendant.

This case was tried before Honorable Luther A. Campbell, Judge of the Somerset County Circuit Court, to whom the same was duly referred by Honorable Charles W. Parker, Justice of the Supreme Court, holding the Somerset Circuit with a jury, at the Somerset Circuit on April 27th and 28th, 1915.

30 Evidence for the plaintiff was submitted and a motion for non-suit was made on behalf of the defendant and the Court, being of the opinion that there was not sufficient evidence to entitle said plaintiff to recover, granted said motion and ordered judgment of non-suit to be entered against the said plaintiff, The Atlantic Pebble Company, Limited, and in favor of the said defendant, Lehigh Valley Railroad Company.

Dated May 1, 1915.

40

Costs $67.34. Whereupon it is adjudged that the complaint of the plaintiff be dismissed, and that the defendant recover of the plaintiff its costs, which are taxed at Sixty Seven Dollars and Thirty-four Cents.

Judgment entered May 7, 1915

WM. S. GUMMERE, C J. 10

I, WILLIAM C. GEBHART, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the judgment entered in the above stated cause as the same remains of record in my office.

[L. S.] In testimony whereof I have set my hand and the seal of said Court at Trenton, this twenty-second day of May, A. D. nineteen hundred and fifteen. 20

WM. C. GEBHARDT,
Clerk.

30

40

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE ATLANTIC PEBBLE COMPANY, LIMITED, *Plaintiff.* *vs.* LEHIGH VALLEY RAILOAD COMPANY, *Defendants.*	Action at Law. Notice of Appeal.

10

TO MESSRS. COLLINS & CORBIN,
Attorneys of Defendant:—

20 TAKE NOTICE that the plaintiff appeals to the Court of Errors and Appeals from the whole of the judgment entered in this cause on the following grounds:—

1. The testimony offered on the part of the plaintiff established a legal contract between plaintiff and defendant and the Court erred in holding that no contract had been proven.

2. The court erred in holding that there was no consideration for the contract between plaintiff and 30 defendant.

3. The Court erred in not submitting to the jury the question of the terms and conditions of the said contract and the amount of plaintiff's damage.

4. The jury should have been permitted to determine for what length of time the cargoes of pebbles in question were to remain stored by defendant under the agreement proven between plaintiff and defendant.

5. The testimony offered by plaintiff established a 40 bailment of the pebbles in question and the jury

should have been permitted to determine whether or not defendant had wrongfully removed the said pebbles from their place of storage in violation of its agreement with plaintiff.

John F. Reger,
Attorney of Appellant.

10

20

30

40

SOMERSET COUNTY CIRCUIT COURT.

THE ATLANTIC PEBBLE CO., LIMITED, *Plaintiff.* vs. THE LEHIGH VALLEY RAILROAD COMPANY, *Defendant.*	

10

Transcript of shorthand notes of testimony taken at the trial of the above entitled cause, at the Court House in Somerville, N. J., on April 27 and 28, 1915.

20 Before HON. LUTHER A. CAMPBELL, Judge, and a jury.

For the plaintiff, John F. Reger.

For the defendant, Collins & Corbin; Charles B. Bradley.

Mr. Reger: I desire to amend the bill of items attached to the complaint, by striking out one of the items, under date of May 24, the fifth item in the bill, of $140. That item was erroneously inserted in the 30 bill and I ask that it be stricken out.

The Court: That reduces the claim by that amount?

Mr. Reger: That reduces the claim by that amount.

JAMES A. QUIGLEY, sworn for the plaintiff, 40 testifies as follows:

Direct Examination by Mr. Reger:

Q. Mr. Quigley, where do you reside? A. 833 Eastern Parkway, Brooklyn.

Q. What is your business? A. The importation of flint pebbles, chinaware and chalk.

Q. Where is your place of business? A. At the present time, 29 Broadway. 10

Q. Under what name do you transact business? A. The John W. Higman Company, Incorporated.

Q. What connection had the John W. Higman Company, Incorporated, with the Atlantic Pebble Company—in 1910, 1911, 1912, were they connected? A. Acted as their selling agents for pebbles imported from Newfoundland.

Q. What was the business of the Atlantic Pebble Company at that time? A. They were organized, I believe, to gather these pebbles in Newfoundland, 20 with the privilege of selling the pebbles if they so desired.

Q. Did you arrange for any shipment of pebbles from Newfoundland to the United States in 1910? A. I did.

Q. Previous to the shipments, which are referred to in the Bill of Complaint in this case, had any shipments been made? A. Yes, one carload.

Q. Where had that been landed? A. At Philadelphia. I believe it was Pier D of the Reading, Baltimore & Ohio. 30

Q. Over what road had the pebbles been shipped? A. The Baltimore & Ohio, whenever they could handle them.

Q. What led up to the negotiation with the Lehigh Valley Railroad Co., which formed the basis of this suit?

Mr. Bradley: I object to that your Honor. There is no foundation for that question. We don't know with whom Mr. Quigley has held these negotiations. 40

The Court: The objection seems to be well taken, until you have laid a proper foundation for it. It may be that this witness had nothing to do with the negotiation, or authorized the negotiation.

Q. Did you have any negotiations with representatives of the Lehigh Valley Railroad Co. in 1910, relative to the shipment of pebbles from Newfoundland to the United States? A. Yes.

10

Q. When were those negotiations held? A. As near as I can remember, in the early part of 1910.

Q. With whom were the negotiations conducted? A. The first time we talked about this business, I think it was with Mr. Moore, although on that point, I could not be certain.

Q. Who is Mr. Moore? A. He is connected with the Lehigh Valley Railroad Company at Philadelphia.

20

Q. What is his full name? A. Walter T. Moore, I believe.

Q. Is he present in Court? A. He is.

Q. This gentleman sitting near Mr. Bradley? A. Yes.

Q. Did anybody else conduct any of these negotiations on behalf of the Lehigh Valley Railroad Company? A. Mr. Emlin, I believe.

Q. What is his full name, do you know? A. Samuel Emlin.

30

Q. Is he in Court? A. He is.

Q. Did you meet this gentleman? A. Yes.

Q. When and where? A. At my office in New York and at various times, at their office in Philadelphia.

Q. For what purpose? A. Well, principally on the handling of pebbles.

Q. Was there a discussion at these meetings relative to the shipment of pebbles from Newfoundland

40

to the United States and their shipment to points in the United States? A. Yes.

Q. What was the result of these negotiations? A. We brought a carload of flint pebbles in 1910, to the Philadelphia & Lehigh Valley Road and stored the pebbles at the P. & R. pier at Port Richmond.

Q. When was that arrangement made? A. During 1910; I could not just say without referring to my correspondence. 10

Q. Was this arrangement made by correspondence? A. Correspondence and telephone conversations and verbal conversations both at my office and at their office.

Q. What was the agreement that you finally reached with the representatives of the Lehigh Valley Railroad Co.? A. They were to store the Atlantic pebbles at Philadelphia, furnish a covered pier, free of storage charges, pending shipment to the interior. 20

Q. What, if anything, was stated to the representatives of the Lehigh Valley Railroad Company about the movement of these pebbles or shipment of these pebbles? A. It was understood, in consideration of their arranging free storage, that they were to handle all the business, when they could do it on an equal basis with any other railroad. The points on which they could not get as cheap a rate to handle it, it was understood that they were not to get the business. 30

Q. How long were the pebbles to remain stored on the pier? A. There was no specific time mentioned; it was understood that the pebbles were to be kept there until ordered shipped.

Q. Can you tell, by referring to your correspondence, when this arrangement was made? A. Why, the first arrangement that was made, was with Mr. Moore, at my office 112 Wall Street, New York City, and that was confirmed in a letter from Mr. Moore

40

to us, during 1910, which I think the correspondence shows.

Q. I show you a letter dated July 29th, 1910, and ask you from whom you received that letter? A. (referring) From the Lehigh Valley Railroad, signed by Mr. Moore.

Q. Are you familiar with Mr. Moore's signature?
10 A. Yes, sir.

Q. Have you conducted other negotiations through him, on behalf of your Company with the Lehigh Valley Railroad Company? A. Yes.

Q. Will you read the letter? A. (referring; reads) "FLINT PEBBLES FROM NEWFOUNDLAND. The John W. Higman Co., New York. Dear Sirs:—Referring to my conversation with your Mr. Quigley 19th inst., I expect to be in New York Tuesday next August 2nd and will call on him during the day
20 with reference to handling Flint Pebbles ex vessel at Philadelphia for distribution to the Interior. Sincerely, (signed) Walter T. Moore."

Q. Do you know whether you replied to that letter or not? A. I believe I did. I can tell by looking at the correspondence.

Mr. Reger: Have you the letters which we demanded, Mr. Bradley?

30 Mr. Bradley: Not all of them.

Mr. Reger: Have you any objection to using our letter books?

Mr. Bradley: No. What letter do you want?

Mr. Reger: The letter in reply to the letter I have just had read.

40 Mr. Bradley: No, I think not.

The Court: If you are going to use this letter as an exhibit, you had better mark it right here then.

Mr. Reger: I offer the letter in evidence.

Marked Exhibit P-1.

Mr. Bradley: I understand that counsel wants to offer in evidence, some extracts from the letter books of the company. I would suggest that the originals be used as far as possible. 10

The Court: I think they have also made a demand for the originals upon you.

Mr. Bradley: Yes, we have some of them but not all.

20

The Court: As he makes a call for each letter, you can answer whether you have the original or not. If you have the original, use that instead of the copy.

Mr. Bradley: Are those the letters of the Higman Company?

A. Yes, these are the letters of the Higman Company. (referring to letter book). This letter was addressed to Mr. Walter T. Moore, general freight 30 agent of the Lehigh Valley Railroad Co., Philadelphia. (reads) "We are in receipt of your favor of the 29th inst., and beg to state that our Mr. Quigley is now in Newfoundland, and we do not expect him back to the office until August 11th; when we have no doubt, he will be pleased to go into the matter of handling the pebbles at Philadelphia with you." That was dated July 30th, 1910.

The Court: Have you that letter or not? 40

Mr. Bradley: No, I have not.

The Court: That is page 73 of the letter book, No. 4.

Admitted in evidence and marked Exhibit P-2.

10 Q. I show you a letter dated August 12th, 1910, and ask you from whom you received that? A. (referring) Mr. Walter T. Moore, of the Lehigh Valley Railroad.

Q. Read the letter, please? A. (reads) "Philadelphia, August 12th, 1910, The John W. Higman Co., New York. I expect to be in New York Monday next 15th inst. and hope to call on Mr. Quigley during the afternoon say between 3 and 4 o'clock. (signed) Walter T. Moore."

20

Marked Exhibit P-3.

Q. Did Mr. Moore call at your office in accordance with the suggestion in that letter? A. No. I wrote him in answer to that letter, advising him that I did not expect to be at my office when he promised to be there, but that if he found it convenient to call later in the week, I would be pleased to meet him.

Q. Did you meet him later in the week? A. I 30 could not remember, but my correspondence will show it. He called in some time, with reference to this cargo of pebbles, but whether it was directly after that, I could not say.

Q. I show you another letter, dated August 16th, 1910, signed Walter T. Moore, and ask you whether you received that letter? A. (referring) "Your letter of the 13th inst. was delayed in delivery owing to misdirection as per envelope attached. Referring to our conversation yesterday we can arrange with the 40 Philadelphia & Reading Railway Co. to provide a

berth for a vessel to unload say 1,000 to 2,000 tons Flint Pebbles in bags on to a covered pier free of storage pending shipment to the interior. I understand you expect the vessel to arrive during October or November next. It is understood that the Stevedore in discharging the cargo is to place it on the Pier in the customary manner. If you will give me a list of the points to which you desire rates from 10 Philadelphia, I shall be glad to furnish them." (signed) Walter T. Moore.

Marked Exhibit P-4.

Q. Did you get any reply to that letter? A. (referring) I don't seem to have any particular letter as to that matter.

Q. I show you another letter dated September 29th, 1910, signed Walter T. Moore, and ask you 20 whether or not you received that letter from Mr. Moore? A. I did.

Q. Will you read that? A. (reads) "The John W. Higman Co., New York.—Confirming our conversation today, we have agreed to handle a full cargo of say about 2,000 tons Flint Pebbles in bags to arrive from Newfoundland during November with the understanding that the Philadelphia & Reading Railway is to provide a suitable berth to discharge the pebbles on a covered Pier where they are to be held 30 free of storage pending shipment to the Interior. We shall expect you to arrange with the Stevedore to unload the cargo according to the custom of the Port which includes trucking on the pier to within about the ship's length of the ship's tackles and piling four tiers high. You will please advise as soon as known the name of vessel and date of sailing from Newfoundland. All routing orders to be placed through this office." (signed) Walter T. Moore.

Marked Exhibit P-5. 40

Q. I show you another letter dated December 3rd, 1910, signed Walter T. Moore, and ask you whether you received that letter from Mr. Moore? A. I did.

Q. Will you read it? A. (reads) "The John W. Higman Co., New York. I have before me your favor 2nd inst. received this morning and note the S. S. "Molina" sailed yesterday morning. I pre-
10 sume she is due to arrive at this port 8th or 9th inst. and arrangements have been made for a suitable berth at one of the covered piers of Philadelphia & Reading Railway at Port Richmond." (signed) Walter T. Moore.

The Court: The S. S. "Molina" refers to what?

Witness: The name of the steamer on which the
20 pebbles were shipped.

Mr. Reger: I offer the letter in evidence.

Marked Exhibit P-6.

Q. I show you another letter dated December 13th, 1910, and ask you whether that letter was received from Mr. Moore? A. Yes.

Q. Will you read it? A. Dated December 13th,
30 1910,—no, this letter I have not received.

Q. That is a letter written to the Atlantic Pebble Co.? You did not receive that? A. No, I did not receive it.

Q. Was the cargo of the S. S. "Molina" stored on the pier D, Port Richmond, at Philadelphia? A. I know it was stored at Port Richmond; I am not familiar with the number of the piers, because I have no occasion to go up there.

Q. After the cargo was placed on the pier, were or-
40 ders received from time to time, for the shipment of

these pebbles? A. Do you mean did we receive them or did we send them?

Q. Did you receive orders and did you communicate those orders to the Lehigh Valley Railroad Co.? A. Yes.

Q. How frequently during the year following? A. I could not tell off-hand without my records. I can say that during the year 1910, we did not send many 10 orders because the boat got down quite late and the cement plants do not operate as fully during the winter months as they do in the spring and summer months.

Q. When did you arrange for another cargo to be brought down from Newfoundland? A. Why, I think the following year.

Q. I show you a letter dated September 13th, 1911, signed Walter T. Moore, and ask you whether that letter was received by you from Mr. Moore? A. It 20 was.

Q. Will you read it? A. (reads) "The John W. Higman Co., New York. Referring to our conversation Monday last, we can arrange with the Philadelphia & Reading Railway Co. to provide a berth for a steamer to unload a cargo of about 1400 tons Flint Pebbles in bags and space on a covered pier free of storage pending shipment to the Interior. The steamer is expected to arrive the latter part of this month and it is understood that the Stevedore employed by 30 the steamer is to place the cargo on the pier and pile five high according to marks. This proposal is submitted subject to your prompt acceptance." (signed) Walter T. Moore.

Mr. Reger: I offer that letter in evidence.

Marked Exhibit P-7.

Q. Was that proposition accepted and was the steamer unloaded at the pier in Philadelphia? A. 40

That particular letter we did not accept, the business was arranged at a later date, either through verbal conversation or a letter; I know I have a letter confirming it.

Q. Was the cargo landed there, in accordance with the proposition made in that letter? A. The cargo was landed, yes.

10 Q. I show you another letter dated September 27th, 1911, and ask you whether or not you received that letter from Mr. Moore? A. No, I did not receive this letter.

Q. I show you another letter dated October 26th, 1911? A. That is a letter that I received.

Q. Did you receive that from Mr. Moore? A. Yes.

Q. Read it? A. (reads) "The John W. Higman Co., New York. Referring to our conversation yesterday, we find from our records that there still re-
20 main at Pier D Port Richmond about 487 tons Flint Pebbles ex S. S. "Molina", and 1237 tons ex S. S. "Flora." It was not expected at the time of the original arrangement that the property would be held for so long a period and the space available for this purpose on terminals of the Philadelphia & Reading Railway is largely occupied. I do not see any prospect of providing accommodations for the next cargo until the stock now on hand is materially reduced and some reasonable assurance given as to the future
30 movement. P. S. I think sufficient space can be reserved at Pier D Port Richmond for the next cargo provided you remove one-half of the present stock or say about 800 tons before the Steamer arrives." (Signed) Walter T. Moore.

Mr. Reger: I offer that letter in evidence.

Marked Exhibit P-8.

Q. What was done with reference to the request
40 contained in that letter for the removal of a quantity

of pebbles then on the pier. A. I have a letter in reply to that, which explains it fully.

Q. Have you the original of that letter?

Mr. Bradley: What date?

Witness: I think I have got the answer. The date that I answered that letter. (referring). 10

The Court: Have you such a letter?

Mr. Bradley: October 28th? Yes, I think I have.

The Court: Then give us that. It is very much easier to handle.

Q. (showing) Is that the letter to which you refer? A. (referring) Yes, that is the letter.

Q. Before reading that—evidently another letter 20 was written by Mr. Moore in the interim; and I show you another letter dated October 27th, 1911, signed Walter T. Moore, and ask you whether you received that letter from Mr. Moore? A. Yes, I did receive this.

Q. Will you read that letter? A. (reads) "The John W. Higman Co., New York. Confirming telephone conversation to-day, we have arranged to accommodate another cargo of Flint Pebbles in bags say 1500 to 2000 tons per Steamer due to arrive from 30 Newfoundland about November 15th, provided you mail to-morrow orders for shipping about 600 tons of the stock now remaining on Pier D, Port Richmond. As stated in my letter yesterday, you are holding these pebbles beyond the time originally contemplated and we shall expect you to handle them more freely in the future. It is understood that the cargo, if required, is to be landed on the second floor of Pier D and stowed on the Pier according to marks." (signed) Walter T. Moore. 40

Mr. Reger: I offer that in evidence.

Marked Exhibit P-9.

Q. Is your letter of October 28th, in reply to the last two letters which you have read? A. It states here "We are in receipt of yours of the 27th."

10 Q. You may read your letter. A. Dated October 28th, 1911, to the Lehigh Valley Railroad Co. "We are in receipt of yours of the 27th inst., and note that you have arranged for the next steamer of Newfoundland Pebbles, which we expect to arrive early next month, at Philadelphia. In your letter you state that we are holding the goods beyond the time originally contemplated, and that you will expect us to handle more freely in the future. To this we can only reply that we have never tried to create 20 a false impression. At no time have we specified how quickly the goods would move. We have every hope that we will ship a large quantity of these pebbles, as the present orders would indicate, but if the business does not turn out as we expect and orders do not come in rapidly, we of coure, cannot order you to ship them. In arranging for this cargo that is to come forward, it is to be understood that the goods are to be placed at Philadelphia, Pier D, Port Richmond, and to be kept in store until we order shipped, 30 —or the same as the preceding cargoes. We enclose herewith Atlantic Pebble Co.'s delivery order against 6608 bags of size No. 3 ex. the S. S. "Flora." Please ship this lot to the Canada Cement Co., plant No. 1, Kilbourn Siding, Pointe-aux-Trembles,Montreal, care Canadian Northern Ry. We understand there are only 6000 bags of size No. 3 on the dock, so you will therefore take 8 bags of No. 2, and mark them No. 3 to complete this lot. Also enclosed please find Atlantic Pebble Co.'s delivery order against 2000 40 bags of No. 4 ex. the S. S. "Flora." Ship these to

the Canada Cement Co., plant No. 2, Longue Pointe, Montreal, care C. P. R. and C. N. Ry. Enclosed you will please fine Canadian Manifests necessary for both shipments. We have an order for another shipment, but the order we are now sending you cleans up all of the size No. 3 and No. 4 on the dock. You will, therefore, have to wait the arrival of the S. S. "Ella" which steamer is chartered to bring down 10 the next cargo from Newfoundland. We would again remind you to please keep the destination of these pebbles from every one, excepting those directly interested. Trusting these shipments receive your prompt attention, and that you send us Bs/L with rate, weight and car number inserted thereon as quickly as possible, we are." (signed) The John W. Higman Co., per Jas. A. Quigley.

Marked Exhibit P-10. 20

Q. Did the orders which you gave in that letter, comply with the request which they made in the previous letter? A. It did. I think that amounted in tons to about 500 tons. We had further orders up to the quantity they asked for, 600 tons, but on account of the sizes not being in stock, naturally we could not ship them.

Q. As soon as the steamship "Ella" arrived, were those orders given? A. (referring) I believe the 30 records will show that.

Q. The steamship referred to in your letter, October 28th, is the S. S. "Ella?" A. Yes, that was the "Ella."

Q. And that was the last of the three steamers to arrive, was it not? A. Yes, I guess that was.

Q. I show you a letter dated November 1st, 1911, signed Walter T. Moore, and ask you whether you received that letter from Mr. Moore. A. I did

Q. Read that please? A. (reads) "I have re 40

ceived yours 28th ult. and due attention will be given to the shipment as ordered of Flint Pebbles now in stock at Pier D, Port Richmond. We note that the S. S. "Ella" with a full cargo about 1500 to 2000 tons Flint Pebbles in bags is due to arrive at this port about 10th to 15th inst. and will thank you to advise exact date of sailing of the Steamer so that
10 arrangements may be made in advance for the necessary facilities to discharge at Pier of the Philadelphia & Reading Railway." (signed) Walter T. Moore.

Mr. Reger: I offer that letter in evidence.

Marked Exhibit P-11.

Q. I show you another letter dated November 3rd,
20 1911, signed Walter T. Moore, and ask you whether you received that letter from Mr. Moore? A. This is not signed by Mr. Walter T. Moore, but it came from Mr. Moore's office.

Q. Is Walter T. Moore's name on it? A. Yes, stamped. This is dated November 3rd, 1911.

Mr. Bradley: I understand this letter has not been offered. I have no letter of that date; no copy. May I see it?
30

Q. Are you familiar with the signature attached to that letter? A. I don't know that I am.

The Court: Suppose you show it to Mr. Bradley.

Mr. Bradley: (referring) This is all right.

Q. Read it? A. (reads) "Referring to your favor of the 2nd inst. I note the information regarding
40 the S. S. "Ella" and await further advice regarding

sailing and arrival. Referring to conversation on the phone this A. M., Mr. Franks is now working on the size No. 3 ex S. S. "Molina" and we expect to have the remaining 1266 bags loaded to-morrow morning." (signed) Walter T. Moore, per

Q. How is that signed? A. That is signed—stamped Walter T. Moore, per—I could not tell the initials—H. E. I think it is. 10

Mr. Reger: I offer the letter.

Marked Exhibit P-12.

Q. I show you another letter dated December 1st, 1911, signed with the stamp of Walter T. Moore, per S. M.

Mr. Reger: Is there any objection to that Mr. Bradley? 20

Mr. Bradley: I think not (referring).

A. I did not receive that letter.

The Court: You did not receive it?

A. No.

Q. I show you a letter dated December 23rd, 1911, signed Walter T. Moore, and ask you whether you received that letter? A. (referring) Yes, I received it. 30

Q. Would you read that? A. (reads) "Confirming my wire date, the Philadelphia & Reading Railway has given notice of urgent need of the space now occupied on Pier D by Pebbles from Newfoundland. The movement of through export and import traffic is increasing and to-day they are holding a large number of loaded cars on the track, subject to a per diem charge of 35 cents each, for lack of room on 40

the piers. The S. S. "Ella" discharged early this month and since that date you have ordered out only a few cars. Furthermore, 300 to 500 tons still remain on the pier in bulk and in such a position as to interfere with the handling of the remainder in bags. A point has now been reached where it is essential for you to take immediate steps to re-condition the
10 bulk pebbles and also to furnish shipping orders to the Interior. Please give this matter prompt attention." (signed) Walter T. Moore.

The Court: You read there—"Ella" discharged early this morning."

Witness: Yes sir (referring) "early this month."

The Court: You meant "early this month?"

20

Witness: Yes.

Mr. Reger: I offer that in evidence.

Marked Exhibit P-13.

Mr. Reger: Mr. Bradley, have you a letter dated December 23rd, 1911, written by John W. Higman Company?

30

Mr. Bradley: No.

Q. I show you a copy of a letter dated December 23rd, 1911, purporting to have been signed by John W. Higman Co., addressed to the Lehigh Valley Railroad Co., and ask you whether or not this is a copy of the letter which you wrote? A. (referring) this is a copy of the letter which I wrote.

Q. Read it please? A. (reads) "Lehigh Valley
40 Railroad Co., Philadelphia, Pa. Replying to your

telegram of even date, we beg to advise that at the present time we have no orders on hand for Newfoundland Pebbles, and cannot move any of the goods at Port Richmond. As to reconditioning the pebbles, we suggest you take this matter up with the Atlantic Pebble Co., at Lincoln, N. J." (signed) The John W. Higman Co., James A. Quigley.

10

Mr. Reger: I offer that in evidence.

Marked Exhibit P-14.

Q. I show you another letter dated December 26th, 1911, signed Walter T. Moore, and ask you if you received that letter. A. (referring) Yes.

Q. Read it please. A. (reads) "I have received your letter 23rd inst. and note contents. The present situation is unsatisfactory and will not be continued by the Philadelphia & Reading Railway Company. The Pebbles are occupying valuable space and there is no evidence of any active steps taken to dispose of them. Unless something is done promptly in this direction, I have reason to think the Philadelphia & Reading Railway Company will adopt some measures to remove them." (signed) Walter T. Moore. 20

Mr. Reger: I offer it in evidence. 30

Marked Exhibit P-15.

Q. I show you another letter dated December 27th, 1911, addressed to the Lehigh Valley Railroad Co., signed John W. Higman Co., and ask you whether this is a copy of the letter which you wrote to the Lehigh Valley Railroad Co., in reply to the letter which you have just read? A. (referring) This is a copy.

40

Mr. Reger: Have you the original, Mr. Bradley, or shall we use the copy? December 27th, 1911.

Mr. Bradley: No, I have no original of that.

Q. Read the copy. A. (reads) "Lehigh Valley 10 Railroad Co., Philadelphia, Pa. We are in receipt of yours of the 26th inst., and can only repeat that at present we cannot order any pebbles out, as we, ourselves, have no orders on hand. The present time is the poorest season of the year. Two-thirds of the cement plants are closed down entirely and those that are operating will not buy, as they take inventory the first week in January and do not want to have too much stock on hand. We can assure you that we are trying very hard to secure some orders for shipment, 20 and if we receive same you will be advised. We do not know what kind of an arrangement you made with the P. & R. for storing these Newfoundland Pebbles, but you were fully advised of the circumstances. When you wrote us under date of October 27th that we would be expected to handle shipments more freely than previous cargoes, we advised you under date of October 28th, that we could not make any promises, and if orders did not come in for these goods, we could not order them shipped. How- 30 ever, if the P. & R. will be a little patient, we think ere long, they will be satisfied that the goods are moving freely enough. This, however, must not be taken as a promise. In regard to straightening out the pebbles now on dock, we received a letter from the Atlantic Pebble Co., this morning advising us of having receiving a copy of a letter from you regarding the condition of the pebbles and that they had attended to the matter in the meantime." (signed) The John W. Higman Company, per James A. Quig- 40 ley.

Mr. Reger: I offer that in evidence.

Marked Exhibit P-16.

Q. I show you another letter dated December 29th, 1911, purporting to be addressed to the Lehigh Valley Railroad Co., and ask you whether or not that is the copy of a letter which you wrote to the Lehigh 10 Valley Railroad? A. (referring) This is a copy that we sent to them.

Mr. Bradley: I have no original.

Q. Read it? A. (reads) "Lehigh Valley Railroad Co., Philadelphia, Pa. Yours of the 27th inst, containing as enclosure copy of letter received from the P. & R. to hand, contents noted. We have nothing 20 to add to our letter of the 27th inst., any more than to say that we have offered Newfoundland Pebbles to several of the large users, making them strong inducements to take pebbles in within the next 10 days. Should we receive any orders, we will send them on to you." (signed) The John W. Higman Company, per James A. Quigley.

Mr. Reger: I offer it in evidence.

Marked Exhibit P-17. 30

Q. I show you a telegram signed Walter T. Moore, dated January 27th, 1912, and ask you whether or not you received that telegram? A. I did.

Q. Read the telegram? A. (reads) "The John W. Higman Co., 91 Wall St., New York City. Philadelphia & Reading give notice will commence moving pebbles to public stores Thursday next if no shipping orders." (signed) Walter T. Moore. 40

Mr. Reger: I offer that in evidence.

Marked Exhibit P-18.

Q. Did you receive a reply to that telegram? A. I think this is a reply to it (indicating).

Q. That is a copy of the reply which you wrote to 10 the Lehigh Valley Railroad Co.? A. Yes, this is a copy of our reply (indicating).

The Court: What is it?

Witness: Dated January 27th, 1912.

Q. Read that? A. (reads) "Lehigh Valley Railroad Co., Philadelphia, Pa. We are in receipt of your telegram of even date, advising that the P. & 20 R. Ry. give notice they are moving pebbles to public stores Thursday of next week, if they receive no shipping orders. We called your office up to-day and Mr. Emlin, Mr. LaBar and Mr. Moore were not at the office, and we talked with one of your clerks. He was not certain whether the telegram referred to Newfoundland Pebbles at Port Richmond or Danish Pebbles at Pier No. 27. He advised that a telegram was sent to the Atlantic Pebble Co., same as was sent to us, which would give us the impression 30 that the telegram referred to Newfoundland Pebbles. We have nothing further to add than as previously advised, that we have no orders at the present time for Newfoundland Pebbles; consequently we cannot give any orders for their removal Had you made arrangements with the P. & R. the same as arrangements made with you, that the pebbles would be held until ordered, this question could not have come up, but as above stated, we can only repeat that we have no orders on hand." (signed) The 40 John W. Higman Co., James A. Quigley.

Mr. Reger: I offer that in evidence.

Marked Exhibit P-19.

Q. I show you a letter dated February 5th, 1912, signed Walter T. Moore, and ask you whether you received that letter. A. (referring) Yes.

Q. Read it please. A. (reads) "The John W. Higman Co., New York. I sent you carbon of my letter 2nd inst., to The Atlantic Pebble Co., and now enclose copies of their letter 3rd inst. and my reply to-day." (signed) Walter T. Moore. 10

Mr. Reger: I offer that in evidence.

Marked Exhibit P-20.

Q. I show you a copy of another letter dated February 5th, 1912, purporting to have been written to the Lehigh Valley Railroad Co., by John W. Higman Co., and ask you whether or not this is a copy of the letter which you wrote? A. (referring) This is a copy of a letter that I wrote. 20

Mr. Bradley: I have that.

Q. Before reading that, will you state what called for that letter? A. I received a copy of the letter that we sent to the Atlantic Pebble Co. 30

The Court: That you sent through a previous letter, which you have read, February, 1912?

Witness: Yes.

Mr. Bradley: And in which that copy was received before this letter of the 5th?

40

The Court: Do you happen to have any other copy of the same letter, which was enclosed, February 5th?

Mr. Bradley: Yes, sir, and the copy which was enclosed in that letter.

10 The Court: You would not have that copy?

Mr. Bradley: I have a copy.

The Court: Which is the same?

Witness: This (indicating) is the letter. This is the original. This is not the copy that I received. This is the original of the copy that I received February 2nd.

20

Mr. Reger: Suppose we have this copy of the letter which was enclosed with the other letter, read first?

The Court: Before you come to February 5th letter, which you are about to offer?

Mr. Reger: Yes.

30 The Court: Certainly; that was the idea.

Q. Read the Atlantic Pebble letter first. A. This is addressed to the Atlantic Pebble Co., Lincoln, N. J. "Yours 30th ult. received and noted. In accordance with the notice previously sent, the Philadelphia & Reading Railway has commenced to transfer the Newfoundland Pebbles from Pier D, Port Richmond, to the Port Richmond Stores for account of the Owners. It is their expressed intention to move 40 1,000 tons or more as may be necessary to provide

room for handling the current through traffic at this terminal. We have advised you fully of the situation from time to time and also prevailed upon the Philadelphia & Reading Railway to postpone this action as long as possible so as to give you every opportunity to dispose of the pebbles and thus avoid any extra expenses for handling and storage. There is no written agreement with the Philadelphia & Reading 10 Railway. But the trend of conversation with yourself and Mr. Quigley of the John W. Higman Co., was to the effect that the property would be moved by you with reasonable promptness. The S. S. "Ella" completed discharge of about 2000 tons on December 6th, of which about 500 tons were loaded in bulk from broken bags and a large part of balance of the cargo in such shape that the bags could not be piled properly. Since that date, only about 2 cars have been ordered out and a large proportion of the bulk 20 Pebbles still remain unbagged. It was never contemplated that these Pebbles would be held indefinitely free of storage and a point was finally reached where the Philadelphia & Reading Railway was obliged to provide more space for its regular trade. Therefore you will understand that these Pebbles are now being sent to Port Richmond Stores at Owners risk and expense." (signed) Walter T. Moore.

Mr. Reger: I offer that in evidence. 30

Marked Exhibit P-21.

Q. Now, will you read your reply to the letter in which was enclosed a copy of the letter addressed to the Atlantic Pebble Co., which you have just read? Your reply, dated February 5th, 1912, is it not? A. Yes. (reads) "Lehigh Valley Railroad Co., Philadelphia, Pa. We received a copy of your letter to the Atlantic Pebbles Co., and note that copies were also 40

sent to Mr. R. L. Russell and Mr. O. H. Hagerman, of the Philadelphia & Reading Ry. In your letter you state: "There is no written agreement with the Philadelphia & Reading Ry., but the trend of conversation with yourself and Mr. Quigley of the John W. Higman Co., that the property would be moved by you with reasonable promptness." We must say
10 that every time your Mr. Emlin discussed the question of arranging cargoes, he was fully advised that there was no time limit for the storing of Newfoundland Pebbles. In fact, this is the reason why it was so hard for him to arrange the last cargo. We told him we could not make any different arrangements, or make any more promises than we did on the two preceding cargoes. When Mr. Moore first approached us on this subject, we fully explained that the Newfoundland Pebble, being a new one on the
20 market, we could not say, just what it was going to do, but that we thought it was a very good pebble. If you will refer to your letter of Sept. 29th, 1910, you will note there was nothing said about time limit, but that the P. & R. Ry. were to provide a suitable berth to discharge the pebbles on a covered pier to be kept for free storage, pending shipment to the Interior. Again on Sept. 13th, 1911, when you arranged for the second cargo, you wrote us a similar letter, and under date of October 27th, 1911, you stated, that
30 the goods were being held beyond the time originally contemplated and that the goods would be expected to move more freely in the future, to which we replied under date of Oct. 28th, that we never tried to create a false impression and that we could only repeat what we previously said, that we could not send you orders to ship the goods, if we, ourselves, did not have them. It was up to you at that time to state whether the goods could be kept on the pier or not. We think if you sent copies of the correspondence to
40 the P. & R. under which the arrangements were made

with you for the storing of Newfoundland Pebbles, there could be no misunderstanding. Your Mr. Moore and Mr. Emlin know full well that Newfoundland Pebbles are the property of the Atlantic Pebble Co., and anything the writer did for the storing of these goods was for the benefit of the Atlantic Pebble Co., and had Mr. Wirts's approval. Surely you must have had some correspondence with the P. & R. before trying to arrange to hold goods on their dock, and it would please us very much to know what kind of an arrangement you made with the P. & R.'' (signed) The John W. Higman Co., per Jas. A. Quigley. 10

Mr. Reger: I offer that letter in evidence.

Marked Exhibit P-22.

20

Q. Did you receive from the Lehigh Valley Railroad Co., any copies of their correspondence with the Philadelphia & Reading, relative to the arrangement which they had made? A. No, not regarding the arrangement.

Q. Subsequent to the letter which you have last read, under date of February 5th, 1912, did you receive orders for the shipment of any of these Newfoundland Pebbles? A. That I could not say.

Q. Did you, after that time, receive orders, selling orders, for these pebbles? A. Oh, yes. 30

Q. Did you order these pebbles shipped from the pier or from the store-house? A. All of our orders were sent through the Lehigh Valley Railroad. We had no direct correspondence with the P. & R.

Q. Was it subsequently shown that the pebbles had been stored in the store-house by the Lehigh Valley Railroad Company? A. I believe they went to the Public Store in Philadelphia.

Q. Were they placed in the Public Store? A. Yes. 40

Q. After they were placed in the Public Store House, what then was done with them? A. They were shipped out as we received orders from time to time.

Q. Did you receive orders from time to time after that? A. Yes.

Q. And did you place your orders with the Lehigh
10 Valley Railroad Company? A. Yes.

Q. Do you know how long it took to remove all of the pebbles? A. No, I could not say that I do.

Q. You had nothing to do with the payment of the storage charges, which were subsequently paid by the Atlantic Pebble Co., had you? A. No.

Cross-Examination by Mr. Bradley:

Q. Mr. Quigley, will you produce the letters, the
20 several letters that we called upon you to produce?

Mr. Reger: I will give you whatever we have. I haven't them in the order in which you asked for them.

Mr. Bradley: The letter from Walter T. Moore to the John W. Higman Co., dated October 28th, 1911.

30 Mr. Reger: That is one that we already offered.

Mr. Bradley: The 27th and 28th, both?

Mr. Reger: I don't seem to have that, Mr. Bradley.

Mr. Bradley: December 27th, 1911, enclosing a copy of a letter from R. L.—

40 (Mr. Reger produces letter.)

Mr. Bradley: December 3rd, 1911, from Walter T. Moore to John W. Higman Co.

(Mr. Reger produces letter.)

Q. I show you a letter dated December 30th, 1911, signed Walter T. Moore, and ask you if you received that letter? A. (referring) Yes, I guess I did. (re- 10 ferring) yes.

Mr. Bradley: I ask to have that marked for identification.

Marked Exhibit D-1 for identification.

Q. Letter of December 27th, 1911, addressed to the John W. Higman Co., by Walter T. Moore, enclosing a copy of a letter from R. L. Russell, General Freight 20 Agent, Philadelphia & Reading Railroad Co., to Walter T. Moore, and ask you if you received that letter from Mr. Walter T. Moore—enclosing that copy? A. Yes, I did.

Mr. Bradley: I ask to have that marked for identification.

Marked Exhibit D-2 for identification.

30

Q. Mr. Quigley, what was the nature of the pebble business that you were doing in this country? A. We were selling them to the cement and ore manufacturing companies for pulverizing; that is pulverizing through a cement colander and ore.

Q. You sold these pebbles then to various manufacturing concerns throughout the country? A. Yes.

Q. And was your business confined to any particular territorial limit in the United States? A. No.

Q. You sold these pebbles all through the East, 40

did you? A. Sold them wherever we could, East, West, North or South.

Q. Did your business, in fact, extend over a large part of the country? A. Yes.

Q. How long had you been connected as selling agents for the Atlantic Pebble Company? A. Since they began picking, which I think was in 1909 or in 10 1910; I believe the first cargo arrived in 1910.

Q. And you represented the company in this country entirely? A. Yes.

Q. And made all of the company's arrangements with regard to the shipping to its customers in the United States? A. No, I could not say that. They probably made some arrangements of their own, which they are entitled to do through our agreement, but there was nothing done that we know of, through another agent.

20 Q. Was you in fact, in charge of all the selling arrangements for the three cargoes which were loaded on Pier D, Philadelphia? A. Yes.

Q. Were those cargoes sold to any parties before they reached Philadelphia? A. Part of them.

Q. How much? A. I could not say.

Q. You say to whom those parts were sold? A. I have records which will show how they were shipped, but not to whom they were sold, before they arrived.

Q. Well, have you those records with you? A. I 30 believe Mr. Reger has some records showing how some shipments were made.

Q. The greater part of those three cargoes, however, were unsold when they arrived in Philadelphia, were they not? A. That I could not say.

Q. Well, you had no orders to ship them to any particular part of the country, had you? A. I think the letters will show that in some cases we had orders, and did not have the pebbles on hand and had to wait until the arrival of a car before they could be 40 shipped.

Q. Just answer the question as it stands. (question read). A. I don't quite understand it.

The Court: Referring now to the time that each shipment arrived in Philadelphia?

Mr. Bradley: Yes.

10

The Court: Suppose you reframe the question.

Q. At the time that each one of these cargoes of pebbles arrived in Philadelphia, did you, as agents for the Pebble Company, have any orders to ship them to any particular place? A. In some cases.

Q. In how many cases? A. I don't know.

Q. Do you recall how many—how large a part of the cargo was ordered? A. No.

Q. Do you recall what the places were? A No. 20

Q. Have you any records that will show that? A. I don't believe I have. The only way it is shown is through correspondence with those companies.

Q. You have nothing that will recall to your mind, where those cargoes were sold, nor where they were shipped? A. Nothing whatever.

Q. And you have no way of recalling that to your mind at this time? A. Not at this time.

Q. Although you think they were never arranged for shipment? A. In some cases, yes. 30

Q. The time that you saw Mr. Moore in 1910, was the first time that you entered into anything like an arrangement concerning the handling of these cargoes, was it not? A. I believe it was.

Q. You had no correspondence with him or with any other official of the Railroad Company, prior to that time? A. No.

Q. Then such arrangement that existed between the Pebble Company made by you as their agent and the Lehigh Valley Railroad Company, was either 40

made with Mr. Moore orally, or was the result of correspondence which you have just read in evidence, is that correct? A. I think that the correspondence will show that the first arrangement was made after an oral conversation with Mr. Moore and confirmed by a letter from Mr. Moore.

Q. Well, the agreement or arrangement, such as it
10 was, is evidenced by the correspondence and by such oral conversations as you may have had with Mr. Moore? A. Yes.

Q. There is nothing outside of the conversation with Mr. Moore and the correspondence attached to the agreement, is there? A. No.

Q. Did you ever pay, on behalf of the Pebble Company or its agent, any sum of money to the Lehigh Valley Railroad Company, in connection with this agreement? A. No.

20 Q. When the pebbles arrived in Philadelphia, they were liable, such parts as were not ordered shipped, were liable to be shipped to any part of the country, according as your business might require, were they not? A. Yes.

Q. And that might have required a shipment, perhaps, to the South or to the South-west? A. That is right.

Q. Or it might have required a shipment up here, perhaps, direct from Philadelphia? A. Yes.

30 Q. And not passing over any railway lines at all? A. No.

Q. So far as your arrangements with Mr. Moore were concerned, you never agreed, on behalf of yourself or on behalf of the pebble company, to definitely ship any of the pebbles to any one place, or any specified places in any part of the South? A. No.

Re-Direct Examination by Mr. Reger:

Q. You referred, Mr. Quigley, to certain orders,
40 which had been given; I show you a batch of orders

and ask you whether or not those are copies of the orders given for the shipment of these pebbles? A. Yes, they are. These are taken from orders that were sent to the Lehigh Valley, and were finally shipped. In many of the cases, the letter is indicated here by a date and will show the different quantities ordered, but when they received orders, for some reason or other, they might not have been 10 able to lay their hands on the particular sizes that were ordered, and told us what they could ship, and we let them ship it on the original orders; so that does not change the date of the letter, but it does change the sizes or total of the pebbles.

Q. The quantities of stones or pebbles indicated on these slips which you have, were actually ordered shipped? A. Shipped.

Q. And were shipped? A. Yes, sir.

Q. From what are those made up? A. Those are 20 taken from my domestic books here. I don't number my letter books to the Lehigh Valley Railroad. They are all in letter form to the Lehigh Valley Railroad Co., enclosing the orders from the Atlantic Pebble Company.

The Court: Are they letters already introduced in evidence?

Witness: No, these are not; they are so voluminous 30 that I took copies of them.

Q. Are these letters which refer to these letters in your letter books? A. Yes, sir. I haven't got them here. They covered about seventeen or eighteen books, but running over the dates of the books I have got here, that correspond with them.

Mr. Bradley: This is merely a memorandum made by Mr. Quigley. 40

The Court: Of course, the great difficulty is that you have not got the letter books. You say these cover the same as the books you have here?

Witness: Yes, they went over a period of seventeen or eighteen books.

10 The Court: It may be, Mr. Bradley, that you can ask establish that by records that you have, or produce the rest of the books.

Mr. Reger: That would take up a great deal of time.

Mr. Bradley: I am not disposed to object to anything on mere technical grounds. If your Honor will bear with me a moment, I will see what the facts are. (After consultation). I have no objection, if he 20 wishes to prove that by these slips as copies.

The Court: You are not objecting to the method of proof?

Mr. Bradley: I am not objecting to the method of proof.

Mr. Reger: I will offer these, then, for what they are worth.

30 Package of slips marked Exhibit P-23.

Q. I understood you to say that all of these orders were placed with the Lehigh Valley Railroad Company? A. All with the exception of those that they could not handle. I think you will find possibly eight or ten of them, we ordered some pebbles shipped by the Lehigh Valley or through their office, and they come back and told us that on account of not being able to make prompt delivery, that the Central Railroad of New Jersey could, if they routed that way, 40 in order to expedite the shipment.

Q. But the orders were given to the Lehigh Valley Railroad Company? A. Exactly.

Q. And you made arrangements for shipment? A. Yes, sir.

By Mr. Bradley:

Q. There were other pebbles imported into the country during this period, were there not, by the Atlantic Pebble Co.? A. Oh, yes. 10

Q. By the Atlantic Pebble—? A. By whom? No, not that I know of; Newfoundland Pebbles is all.

Q. Those are the only shipments that were made, the ones that came to Philadelphia?

The Court: Referring to their particular shipment?

20

Mr. Bradley: Referring to the particular shipment.

A. I understood you to mean from other lands. Newfoundland is all that I know.

Q. During the period between 1910 and 1912, there were other shipments of pebbles received in this country on account of the Atlantic Pebble Company were there not? A. No; the first cargo was in 1910 I think. The first cargo, that did not go to the Lehigh Valley; but the second cargo, which arrived the latter part of the Fall of 1910, was the first cargo they received, for the storage of these pebbles. 30

Q. How many cargoes was that, all told? A. Three.

Q. And you say that there were no other pebbles received in this country on account of the Atlantic Pebble Company, during that period? A. Not that I know of.

Q. At the time that you and Mr. Moore had your conversation and began your correspondence, which 40

finally culminated in making arrangements for the first cargo, the steamship "Molina" you were personally aware, at that time, that the storage was to be done on the pier of the Philadelphia & Reading Railroad Company, were you not? A. Yes, the P. & R., they told me with whom they would make the arrangement.

10 Q. It wasn't on the property of the Lehigh Valley Railroad Company, that these pebbles would be stored? A. I understood the Lehigh Valley Railroad Company had no property in Philadelphia.

Q. Then they could not be stored there if they had none. You are familiar with the railroad of the Lehigh Valley, where it runs? A. No, I could not say that I am.

Q. That does not run to Philadelphia, does it? A. From New Jersey? No, it does not.

20 Q. Nor from anywhere else? A. They have a branch line that runs from Bethlehem in there; that is they ship via Bethlehem, from Bethlehem to New York.

Q. Has the Lehigh Valley any terminal facilities down there? A. No.

Q. That you know of? A. No, not that I am aware of.

Q. You were fully aware that the pebbles, when deposited, would be deposited on property of the 30 Philadelphia & Reading? A. Yes.

Q. And had their terminal in the harbor of Philadelphia? A. Yes.

By Mr. Reger:

Q. What did they tell you about the arrangement being made with the Philadelphia & Reading? A. Told me nothing about the arrangement with the Philadelphia & Reading; I made my arrangement 40 with the Lehigh Valley.

MAX F. WIRTZ, sworn for the plaintiff, testifies as follows:

Direct Examination by Mr. Reger:

Q. Mr. Wirtz, where do you reside? A. In the Borough of Middlesex, New Jersey.

Q. That is near Bound Brook? A. Yes, sir. 10

Q. What is your connection with the Atlantic Pebble Co., the plaintiff in this case? A. I am the treasurer.

Q. Were you treasurer in 1910? A. I was.

Q. In 1912, also? And 1911? A. Yes, sir.

Q. And you are also general manager of that Company, are you not? A. In this country.

Q. When was the Atlantic Pebble Company organized? A. Early in 1910; I don't know the month or the date. 20

Q. And for what purpose? A. For the purpose of picking pebbles on the beaches of Newfoundland and shipping them.

Q. When was the first lot of pebbles shipped from Newfoundland to this country? A. Early in 1910; I don't know the month.

Q. To what point were they shipped in this country? A. The first cargo went to Philadelphia.

Q. To what place there? A. The Baltimore & Ohio pier. 30

Q. And was shipped from there on orders of your company, through the John W. Higman Company? A. Yes, sir.

Q. Who was your selling agent during this period? A. The John W. Higman Company?

Q. Were the selling orders placed with them? A. Yes, sir.

Q. Were you present at any interview between the representatives of the Lehigh Valley Railroad Company and Mr. Emlin in New York, relative to the 40

storage of pebbles at Philadelphia? A. I was present at one interview that I remember.

Q. Do you know when that was? A. Some time in 1911, but I could not say when.

Q. Well, what was the subject of the conference at that time? A. It was a matter of taking care of the Steamship "Flora" the second of the steamers
10 which went to the Lehigh Valley Railroad.

Q. Where did you meet the representatives of the Lehigh Valley Railroad Company? A. I met its representative at No. 91 Wall Street, office at that time of John W. Higman Company.

Q. Whom did you meet? A. Mr. Emlin.

Q. Who else was present? A. Mr. Quigley.

Q. Anyone else? A. Not that I know of.

Q. What was said or done at that time, with reference to these pebbles you were arranging for? A.
20 Well, there was simply a discussion as to the possibility of accommodating another cargo, which had been stored up here, and they were negotiating to bring them down from Newfoundland. That matter was discussed and Mr. Emlin went back to Philadelphia to hear whether arrangements could be made.

Q. What was said to Mr. Emlin at that time, about the terms upon which this cargo would be brought forward? A. They would be on the same
30 terms as the former cargo; that it was to remain on the pier until sold.

Q. Was there any discussion as to the length of time or as to the quickness with which these pebbles would be moved? A. The statement was made to Mr. Emlin that the pebbles must be stored without any agreement as to time, because we had no knowledge as to how long they would remain on the dock. They might be moved quickly or they might not be sold for some time. We were not in a position to
40 say.

Q. What did he say when that statement was made, if anything? A. Nothing very definite, excepting that we ought to appreciate that the railroad company wanted to have freight of that nature removed as rapidly as possible, and we said that was our desire also, as it was our aim to sell the merchandise as rapidly as possible and get our money for it.

Q. Did you have anything to do with the correspondence following? A. I had very little to do with any correspondence until the matter of storage came up. That is when I entered into it particularly. 10

Q. I show you a letter, dated September 27th, 1911, signed Walter T. Moore and addressed to the Atlantic Pebble Co., and ask you whether you received that letter? A. (referring) Yes, sir.

The Court: You have got a few letters?

Mr. Reger: Yes; probably it would be better to keep them in consecutive order. 20

The Court: I suggest, unless you have some other subject, that we take our recess now, rather than break in.

Mr. Reger: I think that would be better to do that.

The Court: It will be better for the jury and everybody concerned. 30

Recess until to-morrow morning at 10.15 A. M.

Somerville, N. J., April 28th, 1915.

MAX F. WIRTZ, resumes stand for further direct examination.

Q. Mr. Wirtz, in your testimony yesterday you stated that at a conference which was held in New 40

York between Mr. Emlin of the Lehigh Valley Railroad and Mr. Quigley and yourself, relative to the cargo of the Steamship "Flora," it was stated to Mr. Emlin that no assurances could be given as to how rapidly pebbles would be moved; have you any recollection as to just the date of that meeting in New York? A. No, sir.

10 Q. There was a letter placed in evidence yesterday from Mr. Allen of the John W. Higman Co., dated December 13th, 1910, in which it was stated that arrangements had been made for the storage of the pebbles of the Steamship "Flora"; was your conversation to which you have just referred previous to that letter or after? A. It must have been previous.

Q. Why do you say that? A. Because the letter indicates the closing of the arrangement and the con-
20 ference was held before any arrangement had been made.

Q. Did you have any correspondence with Mr. Moore of the Lehigh Valley Railroad Company at any time, relative to the matter under discussion and in dispute in this case? A. Yes, sir.

Q. I show you a letter addressed to the Atlantic Pebble Co., dated September 27th, signed Walter T. Moore, and ask you whether you received that letter? A. Yes, sir.

30 Q. Will you read it please? A. (reads) "September 27th, 1911, The Atlantic Pebble Co., Lincoln. Your favor of the 26th inst. with enclosures duly received and contents noted. I understand John Dougherty, Stevedore, has made satisfactory arrangements with the agents of S. S. "Flora" and everything will be done on our part to give satisfactory advice both to the vessel and the cargo. The S. S. "Flora" passed Breakwater early this morning and is due to arrive late this afternoon. She has
40 been assigned to the same berth as the S. S. "Mo-

lina" and it is expected to commence the discharge first thing to-morrow morning. The cargo will be placed on the second deck of pier D. We had a call to-day from your Mr. Frank and will co-operate with him in the work." (signed) Walter T. Moore.

Mr. Reger: I offer that in evidence.

10

Marked Exhibit P-24.

Q. When did the Steamship "Ella" arrive with reference to the time when the "Flora" arrived, before or after? A. The "Ella" arrived after.

Q. Was the Steamship "Ella" the last cargo which was received? A. Yes, sir.

Q. I show you a letter dated December 1st, 1911, addressed to the Atlantic Pebble Co., and signed Walter T. Moore, by S. Emlin, Jr., and ask you if 20 you received that letter? A. Yes, sir.

Q. Will you read that? A. (reads) "December 1st, 1911, The Atlantic Pebble Co., Lincoln. You have no doubt been advised of the arrival of this steamer. The berth allotted her is now occupied by a steamer taking cargo which will complete loading to-day and the berth will be free for the discharge of the S. S. "Ella" at 7 o'clock to-morrow morning." (signed) Walter T. Moore, per S. Emlin, Jr.

30

Mr. Reger: I offer that in evidence.

Marked Exhibit P-25.

Q. Subsequent to the arrival of the Steamship "Ella" did you have any notification from the Lehigh Valley Railroad Company, asking that these pebbles be moved from the Pier? A. Yes, sir.

Q. Did you receive a notice directly from the company or through the John W. Higman Co.? A. Direct from the Company.

40

Q. Did you also have correspondence with the John W. Higman Co., with reference to it? A. Yes, sir.

Q. I show you a letter dated December 28th, 1911, addressed to Walter T. Moore and signed The Atlantic Pebble Co., M. F. Wirtz; Have you the original of that letter, Mr. Bradley.

10 Mr. Bradley: December 28th, 1911? (produces letter).

Q. Is that a copy of a letter sent by you to Walter T. Moore? A. (referring) Yes, sir.

Q. What was the occasion for sending that letter? A. I received from Mr. Moore copies of letters to the Higman Company in which they had requested that the pebbles move more rapidly; stating also that if this were not done, they would be put in the public 20 warehouse; on receiving these copies, I wrote this letter.

Q. Will you read that letter? A. (reads) "December 28th, 1911, Mr. Walter T. Moore, G. F. A. L. V., Philadelphia, Pa. We have copies of your various letters to the Higman Co. and also received this morning copy of Mr. Quigley's letter, in view of which we are very much surprised at the communication from the P. & R. Railroad Co. From the copy of letter October 28th, there seems to be no doubt as 30 to your entire familiarity with conditions and what you would be likely to expect in the matter of this last shipment, so that we cannot see that the P. & R. people have any grounds for writing a letter such as they have. This, however, will not in any way cause us to relax our endeavors to get this stock moving, even if we have to make some concessions in the matter of settlements. You may assure the P. & R. people that every effort is being made to see that this cargo moves promptly." (signed) The Atlantic Peb-40 ble Company, M. F. Wirtz.

Mr. Reger: I offer that letter in evidence.

Marked Exhibit P-26.

Q. Did you make efforts to secure orders for the shipment of these pebbles? A. Through the John W. Higman Company; not direct. We had several conferences. We decided that we would make some sacrifices of profits and the Higman Company also agreed to take long time notes from users of pebbles if they would consent to take in the pebbles at that time.

Q. Was that the busy season in the pebble business or not? A. That was the dull season; no pebbles were moving of any kind.

Q. These pebbles were used by cement plants, I think it has been testified? A. The greatest part of them, yes, sir.

Q. Do the cement plants operate during the Winter? A. No, sir, not to any great extent; very little.

Q. I show you a letter dated January 27th, 1912, addressed to the Atlantic Pebble Company, and signed Walter T. Moore, and ask you if you received that letter? A. Yes, sir.

Q. Will you read it please? A. (reads) "January 27th, 1912, The Atlantic Pebble Co., Lincoln. Confirming my telegrams date to yourselves and The John W. Higman Co., of New York, we are notified by the Philadelphia & Reading Railway that they will commence to move the Pebbles now at Pier D, Port Richmond to Public Stores on Thursday, February 1st, if no shipping orders are received prior to that date." (signed) Walter T. Moore.

Mr. Reger: I offer it in evidence.

Marked Exhibit P-27.

Q. I show you another letter under date of January 29th, 1912, addressed to the Atlantic Pebble Company, signed Walter T. Moore, by S. Emlin, Jr., to which is attached a copy of a letter addressed to Walter T. Moore, and signed R. L. Russell, General Freight Agent, bearing the inscription of the Philadelphia & Reading Railway Company, and ask you
10 whether you received that letter with the copy attached? A. Yes, sir.

Q. Will you read the letter? A. (reads) "January 29th, 1912, The Atlantic Pebble Co., Lincoln. Referring to my telegram and letter of the 27th inst., I enclose herewith copy of letter just received from Mr. R. L. Russell, General Freight Agent of the Philadelphia & Reading Railway dated January 27th. Mr. Russell advises that the cost of loading and transferring to Port Richmond Stores will be $5.00
20 per car and the warehouse company states that they will make the charge as low as possible but are not prepared to name a figure until they have handled some of the goods. (signed) Walter T. Moore, per S. Emlin, Jr.

Mr. Reger: I offer it in evidence.

Marked Exhibit P-28.

30 The Court: Should not the copy be read also?

Mr. Reger: I am willing that it should be.

A. (reads copy). "Philadelphia, January 27th, 1912. Mr. Walter T. Moore, G. F. A. Lehigh Valley R. R., Philadelphia. Referring to my letter to you of December 27th, 1911, notifying you of the necessity for removal of pebbles from Pier D, Port Richmond: Nothing in the interim seems to have been
40 done in the way of furnishing shipping directions,

and as we are urgently in need of considerable space for the unloading of our cars containing export freight, I have to say that I have instructed our people at Port Richmond to send the pebbles to public storage, viz: into the Port Richmond Stores, at Richmond & Williams Streets, Philadelphia, at owner's expense starting this work of transferring from the Pier to the storage on February 1st. It may not be necessary to remove all the pebbles just at this time but we will start by sending about 1000 tons to storage and as to the remainder, we shall have to ask for prompt shipping directions, otherwise we shall have to store those also. In short, the time has arrived when we must have the pebbles entirely removed." (signed) R. L. Russell, General Freight Agent.

Q. Did you get a reply to that letter from Mr. Moore? A. Yes, sir.

Q. I show you a letter dated January 30th, 1912, addressed to Walter T. Moore, and signed The Atlantic Pebble Company, and ask you whether or not that is a copy of your reply. A. Yes, sir.

Q. Have you the original of that?

Mr. Bradley: I think I have (produces letter).

Q. (showing letter) Is that the original of the letter to which you have just referred? A. Yes, sir.

Q. Read that please? A. (reads) "Lincoln, N. J., Jan. 30, 1912, Mr. Walter T. Moore, Philadelphia, Pa., we have yours of the 29th with enclosure and we can only repeat that any expense incurred must be for your account and we cannot be held responsible for any arrangement between yourselves and the P. & R. Railroad Co. The arrangement which you made with the Higman Co. does not contemplate any such action, nor was there any time limit made on the question of the removal of the goods, and we shall

have to maintain our position legally if necessary, so that if any of the goods are removed or expense incurred, it must be for your account." (signed) The Atlantic Pebble Co., M. T. Wirtz, Mgr.

Mr. Reger: I offer that in evidence.

10 Marked Exhibit P-29.

Mr. Reger: Have you the letter dated February 3rd, 1912, Mr. Bradley, from the Atlantic Pebble Company to Walter T. Moore?

Mr. Bradley: No, sir, I haven't got that.

Q. I show you a copy of a letter addressed to Walter T. Moore, signed The Atlantic Pebble Co., and 20 dated February 3rd, 1912, and ask you whether or not you wrote that letter to Mr. Moore? A. Yes, sir.

Q. Will you read that please? A. (reads) "February 3rd, 1912, Mr. Walter T. Moore, Philadelphia, Pa. We have yours of the 2nd inst., and the only arrangement that we know of is that which you consummated with the John W. Higman Co., and on basis of this we shall have to base our action in case there are any charges for handling or storage, as we 30 positively will not be responsible for any such charges. These pebbles are insured on the P. & R. Dock, and as we have no knowledge of where they are at present located, we must point out to you that we shall hold you responsible in case of any damage by fire to the goods in question." (signed) The Atlantic Pebble Co., M. T. Wirtz, Sec'y.

Mr. Reger: I offer that in evidence.

40 Marked Exhibit P-30.

Q. I show you another letter dated February 6th, 1912,—

The Court: There seems to have been, from the reading of the letters, an intervening letter; was that an oversight on your part?

Mr. Reger: I don't seem to have the letter. 10

The Court: I am only speaking of it because you are breaking the continuity between the dates of January 30th and February 3rd.

Mr. Reger: Yes; I don't seem to have the letter; I don't know what is in it.

Q. I show you another letter dated February 6th, 1912, addressed to the Atlantic Pebble Company, and 20 signed Walter T. Moore, by W. J. Robertson, and ask you whether or not you received that letter? A. Yes, sir.

Q. Will you read that? A. (reads) "February 6th, 1912, The Atlantic Pebble Co., I enclose herewith copy of letter received to-day from Mr. R. L. Russell, General Freight Agent of the Philadelphia & Reading Railway with copy of his letter same date to Mr. O. H. Hagman, Port Richmond, from which you will note that on account of congestion of freight they 30 are obliged to remove an additional 500 tons which will make in all about 1500 tons sent to Port Richmond Stores, Cambria and Richmond Streets, for your account." (signed) Walter T. Moore, per Wm. J. Robertson.

Q. There is a copy of a letter attached to that? A. Yes, sir.

Q. Read that? A. (reads) "Philadelphia, February 5th, 1912. File 145940-1. Mr. Walter T. Moore, Philadelphia, Pa. I enclose you copy of letter I have 40

sent to-day to our Agent Port Richmond, which is self explanatory. We are holding out to-day 61 cars and there is prospect of large additional movement of export freight, so that we must take measures now to have an additional quantity of the pebbles removed." (signed) R. L. Russell, General Frt. Agt.

Q. Is there also another copy attached to that let-
10 ter? A. Yes, sir, of February 5th, 1912. (reads) "Philadelphia, February 5th, 1912, File 145940-1. Mr. O. H. Hagerman, Shipping & Freight Agent, Port Richmond. Referring to my letter to you January 27th, and to our conversation to-day, in reference to removal of Pebbles from Pier D: I wish you would send an additional lot of approximately 500 tons to the Port Richmond Stores, and after you have done so will you please advise me promptly as to what the conditions are with prospect to being able
20 to take care of the accumulation of export freight account of Hamburg-American Line, as I notice we have this morning a large accumulation of cars outstanding. Is it possible for you to re-arrange the pebbles in any way so that less space can be occupied?" (signed) R. L. Russell, G. F. A.

Mr. Reger: I offer them in evidence.

Marked Exhibit P-31, three letters.

30

Mr. Reger: Have you, Mr. Bradley, a letter dated May 8th, 1912, addressed to Walter T. Moore, signed by the Atlantic Pebble Co.?

Mr. Bradley: Yes (produces letter).

Q. After the 1500 tons of pebbles had been placed in the store house as indicated by previous correspondence, did you receive orders from your customers, for any of this stuff? A. From the John W.
40 Higman Company, we received orders.

Q. And were any of the pebbles in the storehouse ordered out of the storehouse? A. Yes, sir.

Q. I show you a letter dated April 8th, 1912, addressed to Walter T. Moore, and signed the Atlantic Pebble Co.; did you write that letter? A. Yes, sir.

Q. Will you read it please? A. (reads) "April 8th, 1912, Mr. Walter T. Moore, Phila., Pa. We understand from Mr. Quigley of the John W. Higman Co. that they are about to order some pebbles to be shipped out of store, and they also advise us that a check will have to be sent for storage charges for the material as it is removed. We have agreed with Mr. Quigley to pay these charges under protest and will reserve our claim until all the material has been removed from store and will then take legal action to have the matter straightened out. We wish that our position shall be clearly understood in the matter and that any payments we make without any further formal notice are made on this basis until the entire amount of material has been removed from store." (signed) The Atlantic Pebble Co., M. T. Wirtz, Treas.

Mr. Reger: I offer that in evidence.

Marked Exhibit P-32.

Q. Did the Atlantic Pebble Company subsequently pay any storage charges for the storage of these pebbles in the warehouse? A. Yes, sir.

Q. By whom were these payments made? A. The first payment was made direct to the Lehigh Valley Railroad Company; the subsequent payments were made to the Pennsylvania Warehouse and Safe Deposit Co., with one exception, I believe.

Q. To whom were the checks for the payments sent? A. To Mr. Walter T. Moore, office of the Lehigh Valley Railroad Company.

Q. How were the checks drawn, to the order of the Pennsylvania Warehousing Company? A. Yes, sir.

Q. Were all of the payments with the one exception, which you speak of, made through Mr. Moore's office? A. Yes, sir, they were all made through Mr. Moore's office.

Q. Will you refer to your book and tell us what 10 payments were made from time to time?

The Court: Is there any controversy as to the amount?

Mr. Bradley: No, Your Honor, none whatever.

The Court: I am only asking if there is not, is formal proof necessary?

20 Mr. Reger: I don't think it is necessary to go over the accounts, because we are satisfied it is a reasonable amount.

The Court: That the amounts were actually paid?

Mr. Reger: That the amounts were actually paid.

The Court: Then is there any use, gentlemen, simply taking up the time with formal proof?

30

Mr. Bradley: No, I am entirely satisfied with that. If Mr. Wirtz will state that he is ready to prove the amount as set forth in the schedule attached to the complaint.

Mr. Reger: Yes.

The Court: With that one exception of May 21st.

40 Witness: Which has been taken out.

The Court: What have you to say as to that? You are able to prove it?

Witness: Yes, sir.

Mr. Bradley: Otherwise the schedule attached to this is correct?

10

Witness: The schedule attached to this is correct.

Mr. Bradley: And that you paid those amounts?

Witness: Yes.

Mr. Bradley: Then I will waive the formal proof.

The Court: That leaves $5,517.12. That seems to be the amount set forth, less—the last payment was made when? 20

Mr. Bradley: On February 10th, 1914.

Witness: The 21st, pardon me.

The Court: February 21st, 1914?

Witness: 1914.

30

The Court: Is that the date from which you are asking interest?

Mr. Reger: Yes.

Q. I show you certain receipts which are attached, also receipts from Walter T. Moore, addressed to your company, and ask you whether or not those are the receipts and correspondence with Mr. Moore relative to the payments which were made, about which you have just testified? A. Yes, sir. 40

Q. You have already been over those and checked them up, haven't you? The first item in that bill of items attached to the bill of complaint, does not appear in those receipts, does it? A. No, sir; that is the only one that is missing.

Q. And that check was made direct to whom? A. To the Lehigh Valley Railroad Company.

10 Q. That item was also paid for the storage charges was it? A. Yes, sir.

Mr. Reger: I offer this in evidence.

The Court: What is the purpose of it? Simply to show the payments?

Mr. Reger: To show the payments.

20 The Court: That is the only purpose?

Mr. Reger: That is the only purpose.

The Court: That is something you have agreed upon?

Mr. Reger: Yes.

30 Marked Exhibit P-33.

Q. What amount was paid, Mr. Wirtz, for storage charges, during the first year that they were in the store-house? A. I have the exact amount on a piece of paper.

Q. Will you get it. A. (referring) $2739.70.

Q. What tonnage does that represent? A. 1498 tons.

Q. Practically 1500 tons? A. Yes, sir.

40 Q. The first amount which was placed in storage

after the Steamship "Ella" arrived, amounted to 1500 tons, did it not? A. 1000 tons.

Q. In two lots? A. In two lots, each of 500 tons.

Q. And that quantity was placed in the store-house early in February, about the first of February, 1910? A. Yes, sir.

Q. Do you know when the remainder of the pebbles were stored? A. No, sir, I do not. 10

Q. It was some time later? A. Yes, at intervals they seemed to go into the warehouse. We had no notice of that.

Q. They were removed from time to time, from the pier into the warehouse? A. Yes, sir.

Q. After they had all been removed from the warehouse, ordered out by your orders, did you then have any correspondence with Mr. Moore? A. I asked Mr. Moore to secure for us a statement of the entire storage account, showing when the material had gone 20 into the warehouse and when it was removed and the charges paid.

Q. I show you a letter dated May 12th, 1914, addressed to The Atlantic Pebble Company, and signed Walter T. Moore, and ask you whether you received that letter? A. Yes, sir.

Q. Will you read it please? A. (reads) "March 12, 1914, Atlantic Pebble Company, Lincoln. Referring to my letter 4th inst. your pebbles have now been all loaded from the Warehouse and the account 30 closed by the Pennsylvania Warehousing & Safe Deposit Company. They are not disposed at this time to make up an account as they have rendered you through this office a full statement of each lot as it was released which shows the amount of storage and the switching charges in full. I have advised you in each instance of the actual weight loaded and by comparing these figures with the tonnage as ordered you will find there is a difference in your favor. The warehouse company are willing to drop the difference 40

which you owe them and is figured roughly at about $150. I trust that this will be satisfactory to you." (signed) Walter T. Moore, per S. Emlin, Jr.

Mr. Reger: I offer that letter.

Marked Exhibit P-34.

10

Q. Was any statement ever furnished you such as you asked for? A. No, sir.

Cross-Examination by Mr. Bradley:

Q. Mr. Wirtz, where were you doing business in 1910? A. At Lincoln, N. J.

Q. Was the Higman Company at that time, acting as your selling agents? A. Yes, sir.

20 Q. You say you are the treasurer, I think, of the Atlantic Pebble Company? A. Yes, sir.

Q. Were you also general manager? A. Yes, sir, at this end; not in Newfoundland.

Q. But in the United States? A. Yes, sir.

Q. Had entire charge of the Company's business in this country? A. Yes, sir.

Q. Did you have conferences with Mr. Quigley of the Higman Company in 1910, relative to the arrangement which he made with the Lehigh Valley

30 Railroad Company? A. Yes, sir.

Q. And did you authorize him to take full charge of that matter and to make such arrangements as he could? A. Yes, sir.

Q. You did not then directly have any dealings with the agents of the Lehigh Valley Railroad Company, until 1911, I think? A. Yes.

Q. The first time you met Mr. Moore or Mr. Emlin, was in the office of the Higman Company in New Jersey? A. No, sir, I met Mr. Moore at the time of

40 the arrival of the Steamship "Molina." There was

some question as to unloading the cargo of that vessel, and Mr. Quigley was under the impression that we were to unload on the lower dock. Instead of that, owing to the fact that the pebbles were to remain for a long time on the pier, the P. & R. would only unload it on the upper dock, and these vessels that were chartered, would lie very low in the water, and it was a question whether a Stevedore would be able to unload from this very low position on to the larger dock, and when the vessel arrived, I went down to the pier, to the Custom House, and called on Mr. Moore in reference to it. 10

Q. And that was the first meeting with Mr. Moore? A. That was my first meeting with Mr. Moore, yes.

Q. At that time, did you discuss the terms of this arrangement at all? A. No.

Q. That had already been referred to Mr. Quigley? A. Yes, sir. 20

Q. You had charge of the sale of these three cargoes, that came? A. Yes, sir.

Q. Can you tell whether any of those cargoes had been sold at the time they arrived or beforehand? A. I have no absolute knowledge except that Mr. Quigley told me that a number of the cargoes had been sold prior to arrival, but as to the quantities and to whom, I have no knowledge.

Q. That was not within your direct business, the sale of these cargoes? A. Yes, because I made another sale through Higman & Company. These cargoes were sold by me practically to Higman & Company. 30

Q. As a factory agent of the Atlantic Pebble Company? A. Yes, sir.

Q. You made no direct sales to the customers who really used these pebbles? A. No.

Q. As a matter of fact, the pebbles were sold to various consumers all through the country, were they not? A. Yes, sir, so I understand. 40

Q. Now, did you ever give any direct authority to Mr. Quigley of the Higman Company to enter into any particular kind of contract with the Lehigh Valley Railroad? A. No, sir.

Q. Neither in 1910 or at any other time? A. No, sir.

Q. So that whatever was done in that regard, was 10 done entirely by Mr. Quigley. A. Yes, sir.

Q. Under his general authority as selling agent of the Atlantic Pebble Company? A. Yes, sir.

Q. The Atlantic Pebble Company paid no consideration in money to the Higman Company or to the Lehigh Valley Railroad Company for this privilege of dumping pebbles on Pier D, did they? A. No, sir.

Q. And is not obligated in any way to the Lehigh Valley Railroad or to any other person in connection with that unloading? A. No, sir.

20 Q. When you and Mr. Emlin first discussed these arrangements in New York, I think it was— A. Yes, sir.

Q. In 1911— A. Yes, sir.

Q. Did you discuss the matter with him as if the Atlantic Pebble Company were in the arrangement with the Lehigh Valley Company or did you merely discuss it as an arrangement between Higman & Co. and the Lehigh Valley Co.? A. My position as Secretary really; because discussions had been going on 30 between the Higman Company and the Lehigh Valley and we, directly, did not interfere.

Q. Mr. Quigley then was acting entirely for the Atlantic Pebble Company? A. Yes, sir.

Q. Although he was not in any way interfered with by you nor did you have any connection whatever, with negotiations? A. No, sir.

Q. So that anything that you may have said or that might have been said at that conference in 1911, so far as you were concerned was really of no account

40

in connection with this arrangement? A. No, it was not.

Q. You could not really say it had any effect upon it, one way or the other, could you? A. We had no contract with the Lehigh Valley.

Q. If there was any arrangement or contract there — A. No, sir.

Q. You did not make it and had no connection with it? A. No, sir. 10

Q. And really your whole knowledge of this arrangement with the Lehigh Valley Company is derived from what Mr. Quigley may have told you and from what you may have seen in the correspondence, isn't that so? A. Yes, sir.

Q. Now, the Philadelphia & Reading began to show some impatience with regard to the length of time which the pebbles remained on the pier, sometime in 1911, I think? A. Before the arrival of the second vessel. 20

Q. Yes, before the arrival of the second vessel, the Steamship "Flora." A. "Flora," yes, sir.

Q. And from that time, on, considerable correspondence was had between the Lehigh Valley and the Atlantic Pebble Company with regard to the moving of the pebbles? A. Not until December. Between September and December, there was very little said.

Q. But by December— A. Then it began to get energetic. 30

Q. Yes, it began to get energetic and the controversy was full-fledged by the first of December, was it not? A. Yes, sir.

Q. And the pebbles were actually removed and final notice of their removal was given I think, on January 27th? A. I would like to make a correction on that. It was not the first time they got so energetic, because they agreed to take in the "Ella" which had not arrived until December 6th, so that

40

after the "Ella" was unloaded and the cargo was on the pier, then they began to make trouble.

Q. That was about the middle of December, then, wasn't it? A. Yes, sir.

Q. And six weeks before the pebbles were actually removed? A. Yes, sir.

Q. Can you say about when the first removal was
10 made? A. Begun in February; I don't know the exact date.

Q. But it was not until after the first of February? A. About that time, yes, sir.

Mr. Bradley: Mr. Reger, have you a letter from Mr. Walter T. Moore to The Atlantic Pebble Company, dated January 13th, 1912?

Witness: I have a memorandum of that, Mr. Re-
20 ger; that was one that I could not find.

The Court: That seems to settle it then.

Mr. Bradley: Telegram from Mr. Walter T. Moore, from M. T. Wirtz, dated January 27th, 1912?

Mr. Reger: I have a copy of that. I think that telegram is already in evidence.

30 Mr. Bradley: There is a telegram from Walter T. Moore to Hagerman.

Mr. Reger: Here is a copy of it.

Mr. Bradley: We can identify that. There is one thing more—a letter from Walter T. Moore to the Atlantic Pebble Company, dated December 30th, 1911.

Mr. Reger: (produces letter) The other one is January 13th, 1912; here it is (producing letter). I
40 have the original.

Mr. Bradley: You have the original?

Mr. Reger: Yes.

Q. I show you a letter dated December 30th, 1911, from Walter T. Moore, to the Atlantic Pebble Co., and ask you if you are familiar with Mr. Moore's signature and if you received that from Mr. Moore? 10
A. Yes, sir.

Mr. Bradley: I ask to have it marked for identification.

Marked Exhibit D-3 for identification.

Q. I show you a letter dated January 13th, 1912, to the Atlantic Pebble Co., signed Walter T. Moore, and ask you if you received that letter from Mr. Moore? 20
A. Yes, sir.

Mr. Bradley: I ask to have that marked.

Marked Exhibit D-4 for identification.

Q. I show you what purports to be a copy of a telegram addressed to M. W. Wirtz, signed Walter T. Moore, dated January 27th, 1912, and ask you if that is a copy of a telegram that you actually received on 30 that date from Mr. Moore. A. Yes, sir.

Mr. Bradley: I ask to have that marked.

Marked Exhibit D-5 for identification.

By the Court:

Q. Mr. Wirtz, I want to ask you a few questions to clear up what I understood from your cross-exami- 40

nation. You were being asked by Mr. Bradley regarding the question as to whether or not any of these pebbles had been sold prior to their delivery at Philadelphia? A. Yes, sir.

Q. You said something about their having been sold to the Higman Company? A. To the Higman Co.

10 Q. What did you mean by that? A. We sold all of these pebbles to the Higman Company. We made no direct sales to any customers, because, as I understood Mr. Bradley's question, he wanted to know whether any of these cargoes had been sold to consumers prior to their arrival and there had been in each instance parts of the cargoes sold by Higman Company to consumers, and which was reported by them to us.

Q. Prior to the arrival of these cargoes at Phila-
20 delphia, whose property were they, the Higman Company's property? A. No, sir, Atlantic Pebble Company's property.

Q. Whenever a sale took place, as you spoke of, from the Higman Company, it went from one of the cargoes? A. Upon shipment?

Q. Every new shipment? A. From the pier in Philadelphia; then we considered the sale made, and from that time on, the time for payment began, as soon as the bill of lading had been issued by the rail-
30 road.

Plaintiff rests.

Mr. Bradley: I beg to move that a judgment of non-suit be entered in this case upon a number of grounds:

First, that the evidence shows that no contract was entered into because there was no meeting of the minds of the parties, or any definite terms. It was a
40 mere arrangement.

Second, that the evidence shows no contract because there was no consideration for a contract.

Third, that any facts tending to show consideration were so uncertain as not to be sufficient to constitute a binding contract.

Fourth, that if any contract was entered into between the parties, the agreement on the part of the defendant was only to procure for the plaintiff a mere revocable license. 10

Fifth, that if any consideration was created by the acts and statements of the parties, it must be construed to be limited to an agreement to permit the plaintiff to store its pebbles on the dock in question for a reasonable time only.

Sixth, that the defendant in entering into the arrangement and in making the contract, if any, was acting only as agent for the Philadelphia & Reading Railroad Company, which agency was well known to the plaintiff at the time of making the contract, and all conditions of which were fully disclosed at that time. 20

(After recess, and after arguments).

The Court: In my opinion, gentlemen, the motion for a non-suit should be granted. It does not appear to me from the testimony so far adduced, that a legal contract, supported by a valuable consideration and binding upon the defendant, has been established. If my conclusion is legally correct, then the plaintiff has not made out its case, and there is no basis for the action which we are trying; consequently there would be nothing for presentation to the jury. That being my conclusion, the motion for a non-suit will be granted. 30

Mr. Reger: My objections, I take it, have been sufficiently noted, my grounds? 40

Exhibits.

The Court: I understand that you object to the reasons affirmatively urged, of course, by the defendant in his motion for a non-suit; and that you have answered those reasons; and I think that you advanced at least one other matter, the matter of bailment, which was not touched upon by the defendant.

10 Exhibit P-23 for Plaintiff:

Orders given defendant by the John W. Higman Company, selling agents of plaintiff, as abstracted from letters, which orders show route of shipment.

Date of letter to Lehigh Valley Railroad—Jan. 30, 1911.

Shipped to—Dexter Portland Cement Co., Nazareth, Pa.

20
68 bags size No. 0 |
131 bags size No. 1 | 30 tons.
200 bags size No. 2 |

Routed P. & R., L. V., L. & N. E.

Letter date to Lehigh Valley Railroad Co.—Jan. 30, 1911.

Shipped to—Dexter Portland Cement Co., Nazareth, Pa.

68 bags No. 0 |
30 131 bags No. 1 | 30 tons.
200 bags No. 2 |

Route P. & R., L. V., L. & N. E.

Letter date of Lehigh Valley R. R. Co.—Feb. 6, 1911.

Shipped to—Alsen's American Portland Cement Co.

200 bags No. 2 |
| 30 tons.
200 bags No. 3 |

40 Via P. & R., C. R. R. of N. J. to Alsen.

Exhibits.

Date of letter to Lehigh Valley R. R. Co.—Feb. 11, 1911.

Shipped to—Rickert & Banks, Waverly, N. J., Penn. R. R. Del'y.

5 bags No. 1, 5 bags No. 2, 5 bags No. 3.

Date of letter to Lehigh Valley R. R. Co.—Feb. 13, 1911. 10

Shipped to—Louisville Portland Cement Co., Speeds, Ind.

200 bags No. 2 |
| 30 tons.
200 bags No. 3 |

Route P. & R., L. V., Pan Handle.

Same date:

Shipped to—New Jersey Zinc Co., Hazard County Carbon, Pa. 20

13 bags No. 3 (1 ton).

C. R. R.

Date of Letter to Lehigh Valley R. R. Co.—Feb. 13, 1911.

Shipped to—Helderberg Portland Cement Co., Howes Cave, N. Y.

35 bags No. 1 |
34 bags No. 2 | 17 $^{2022}/_{2240}$ tons. 30
120 bags No. 3 |

P. & R., L. V., D. & H.

Date of letter to Lehigh Valley R. R. Co.—Feb. 20, 1911.

Shipped to—Chanute Cement Co., Chanute, Kas.

119 bags No. 2 |
| 17 $^{2072}/_{2240}$ tons.
120 bags No. 3 |

P. & R., L. V., Santafe. 40

Date of letter to Lehigh Valley R. R. Co.—Mar. 20, 1911.

Shipped to Chicago Portland Cement Co., La Selle, Ill.

200 bags No. 2 | 30 tons.
200 bags No. 3 |

10 P. &. R., L. V., Ill. Cent.

Date of letter to Lehigh Valley R. R. Co.—Mar. 20, 1911.

Braun-knecht-Heimann Co., Amer-Hawaiian, Bush Terminal, B'klyn.

239 tons No. 4—20 $^{152}/_{2000}$.

P. & R. (?)

Date of letter to Lehigh Valley R. R. Co.—Mar. 21,
20 1911.

Shipped to—Braun-Knecht-Heimann Co.

596 Bags No. 4—51 $^{128}/_{2000}$.

P. & R., L. V., to New York Sunset. Gulf Route.

March 24.

Canada Cement Co., Plant No. 2.

1000 bags No. 3—75 tons gross.

P. & R., L. V., c/o C. N.

30 *Date of letter to Lehigh Valley R. R. Co.—Mar.* 31, 1911.

Shipped to Braun-Knecht-Heimann, Bush Terminal.

239 bags No. 4—20 $^{152}/_{2000}$ tons.

P. & R., L. V. to Brooklyn.

April 5th, 1911.

Braun-Knecht-Heimann Co.

239 bags No. 3—30 $^{152}/_{2000}$ tons.

40 P. & R., L. V. to Amer-Hawaiian Line—Brooklyn.

Date of letter to Lehigh Valley R. R. Co.—Apr. 20, 1911.

Shipped to—Braun-Knecht-Heimann Co.

298 No. 4—25 $^{64}/_{2000}$.

P. & R., C. R. R. of N. J. to Amer-Hawaiian Line, B'klyn, N. Y.

Date of letter to Lehigh Valley R. R. Co.—May 2, 1911. 10

Shipped to—Chicago Portland Cement Co., Oglesby, Ill.

Shipped

Ordered 933 bags No. 3 | 467 bags No. 3—35 $^{56}/_{2240}$ tons
| 466 bags No. 3—34

P. & R., L. S. and L. V. to Oglesby, Ill. 2 separate Bs/L.

Date of letter to Lehigh Valley R. R. Co.—May 27, 1911. 20

Shipped to—Atlas Portland Cement Co.

Shipped 800 bags No. 2—60 tons.

Via P. R., C. R. R. of N. J. and N. & B. R. R. to Northampton, Pa. (Atlas).

Date of letter to Lehigh Valley R. R. Co.—May 31, 1911.

Shipped to—Dexter Portland Cement Co., Nazareth Pa. 30

B/L reads? 400 bags No. 2—30 tons.

Via P. & R., L. V. R. R., L. & N. E. R. R. to Nazareth, Pa.

May 12th 1911.

400 bags No. 3—30 tons.

P. & R., L. V. to Nazareth, Pa.

Date of letter to Lehigh Valley R. R. Co.—June 17, 1911. 40

Shipped to—Braun-Knecht-Heimann.
133 bags No. 1.
134 bags No. 2.
——
267 bags—20 $^{56}/_{2240}$ tons.

Via P. & R., C. R. R. of N. J. to Amer. Hawaiian S. S. "Co.'s" Pier for shipment to Seattle, Wash.

10

Date of letter to Lehigh Valley R. R. Co.—June 19th, 1911.

Shipped to—Hardinge Conical Mill Co.
12—No. 1.
24—No. 2.
—
36 bags—2 $^{1568}/_{2240}$ tons.

Ex. "Molina" via P. & R., c/o Lake Shore—L. V. Route to Ruhm Phosphake Mining Co., Mt. Pleasant,

20 Tenn.

Date of Letter to Lehigh Valley R. R. Co.—June 28, 1911.

Shipped to—Canada Cement Co.
1 Car—400 bags No. 3—30 tons.

Ex. "Molina" via L. V. R. R. c/o Grand Trunk to Lakefield, Ont.

30 *Date of letter to Lehigh Valley R. R. Co.—June* 28, 1911.

Shipped to—Canada Cement Co.

No. 3. 1 Car Selected Nfld. Pebbles—400 bags—30 tons.

Ex. "Molina" via. L. V. R. R. c/o Grand Trunk to Lakefield, Ont.

Date of letter to Lehigh Valley R. R. Co.—June 30,

40 1911.

Shipped to Helderberg Cement Co., Howes Cave, N. Y.

60—No. 1.
60—No. 2.
680—No. 3.
——
800 bags—60 tons.

Via P. & R., L. V., D. & H. to Howes Cave, N. Y.

Date of letter to Lehigh Valley R. R. Co.—July 5th, 1911.

10

Shipped to—Canada Cement Co.

1 Car—400 bags—30 tons, No. 3.

Ex. "Molina" and via L. V. R. R. c/o Grand Trunk for Shallow Lake, Ont.

Date of letter to Lehigh Valley R. R. Co.—July 10, 1911.

Shipped to—Braun-Knecht-Heimann Co.

239 bags—20 $^{152}/_{2000}$ tons.

20

Ex. "Molina" and via P. & R. R. and C. R. R. of N. J., to Morgan Line at New York—Sunset Route to Galveston or New Orleans, thence So. Pac. via Sacramento, c/o Tonopah & Goldfield to Millers, Nev.

Date of letter to Lehigh Valley R. R. Co.—July 11/11.

Shipped to—Dexter Portland Cement Co., Nazareth, Pa.

No. 2—400 bags—30 tons.

Via P. & R., L. V. R. R. and L. & New England R. R. to Nazareth, Pa.

30

Date of letter to Lehigh Valley R. R. Co.—July 18, 1911.

Shipped to—Canada Cement Co.

No. 4—400 bags—30 tons.

Ex. "Molina" and via P. & R., L. V. R. R.—Grand Trunk for Montreal.

Date of letter to the Lehigh Valley R. R. Co.—July 25, 1911.

40

Shipped to—Canada Cement Co.
No. 3—275
No. 4—125
——
400 bags—30 tons.

"Molina" via L. V. R. R. and Grand Trunk c/o Montreal Terminal or C. N. Ry. to Montreal.

10

Date of letter to the Lehigh Valley R. R. Co.—July 28, 1911.

Shipped to—Braun-Knecht-Heimann Co.
No. 2—239 bags—20 $^{152}/_{2000}$ tons.

Via P. & R. to Amer. Hawaiian S. S. Co.'s pier and via S. S. "California" to San Diego, Cal.

Date of letter to the Lehigh Valley R. R. Co.—Aug.

20 18, 1911.

Shipped to—Canada Cement Co.
No. 2—2000 bags—150 tons.

Ex. S. S. "Molina" and via L. V. R. R. c/o Grand Trunk to Port Colborne, Ont.

Date of letter to the Lehigh Valley Railroad Co.— *Sept.* 29/11.

Shipped to—Michigan Portland Cement Co.
No. 3—318 bags—20 $^{38}/_{2240}$ tons.

30 Ex. S. S. "Flora" at P. & R. and via P. & R. and Michigan Central, Lehigh Valley to Chelsea, Mich.

Date of letter to the Lehigh Valley Railroad Co.— *Sept.* 29/11.

Shipped to—Victor M. Braschi & Co.
No. 4—318 bags—20 $^{38}/_{2240}$ tons.

Via P. & R., c/o C. R. R. of N. J. and then to pier 7—N. R.—via American & Cuban S. S. Co.'s S. S.

40 "Santa Clara" for shipment to Vera Cruz.

Exhibits.

Date of letter to Lehigh Valley R. R. Co.—Sept. 29, 1915. *Letter reads* 239 *bags date Sept.* 27/11.

No. 3—142
No. 4—142
— —
284 bags—40,044 lbs.—20 $^{44}/_{2000}$ tons.

Ex. S. S. "Flora" at Phil. via P. & R. c/o C. R. R. of N. J. to Amer-Hawaiian S. S. Co.—Bush Dock— Brooklyn, N. Y., for shipment to Seattle, Wash. 10

Date of letter to the Lehigh Valley R. R. Co.—Sept. 29, 1911.

Shipped to the—Canada Cement Co.

No. 4—1430 bags—90 $^{30}/_{2240}$ tons.

Ex. S. S. "Flora" and via P. & R., L. V. R. R., via Montreal Terminal Ry. or C. N. Ry. to Montreal.

Letter reads—1200 bags.

Date of letter to the Lehigh Valley Railroad Co.— 20 *Oct.* 16, 1911.

Shipped to—Braun-Knecht.

No. 5—565 bags—39 $^{1665}/_{2000}$ tons.

Ex. "Flora" and via P. & R., L. V. R. R. c/o Morgan Line at New York, for shipment to The Tigre Mining Co., S. A.—Yzabel Somora, Mex.

Date of letter to the Lehigh Valley Railroad Co.— Oct. 16, 1911.

Shipped to—Canada Cement Co., Plant No. 1, Kilbourn Siding, Point Anx., Trembles. Montreal. 30

No. 4—833 bags—52 $^{973}/_{2240}$ tons.

Via P. & R., L. V. R. R. c/o Canadian Mo. Rly.

Date of Letter to Lehigh Valley Railroad.—Oct. 28, 1911.

Shipped to—Canada Cement Co., Plant No. 2, Long Point, Montreal, Canada.

2000 bags—125 $^{2000}/_{2240}$ tons.

Ex. S. S. "Flora" and via P. & R., L. V. R. R., c/o C. P. R. and C. N. Rly. 40

Exhibits.

Date of letter to the Lehigh Valley Railroad—Oct. 28, 1911.

Shipped to Canada Cement Co., Plant No. 1, Kilbourn Siding Point Anx., Trembles, Montreal.

No. 3—6366 bags—415 $^{2188}/_{2240}$ tons.

Ex. S. S. "Flora" and via P. & R., L. V. R. R. to plant No. 1.

10 *Date of letter to Lehigh Valley Railroad—Nov.* 4, 1911.

Shipped to—Chicago Portland Cement Co., Oglesby, Ill.

No. 3—400 bags—30 tons.

Ex. "Molina" and via P. & R., L. V. T. Co. to Chicago C. M. & St. Paul.

Shipped to—Dexter Portland Cement Co., Nazareth, Pa.

20 *Date of letter to Lehigh Valley Railroad.—Nov.* 8, 1911.

No. 2—476 bags—29 $^{2156}/_{2240}$ tons.

Ex. S. S. "Flora" and via P. & R., L. V. R. R. and L. & N. E. Ry.

Date of letter to Lehigh Valley R. R. Co.—Dec. 6, 1911.

Shipped to—Canada Cement Co.

No. 4—200 bags—24 $^{1940}/_{2240}$ tons.

Via P. & R., L. V. R. R., Grand Trunk Rly. and
30 Can. Mo. Ry. to Longue Points, Montreal.

Date of letter to Lehigh Valley R. R. Co.—Dec. 11/11.

Shipped to—Braun Corporation.

No. 5—148
No. 4—180
——
328 bags—34 $^{1100}/_{2000}$ tons.

Via P. & R., C. R. R. of N. J. c/o Morgan Line at
40 New York for shipment to The Tigre Mining Co. S.

Exhibits.

A.—c/o L. W. Van Treese, Customs Agt. at Douglas, Arizona.

Date of Letter to Lehigh Valley R. R. Co.—Feb. 23, 1912.

Shipped to—Alpha Portland Cement Co.
No. 2—160 bags—22,560 lbs.
Via P. & R. and L. V. R. R. for L. & N. E. del'y to Martines Creek, Pa.

10

Date of letter to Lehigh Valley R. R. Co.—Feb. 29, 1912.

Shipped to—Alpha Portland Cement Co.
No. 2—160 bags—10 $^{160}/_{2240}$ tons.
Via P. & R., L. V. R. R. for L. & N. E. del'y to Martines Creek.

Date of letter to Lehigh Valley R. R. Co.—Jan. 5th, *as Mar.* 1st, 1912.

20

Shipped to—Ironton Portland Cement Co.
266—No. 1.
317—No. 2.
——
583 bags—39 $^{2025}/_{2240}$ tons.
Via P. & R. and Traders Despatch, to Ironton,

Letter date to Lehigh Valley R. R. Co—Mar. 8, 1912.

Shipped to—Chicago, Portland Cement Co.
No. 3—296 bags—24 $^{580}/_{2240}$ tons.

30

Ex. S. S. "Ella"—P. & R., L. V. T. Co., c/o C. M. & St. Paul to Oglesby, Ill.

Letter date to Lehigh Valley R. R. Co.—Mar. 28, 1912

Shipped to—Superior Portland Cement Co.
134 No. 1.
160 No. 2.
——
Ohio.

294 bags—20 $^{272}/_{2240}$ tons.

40

Via P. & R.—Traders Despatch c/o D. T. & I. del'y to Superior, O.

Letter date of Lehigh Valley R. R. Co.—Mar. 30, 1912.

Shipped to—Sandusky Portland Cement Co.

No. 3—408 bags—20 tons.

10 Ex. "Ella," via P. & R. and Lake Shore—L. V. to Bay Bridge, Ohio.

Letter date to Lehigh Valley R. R. Co.—Apr. 8, 1912.

Shipped to—Alsens American Portland Cement Co.

925 bags—49 $^{2188}/_{2240}$ tons.

Via P. & R. and C. R. R. of N. J. and West Shore to Alsen, N. Y.

20 *Letter date of Lehigh Valley R. R. Co.—Apr.* 10th, 1912.

Shipped to—Butters Agencies, Inc.

No. 4—517 bags—60 tons.

Ex. "Ella" at Philadelphia via P. & R., L. V. R. R. and Grand Trunk Rly. to Nipissing Mining Co., Cobalt, Ont.

Letter date to Lehigh Valley R. R. Co.—Apr. 25, 1912.

30 Shipped to—Chicago Portland Cement Co.

No. 3—800 bags—49 $^{1700}/_{2240}$ tons.

Via P. & R., L. V. T. Co. for C. M. & St. Paul del'y for Oglesby, Ill.

Letter date to Lehigh Valley R. R. Co.—Apr. 30, 1912.

Shipped to—Chicago Portland Cement Co.

No. 3—347 bags—24 $^{340}/_{2240}$ tons.

Via P. & R., L. V. T. Co., c/o C. M. & St. Paul, to 40 Oglesby, Ill.

Exhibits.

Letter date to Lehigh Valley R. R. Co.—Apr. 30, 1912.

Shipped to—Chicago Portland Cement Co.
No. 3—362 bags—25 $^{2100}/_{2240}$ tons.
Via P. & R., L. V. T. Co., c/o C. M. & St. Paul, to Oglesby, Ill.

Letter date to Lehigh Valley R. R. Co.—May 2, 1912. 10
Shipped to—Chicago Portland Cement Co.
No. 3—338 bags—26 $^{760}/_{2240}$ tons.
Ex. "Ella" via P. & R., L. V. T. Co., c/o C. M. & St. Paul, to Oglesby, Ill.

Letter date to Lehigh Valley R. R. Co.—May 2, 1912.

Shipped to—Chicago Portland Cement Co.
No. 3—527 bags—25 tons.
Ex. "Ella" and via P. & R., L. V. T. Co., c/o C. M. 20
& St. Paul, del'y at Oglesby, Ill.

Letter date to Lehigh Valley R. R. Co.—May 8, 1912.
Shipped to—Chicago Portland Cement Co.
No. 3—528 bags—25 tons.
Ex. "Ella" and via P. & R., L. V. T. Co., c/o C. M. & St. Paul del'y at Oglesby, Ill.

Letter date to Lehigh Valley R. R. Co.—May 15, 1912.

Shipped to—Michigan Portland Cement Co. 30
No. 4—445 bags—48 $^{140}/_{2240}$ tons.
Ex. S. S. "Ella" via P. & R. R. R., Michigan Central and L. V., to Chelsea, Mich.

Letter date to Lehigh Valley R. R. Co.—May 17, 1912.

Shipped to—Wyandotte, Portland Cement Co.
No. 3—563 bags—50 tons.
Ex. "Ella" via P. & R., Mich. Central, L. V. R. R. to Wyandotte, Mich.

40

Exhibits.

Letter date to Lehigh Valley R. R. Co.—May 21, 1912.
Shipped to—Virginia Port. Cement Co.
810 bags—42 $^{20}/_{2240}$ tons.
Via P. & R. R. R. to Fordwick, Va.

10 *Letter date to Lehigh Valley R. R. Co.—June* 3, 1912.
Shipped to—Alpha Portland Cement Co.
No. 2—522 bags—30 $^{1000}/_{2240}$ tons.
Via P. & R., L. V. R. R. for L. & N. E. del'y to Martins Creek, Pa.

Letter date to Lehigh Valley R. R. Co.—June 10, 1912.
Shipped to—Virginia Portland Cement Co.
No. 2—2400 bags—148 $^{1440}/_{2240}$ tons.
20 Via P. & R. via Belmont & Penn. R. R., c/o C. O. to Fordwick, Va.

Letter date to Lehigh Valley R. R. Co.—June 18, 1912.
Shipped to—Virginia Port. Cement Co.
No. 2—1720 bags Nfld. pebbles—110 $^{1880}/_{2240}$ tons.
Via P. & R. and C. & O. to Fordwick, Va.

30 *Letter date to Lehigh Valley R. R. Co.—June* 26, 1912.
Shipped to—Sandusky Port. Cement Co.
2 and 3—781 bags—49 $^{2060}/_{2240}$ tons.
Via P. & R. to York, Pa.

Letter date to Lehigh Valley R. R. Co.—June 26, 1912.
Shipped to—Sandusky Port. Cement Co.
No. 3—218 bags—24 $^{40}/_{2240}$ tons.
40 Via P. & R.—Traders Despatch to Syracuse, Ind.

Exhibits.

Letter date to Lehigh Valley R. R. Co.—June 26, 1912.

Shipped to—Sandusky Port. Cement Co.

No. 3—435 bags—46 $^{870}/_{2240}$ tons.

Via P. & R.—Lake Shore, L. V. R. R. for Del'y at Bay Bridge, Ohio.

Letter date to Lehigh Valley R. R. Co.—June 26, 1912. 10

Shipped to—Sandusky Port. Cement Co.

No. 2—975 bags—60 $^{580}/_{2240}$ tons.

Via P. & R. and L. V. Trans. Co. to Dixon, Ill.

Letter date to Lehigh Valley R. R. Co.—June 26, 1912.

Shipped to—Sandusky Port. Cement Co.

No. 3—570 bags—62 $^{1860}/_{2240}$ tons.

Via P. & R., L. V. Trans. Co. to Dixon, Ill. 20

Letter date to Lehigh Valley R. R. Co.—June 26, 1912.

Shipped to—Sandusky Port. Cement Co.

No. 2—400 bags—24 $^{1400}/_{2240}$ tons.

Via P. & R.—Traders Despatch to Syracuse, Ind.

Letter date to Lehigh Valley R. R. Co.—July 1, 1912.

Shipped to—Braun-Knecht-Heimann Co. 30

No. 4—240 bags—20 tons.

Via P. & R.—Traders Despatch, Chicago, Burl. & Quincey & Great No. to Motherlode Mining Co., Salmo, B. C.

Letter date to Lehigh Valley R. R.—July 12, 1912.

Shipped to—Helderberg Cement Co.

No. 3—283 bags—29 $^{2140}/_{2240}$ tons.

Via P. & R., L. V. R. R., and D. & H. for del'y at Howes Cave, N. Y. 40

Exhibits.

Letter date to Lehigh Valley R. R. Co.—July 16, 1912.
Shipped to—Alpha Port. Cement Co.
No. 3—568 bags—63 $^{720}/_{2240}$ tons.
Via P. & R., L. V. R. R. for L. & N. E. del'y at Martin's Creek, Pa.

10 *Letter date to Lehigh Valley R. R. Co.—July* 24, 1912.
Shipped to—Chicago Portland Cement Co.
No. 4—380 bags—25 $^{700}/_{2240}$ tons.
Via P. & R., L. V. Trans. Co. and C. M. & St. Paul to Oglesby, Ill.

Letter date of Lehigh V. R. R. Co.—July 30th, 1912.
Shipped to—Alpha Portland Cement Co.
No. 2—260 bags—30 $^{1300}/_{2240}$ tons.
20 Via P. & R. and West Shore R. R. to Alsen, N. Y.

Letter date to Lehigh Valley R. R. Co.—Aug. 1, 1912.
Shipped to—Chicago Portland Cement Co.
No. 3—940 bags—104 $^{240}/_{2240}$ tons.
Ex. "Ella" and via P. & R., L. V. T. Co. and C. M. & St. Paul to Oglesby, Ill.

30 *Letter to Lehigh Valley R. R. Co.—Aug.* 1, 1912.
Shipped to—Alpha Portland Cement Co.
No. 2—450 bags—33 $^{2000}/_{2240}$ tons.
Via P. & R. and L. V. R. R. to Alpha, N. J.

Letter to Lehigh Valley R. R. Co.—Aug. 12, 1912.
Shipped to—Chicago Portland Cement Co.
No. 4—1330 bags—123 $^{440}/_{2240}$ tons.
Via P. & R., L. V. Trans. Co., c/o C. M. & St. Paul
40 to Oglesby, Ill.

Exhibits.

Letter to Lehigh Valley R. R. Co.—Aug. 14, 1912.
Shipped to—Sandusky Portland Cement Co.
No. 3—517 bags—58 1320/2240 tons.
Via P. & R., Lake Shore, L. V. route to Bay Bridge, Ohio.

Letter date to Lehigh Valley R. R. Co.—Aug. 14, 1912. 10
Shipped to—Sandusky Portland Cement Co.
No. 2—1210
No. 3— 590
——
1800 bags—129 1020/2240 tons.
Via P. & R., L. V. T. Co., c/o C. Mo. Western, to Dixon, Ill.

Letter to Lehigh Valley R. R. Co.—Aug. 19, 1912. 20
Shipped to—Nipissing Mining Co.
No. 4—335 bags—17 1920/2240 tons.
Via P. & R., L. V. R. R. and Grand Trunk Rly. to Cobalt, Ont.

Letter date to Lehigh Valley R. R. Co.—Aug. 31, 1912.
Shipped to—Sandusky Portland Cement Co.
No. 2—243
No. 3—233 30
——
476 bags—52 760/2240 tons.
Via P. & R.—Traders Despatch to Syracuse, Ind.

Letter date to Lehigh Valley R. R.—Oct. 9, 1912.
Shipped to—Alpha Port. Cement Co.
No. 2—282 bags—26 2080/2240 tons.
Via P. & R., L. V. R. R., L. & N. E. del'y at Martins Creek, Pa.
40

Letter date to Lehigh Valley R. R.—Oct. 21, 1912.
Shipped to—Superior Port. Cement Co.
No. 1—186
No. 2—143
——
329 bags—30 $^{980}/_{2240}$ tons.
Via P. & R., Traders Despatch, D. T. & I. del'y to
10 Superior, Ohio.

Letter date to Lehigh Valley R. R. Co.—Nov. 6, 1912.
Shipped to—Virginia Port. Cement Co.
No. 3—285 bags—29 $^{440}/_{2240}$ tons.
Via P. & R., c/o C. & O. for del'y at Fordwick, Va.

Letter date to Lehigh Valley R. R. Co.—Nov. 6, 1912.
Shipped to—Virginia Port. Cement Co.
No. 2—294 bags—26 $^{1552}/_{2240}$ tons.
20 Via P. & R. for C. & O. del'y at Fordwick, Va.

Letter date to Lehigh Valley R. R. Co.—Nov. 6, 1912.
Shipped to—Virginia Portland Cement Co.
No. 2—1086 bags—68 $^{680}/_{2240}$ tons.
Ex. "Ella" and "Molina" at Phila. and via P. & R. for Ches. & Ohio Del'y at Fordwick, Va.

30 *Letter date to Lehigh Valley R. R. Co.—Nov.* 6, 1912.
Shipped to—Ironton Port. Cement Co.
No. 2—574 bags—54 $^{2060}/_{2240}$ tons.
Via P. & R.—Traders' Despatch to Ironton, Ohio.

Letter date to Lehigh Valley R. R. Co.—Nov. 20, 1912.
Shipped to Motherlode Sheep Creek Mining Co.
No. 4—40160 lbs.—20 $^{160}/_{2000}$ tons.
Via P. & R., L. V. R. R., c/o Great No. Rly. via St.
40 Paul to Salmo, B. C.

Exhibits.

Letter date to Lehigh Valley R. R. Co.—Dec. 14, 1912.

Shipped to—Wyandotte Port. Cement Co.

No. 3—271 bags—26 $^{2080}/_{2240}$ tons.

Via P. & R., Michigan Central, L. V. to Wyandotte, Mich.

Letter date to Lehigh Valley R. R. Co.—Jan. 21, 1913. 10

Shipped to—Superior Port. Cement Co.

No. 1—264
No. 2—180
——
444 bags—38 $^{580}/_{2240}$ tons.

Via P. & R.—Traders Despatch via D. T. & I. for del'y at Superior, Ohio.

20

Letter date to Lehigh Valley R. R. Co.—Jan. 29, 1913.

Shipped to—Huron Port. Cement Co.

H No. 3—1127 bags—110 $^{1860}/_{2240}$ tons.
HH No. 1—138 bags—13 $^{680}/_{2240}$ tons.

Via P. & R., L. V. R. R. Pere Marquette, to Alpena, Mich.

Letter date to Lehigh Valley R. R. Co.—Mar. 5, 30 1913.

Shipped to—J. R. Alsing Co.

9 bags—1 ton.

At Philadelphia.

Letter date to Lehigh Valley R. R. Co.—Mar. 12, 1913.

Shipped to—Thomsen Chem. Co.

10 bags—2240 lbs.

Via P. & R. and Penn. R. R. for del'y at Balt., Md. 40

Exhibits.

Letter date to Lehigh Valley R. R. Co.—May 5, 1913.
Shipped to—Newaygo Port. Cement Co.
129 No. 1.
75 No. 4.
— —
195 bags—17 $^{1920}/_{2240}$ tons.
Via P. & R., L. V., Pere Marquette for del'y at
10 Newaygo, Mich.

Letter date to Lehigh Valley R. R. Co.—June 9, 1913.
Shipped to—Braun-Knecht-Heimann Co.
335 No. 4—47 $^{1280}/_{2240}$ tons.
534 No. 5—34 $^{1140}/_{2240}$ tons.
Via P. & R. to New York, thence Sunset Route to Goldfield Con. Mining Co., Goldfield, Nev.

Letter date to Lehigh Valley R. R. Co.—June 21, 1913.
20 Shipped to—Iowa Port. Cement Co.
No. 1—596 bags —40 $^{1840}/_{2240}$ tons.
Via P. & R., M. C., L. V., c/o C. M. & St. Paul for del'y at Des Moines, Ia.

Letter date to Lehigh Valley R. R. Co.—Aug. 21, 1913.
Shipped to—Braun-Knecht-Heimann Co.
No. 4—120 bags.
No. 5—176 bags.
— —
30 296 bags—28 $^{1820}/_{2240}$ tons.
Via P. & R., Mich. Central, L. V., C. M. St. Paul, Union Pac.. So. Pac., c/o Eureka Nevada R. R. for del'y at Palsidate, Nev., for Buckhorn Mines.

Letter date to Lehigh Valley R. R. Co.—Aug. 30, 1913.
Shipped to—Iowa Portland Cement Co.
No. 1—470 bags—32 $^{1840}/_{2240}$ tons.
Via P. & R., Mich. Central, L. V., c/o Chic. Great
40 Western, to Des Moines.

Exhibits.

Letter date to Lehigh Valley R. R. Co.—Aug. 30, 1913.
Shipped to—Iowa Port. Cement Co.
No. 1—940 bags—65 $^{880}/_{2240}$ tons.
Via P. & R., Mich. Central R. R., L. V. via Chic. M. St. Paul to Des Moines, Ia.

Letter date to Lehigh Valley R. R. Co.—Oct. 15, 1913. 10
Shipped to—Iowa Port. Cement Co.
3 cars—101 $^{1780}/_{2240}$ tons.
Via P. & R., Reading Despatch via S. N. Y., c/o C. M. & St. Paul for del'y at Des Moines, Ia.

20

30

40