

This compels an examination of the evidence. It is to be noted that although the goods were lying at Sydney at the time of the trial the plaintiffs did not offer any evidence as to the quality of the goods based on any inspection or examination of the specific lot tendered. They content themselves with the depositions of witnesses taken under commission in France. The first witness examined is John Brownlie. He does not throw much light on the quality of the pebbles actually shipped. He admits he handed the order over to an agent and did not select the pebbles himself. The second witness is the agent mentioned, by name Julien Petitpas. He states he had the pebbles in question taken out of a heap of 700 of $1\frac{3}{4}$ to $2\frac{3}{4}$, and that he supervised the whole operation as usual. He states that it is quite impossible the 30 tons could be bad as they were taken from a heap of 700 to 800 tons, the rest of which have since been disposed of, and no complaints from customers, and that they were in compliance with the order. I do not know what he means by supervision as usual, and from the tenor of his answers I am inclined to think he knows personally little about the actual goods sent, his answers being chiefly opinions. Then follows the foreman, Vauthier, who states he assisted in filling the bags; that they were taken from a heap of 900 to 1000 tons and that they were quite up to the standard of quality, shape and size usual in the trade. The next witness is the bag marker, and does not, I think, assist much as it is not his business to select. Then follows three women sorters. The first one says this 30-ton order was taken from a heap of 1000 tons; that the pebbles were all of very good quality; and the heap from which the particular order has been taken has since been sold and that she never heard of any complaint being made. The second one says the pebbles were of good shape and quality and were generally in accordance with what the firm is in the habit of supplying ever since she has been in its employment. Whilst the third sorter states that the pebbles sent to fill the order were of good shape and similar to what they are in the habit of supplying. And they all answer the question, "were these the best round, French pebbles for tube mills?" by stating that they never saw better, and it was on this evidence the plaintiffs rested their case. Practically, this means that the foreman and three women sorters speak to the quality of the goods sent. The witnesses were not cross-examined or examined by counsel, ex parte interrogatories