

It appears that in the meantime the defendant had been interviewing the Commissioners on the question of the rates to be charged. Notwithstanding his last mentioned letter the defendant was still apparently not satisfied and particularly with the "minimum of 60,000 pounds per carload," and a correspondence ensued between the plaintiffs and him over the matter. Accounts were sent in by the plaintiffs and payment requested until on the 29th of May, 1912, the plaintiffs wrote to the defendant as follows: "We enclose herewith a statement of your account shewing the freight charges against yourselves and your sub-contractors, and demurrage, supplies and other accounts, and also shewing the two cheques we have received from you on account, and we would say that unless we receive your cheque for this account by return mail will be obliged to draw on you at sight for the amount as we must have it closed up and not have it running on indefinitely."

The defendant was resisting payment and claiming that the charges should be on the basis of his alleged understanding of the contract, and finally a temporary arrangement was made through the instrumentality of the Commissioners. When the plaintiffs had performed all the services and supplied all the materials for which they claim in this action, there were five items of account in respect to which they claim is preferred.

In their original statement of claim there was first an item for freight at \$5,529.70. It was admitted during the course of the trial that this should in any event be reduced to \$5,456.50. There was a claim for demurrage as to cars put in at first at \$1,911, that is to say, a dollar a day for detention of cars through the action, as it was alleged, of the defendant. It was admitted that this should be reduced in any event to \$1,820. There was a claim for gravel for 930 yards at \$1.25 per yard, amounting to \$1,162.50; a claim for \$54 for passenger fares for men of the defendant travelling over plaintiffs' section, and a claim for sundries of \$176.50, included in which was an item of \$65, which it was stated at the trial should be reduced by \$40, thus making the claim as to this item \$136.50.

Upon the question as to what the contract was at the beginning upon the weight of the testimony it is impossible for me to do otherwise than come to the conclusion that it was as stated by Chamberlain and not as stated by the de-