BANKING & FINANCIAL NEWS.

STEEL-COAL CASE.

Consolidated Appeal Before Privy Council—Arguments of the Coal Company—Justified in Breaking Contract.

The dispute between the Dominion Iron and Steel and Dominion Coal Companies is now in its final stages, and the last of this cause celebre probably will soon have been heard. The decision of the last court of appeal is awaited with the keenest interest, for upon it depends entirely the future of the two great corporations involved in the fight. The history of the case is too well known to readers of this journal to need going into here, the summarized facts published below sufficing to refresh the memory on the main points.

The consolidated appeal of the Coal Company came before the Judicial Committee of the Privy Council in London, England, on Tuesday. The committee consisted of Lords Robertson, Atkinson and Collins and Sir Arthur Wilson. Counsel were:

For the Coal Company, Messrs. Danckwerts, K.C., Eugene Lafleur, K.C., Campbell, K.C., H. A. Lovatt, K.C., and J. D. Crawford were the counsel instructed by Lawrence Jones & Co.

For the Steel Company, Sir Robert Finlay, K.C., Wallace Nesbitt, K.C., Hector McInnes, Lawrence and Stewart, instructed by Hills, Son & Rickard, appeared.

Mr. Danckwerts in opening for the Coal Company, detailed the histories of the respective companies and described minutely the methods of coal mining and the manufacturing of steel. Analyzing the contract, he said that clause one, which designated the various works for which coal was required, had for its object the limitation of the quantity of it. It was clause three which gave the Steel Company power to designate the seam and prescribe the quality of coal to be supplied.

Contract Price too Low.

In pursuance of this power, the Steel Company, which had a thorough knowledge of the Coal Company's property, designated the Phelan seam. This the Coal Company worked in several pits, including one called No. 6., in which the quality varied somewhat, as not infrequently occurred in all coal mines. It was difficult to imagine greater power given to a purchaser than that possessed by the Steel Company.

Regarding the contract price of coal to be supplied by the Coal Company, namely $1.24, Mr. Danckwerts pointed out that this was a low one, and a high-class quality of coal could not be expected for it. He submitted that the argument of the other side that clause one, which was intended to define the quantity, really defined the quality, and that that should be treated as a subsidiary thing was a remarkable view to take of the contract, which should be taken as a whole.

No Obligation to Select Coal.

In seeing that the coal supplied was from the Phelan seam and passed over the picking belt. Mr. Danckwerts claimed that the Coal Company had fulfilled the terms of the contract. They were also justified in breaking the contract, he contended, when the Steel Company demanded "suitable" coal, as this was adding a word to the contract.

Resuming the following day, Mr. Danckwerts read the lengthy correspondence which passed between the companies prior to the letter constituting a breach of contract in Nov., 1905, and quoted evidence showing that so long as the Coal Company observed clause 3 of the contract they were not entitled to select nor bound to select the coal supplied, or supply coal fit for steel making.

Finally, Mr. Danckwerts traversed the judgments of Justice Longley and Judge Townsend in the Supreme Court. He referred to certain cases quoted by the judges in support of their judgments and claimed that some were inapplicable while others more favorable to the Coal Company's views of the contract than otherwise.

Case for Steel Company.

Mr. Eugene Lafleur, K.C., followed, and Sir Robert Findlay, K.C., then opened the case for the Steel Company. He said that the contract must be considered according to its words, and submitted that the attempt which had been made to introduce what had passed before the contract, and letters between the parties since the contract was inadmissible. These circumstances and letters were, in any case, entirely futile. The Coal Company's contention was a startling one. It was common ground that there was a large quantity of coal, suitable for metallurgical purposes being produced from the Phelan seam, but the Coal Company contended that they were entitled to select the coal which was unsuitable from that seam.

Mr. Danckwerts, interrupting, denied having made such contention, and counsel were proceeding to argue the point when Lord Robertson remarked that Mr. Danckwerts would have an opportunity to reply later.

Enquiry from the Bench.

Resuming on Thursday, Sir Robert Findlay dealt with the selecting by the Coal Company of coal unsuitable for metallurgical purposes. He pointed out that it had been stated by the Coal Company that coal from Nos. 6 and 4 was all the contract entitled them to. He then resumed on "reasonably free from stone and shale," and said that the Coal Company were endeavoring to read a new term into the contract when they claimed that if the coal were picked on the picking belt that stipulation was met.

Lord Robertson inquired if Sir Robert Findlay thought he could get home on that point apart from any other. Sir Sir Robert Findlay replied in the affirmative, and emphasized Judge Russell's judgment as to the remedy by specific performance. The weight of evidence showed that the coal was not reasonably free from stone and shale. On clause one of the contract, Sir Robert adverted to the fact that several directors were common to both companies. Lord Robertson thought it rather a dangerous argument, because it showed the Steel Company in a position to particularize the kind of coal needed.

His Lordship Got Lost.

When Sir Robert Findlay had read some of the voluminous correspondence on various points prior to the rupture of the contract, Lord Robertson broke in with the remark that he thought previously that he understood the case, but was afraid he was getting rather lost.

Continuing, counsel contended that under the circumstances the Coal Co.'s rescinding the contract was wrong, and the Steel Company asked only that the contract be carried out, and that really the Coal Company were seeking an excuse to get rid of an onerous contract. Lord Collins questioned this, but Lord Atkinson agreed with counsel's proposition.

The question of specific performance was then dealt with, when counsel read Judge Russell's judgment, and the very full reasons therein urged that specific performance was the only and true remedy. After Mr. Wallace Nesbitt, K.C., had spoken the court adjourned until Monday.

Here in brief is the history of the Steel-Coal dispute:—

Dominion Coal Company was incorporated and began operations in 1893.

Dominion Iron & Steel Company was organized in 1899, many directors being also directors of the Coal Company.

Steel Company erected works and began to operate in 1901.

Steel Company entered into contract with Coal Company for supply of coal at $1.20 per ton.

Steel Company took lease of Coal Company in 1902, paying yearly rental of $1,600,000, and royalty of 15 cents per ton on all coal mined exceeding 3,500,000 tons.

Lease terminated in 1903, and Coal Company assumed full control of its own property.

Coal Company agreed, on October 20th, 1903, to furnish Steel Company with all coal required at $1.24 per ton, with 4 cents per ton for use of cars.

Steel Company Asked for Phelan Coal.

Steel Company, having choice, asked for coal from Phelan seam.

The coal sent to Steel Company, and found to contain too high degree of sulphur for steel manufacture, was rejected and frequently taken back by Coal Company.

Steel Company notified Coal Company that coal was unsuitable.

Steel Company agreed to accept, without prejudice to rights under contract, 75 tons per day of rejected coal.

Proposal was agreed to by Coal Company and the arrangement continued for some months.

Coal Company in 1905-1906 failed to supply the full coal requirements of the Steel Company, except in winter months.

Steel Company notified Coal Company on March 30th, 1905, that because of increased work, 80,000 tons of coal would be required in April, 1906.

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