

unload, and that the time should be estimated from the time they started to load at the pit until the train came back to the pit, that the loading was to be done with a steam shovel, and the unloading with a ledgerwood, and that such charge was to include the train crew. Then he says that he further asked Chamberlain what he would haul his material for, and that the reply given was 2 cents per ton per mile with a minimum of \$5 per car.

Two other witnesses testified that they were present at the interview and substantially corroborate the evidence of Chamberlain as to what was said.

It appears that in October following, Chamberlain met with an accident and left the employment of the plaintiffs. Soon after the conversation between Chamberlain and the defendant on the 9th of September, 1911, the defendant began to ship freight in cars which were received by the plaintiffs at Cochrane from the T. & N. O. Railway and placed for the defendant along the plaintiffs' section where indicated by him, and moved from time to time from one place to another as directed by him.

The plaintiffs were the owners of certain gravel pits along the line of their section and furnished from these pits gravel for the defendant to use in connection with the construction of the stations under his contract with the Commission. Matters ran along until December 9th, 1911, the plaintiffs in the meantime having rendered accounts to the defendant on the basis of their understanding of the contract as reported to them by Chamberlain. On this date the plaintiffs wrote to the defendant a letter in the following terms: "We wish to advise you that our understanding of the arrangement for freight as arranged by Mr. Farquier with the Commissioners of the Transcontinental, is that we are to charge two cents (2c.) per ton per mile, with the minimum charge of five dollars (\$5) per carload, and that the understanding is that a minimum carload will be sixty thousand pounds (60,000 lbs).

This cancels all previous arrangements for freight or notifications in that regard," to which letter the defendant replied on the 15th December as follows:

"I have your favour of the 9th inst. regarding the rate of freight to be charged; I have also been advised by the Commissioners and thank you for your confirmation."