The Monetary Times

Trade Review and Insurance Chronicle

Vol. 42—No. 34. **Toronto, Canada, February 20th, 1909.** **Ten Cents.**

The Monetary Times
OF CANADA

PUBLISHED EVERY SATURDAY BY THE MONETARY TIMES PRINTING COMPANY OF CANADA LTD.

Editor—Fred W. Field.
Business Manager—James J. Salmond.

The Monetary Times was established in 1867, the year of Confederation. It absorbed in 1869, The Intercolonial Journal of Commerce, of Montreal; in 1870, The Trade Review, of Montreal; and The Toronto Journal of Commerce

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All mailed papers are sent direct to Saturday morning trains. Subscribers who receive them late will confer a favor by reporting to the Circulation Department.

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WHERE STANDS DOMINION COAL?

What does the Privy Council decision actually mean? What will be the effect thereof upon the future of the Dominion Coal Company and that of the Dominion Iron and Steel Company? These are questions being asked regarding the important decision given last week. The impression is widely held that the damages which the Coal Company must pay will necessarily break its back and, at the same time, the spirit of James Ross. But that apparently is not the case.

In 1904 and 1905, the Dominion Coal Company's operations showed handsome profits. These were made while the contract for the supply of coal at $1.24 to the Steel Company was in force. In 1906, there was a breach of that contract, while the Coal Company have not since that year, supplied coal to the Steel Company at the contract price. Judge Longley's decision in the Supreme Court of Nova Scotia held that the Coal Company must perform its contract. The Privy Council disagreed, and say that in their view, the contract is not one of which specific performance should be decreed. In other words, the contract between the two companies for the supply of coal at $1.24 per ton is terminated. Thus, the Coal Company is relieved from the obligations of the contract. That is of some advantage. The contract was for a period of ninety-nine years. It was revisable every five years, but only on the basis of change in the cost of labor. The Privy Council's decision relieves Mr. Ross and his colleagues from a contract stipulating the price at which coal shall be supplied to the Steel Company ninety years hence—a contract with minimum revisory privileges.

The question of damages has been referred to the Supreme Court of Nova Scotia, where they will be assessed. They will be reckoned on two points. Firstly, owing to the wrongful repudiation of the contract by the Coal Company, the contract itself, therefore, being at an end, damages will be awarded for the loss thereof. Secondly, damages will be mulcted in respect to breaches of the contract committed before repudiation on October 31st, 1906. A cursory examination of the principles upon which these damages may be awarded reveals prospective difficulties. At whatever figure they be named now, there is always present the hazard of appeal to establish a different principle of assessment. Supposing the Steel Company proves that it will have to pay $1.50 for coal, instead of $1.24—the price stipulated by the contract. Suppose that an average of $1.50 per ton is reached; after actuarial figuring has been done on probable increase in the cost of labor, coal, and so forth, the Coal Company would then pay damages for the remaining term of the ninety years contract, at the rate of twenty-six cents per ton—being the difference between $1.24, the contract price, and the supposed average price, $1.50, paid by the Steel Company. That might amount to many millions of dollars. Upon the payment of these damages, together with those for breaches of the contract prior to its repudiation, the Coal Company would be free to sell its coal at what price and to whomever it so desires. The Privy Council's decision, then, is not only one of advantage to the Steel Company, but it has released the Coal Company from a contract which bound it to sell coal ninety years hence at a price stipulated at the present time. This contract was, in effect, a mortgage on the Coal Company's property. The Privy Council's decision permits the Coal Company to discharge this mortgage by a cash payment. The Nova Scotia court's decision did not give this privilege, but decreed specific performance. Who can tell what will be the value of this coal ninety years hence freed from such a mortgage?