the stated price. Holding that the Coal Company in effect discriminated against the Steel Company in sending coal known to be unsuitable, their Lordships declare that the former company was not justified in repudiating its contract when such coal was refused. But the contract is not held by their Lordships as being one whose specific performance would be now decreed by Court of Equity. The Steel Company is, therefore, stated to be entitled to treat the contract as itself at an end, and recover damages for the loss of it, in addition to the damages in respect to those breaches in it which may have been committed before the repudiation of October 31, 1906.

All proper care, their Lordships add, should be employed in the ascertaining of these damages before assessment is fixed.

It is evident that the difficulty of equitably assessing damages is no slight one—especially in view of the judgment's holding that the obligation of the Coal Company to supply coal is limited to the extent to which coal may be obtained by reasonably proper working of the mines opened or to be opened. Indeed, it would appear that if (making an extreme supposition) the Coal Company now had no coal of the quality required by the Steel Company the latter would not be entitled to any damages so far as the contract had to do with the future. It will be remembered that the Steel Company in its suit placed the value of the contract at $15,000,000.

As regards past damages, in the last annual statement of the Steel Company the sum of $132,252 is claimed on account of short delivery previous to repudiation of contract—a claim which, in principle, the Privy Council held as well founded. Then $479,000 is claimed for non-delivery of coal in November, 1906. Under the new contract, afterwards entered into without prejudice, $1,847,550 over and above the contract rate was paid for coal up to March 31, 1908. Adding to this the amount since paid, the total claim to date under this head would run up to about $3,000,000—an amount towards which the Coal Company is understood to have set aside and to be setting aside provision out of its earnings. There is a further claim of $465,005, paid for extra cost of coal purchased from others. Interest on these claims will add another $200,000 to the claim, bringing the total claim (aside from that as to contract's future) up to about over $4,275,000.

The Original Cause of Dispute.

It will be remembered that the contract over which the dispute arose was signed in October, 1903, after the termination of the temporary amalgamation of the Steel and Coal Companies. By the new agreement the Coal Company was to furnish the Steel Company (at the price of $1.24 per ton, including 4 cents per ton for the use of cars) with all coal required for the various branches of its business, such as iron and steel producers, etc.; but with the proviso that the Steel Company should not demand more coal than was necessary for the operation of four blast furnaces and the conversion of their output into various finished products. Both Nova Scotia courts to which the case was taken, practically sustained the Steel Company's contention that the contract was an undertaking to supply a steel plant, rather than a mere contract to supply coal. And this view, as appears above, has been affirmed by the Privy Council.

The contract designated that the coal was to be "freshly mined run of mine coal, reasonably free from coal and shale, from such seams then being worked by the Coal Company as the Steel Company shall designate." There was further provision that after four years the company might supply slack coal, if suited to use in steel-making and for blast furnace coke, the clause in question defining suitability as follows:

"The slack coal so supplied when properly washed by the Steel Company shall not contain a percentage of impurities to wit: ash and sulphur, appreciably greater than the percentum of impurities in the same coal of run of mine grade when crushed and washed in the same manner."

The Repudiating of the Contract.

The real dispute arose when the Coal Company opened up the pit known as Dominion No. 6, in what it held to be the designated Phelan seam. When the coal reached the Steel Company it was found unfit for its intended use—analysis also showing an excess of sulphur. Some coal from No. 4 and other pits was also rejected, and a long correspondence ensued between the companies. An attempted *modus vivendi* failed to work—the terms of which need not be here detailed. The Steel Company bought part of its supplies elsewhere, claiming that the Coal Company had failed to furnish the quantity of coal called for by duly given notices—even when the Steel Company accepted part in slack and banked coal which it used for steam engines and steamers. It, therefore, notified the Coal Company that it would accept nothing but freshly mined run-of-mine coal from the Phelan seam. Following this notice the Steel Company rejected coal which its analyst found excessive in sulphur and ash. And thereupon the Coal Company sent notice that it considered such refusal to constitute a repudiation of the contract —holding that the rejected coal was of the sort designated in the contract. But this contention has not been upheld either by the Nova Scotia courts or by the Privy Council. In effect the matter is summed up by the original finding of Mr. Justice Longley, that the coal supplied was from the Phelan seam, as No. 6 was geographically on that seam, but that it was not sufficiently suitable for steel purposes to come under the terms of the contract. After reviewing in a general way the nature of the loss and damage sustained by the Steel Company through the action of the Coal Company before and after the breaking of the contract, Judge Longley concluded his findings as follows:

"I, therefore, direct that after the damages sustained up to the date of the reference are determined by the referee, an order pass requiring the Coal Company to pay such damages, and thereafter to specifically carry out the terms of the contract according to the true tenor thereof."

The Privy Council ruling, it will be noted, differs importantly from the foregoing in that it orders assessment of losses during the remainder of the contract's term, instead of continued specific performances of the agreement itself.