

strike and this delay the season for shipping coal by water, which ended on the 1st December, was very much curtailed, with the result that the coal company were unable to meet the demands for their coal, and were unable or refused to fill the order that had been placed with them for the coal required by the appellants to enable them to fulfil their contract with the respondents.

When they were confronted with this difficulty, the appellants' manager had an interview with the respondent Turner at Port Perry in August, 1912, at which, according to the manager's testimony, he explained the situation to Turner and informed him that the appellants would not be able to supply the coal at the contract prices, but that anthracite coal could be purchased from other miners, though at higher prices than those at which the Susquehanna Coal Company were to fill the respondents' order, and that the appellants were willing to buy this coal and supply it to the respondents at an advance upon the price at which it should be bought of enough to cover a fair profit to the appellants, which, as I understand the evidence, was 25 cents a ton. I gather from the reasons for judgment of the learned trial Judge that he thought that the respondent Turner had met this testimony with a denial of its truth, and that he accepted Turner's evidence in preference to that of the appellants' manager. I do not find in the testimony of Turner, either upon his examination for discovery or at the trial, any satisfactory contradiction of the testimony of the appellants' manager. Turner's examination for discovery and his testimony at the trial were most unsatisfactory, and a perusal of them leads me to the conclusion that he was not a frank or truthful witness, or that his memory was so bad that his testimony cannot be relied upon. With the exception of a mild protest in his letter of the 4th October, 1912, and another in his letter of the 24th December, 1912, against being charged more than the contract prices, his conduct throughout and the correspondence which passed between him and the appellants is quite inconsistent with his statement that he always intended to hold the appellants to the contract prices, and is consistent only with such an arrangement as the appellants' manager testified was made having been made. . . .

The proper conclusion upon the evidence is, I think, that none of the coal for the price of which the appellants are suing was delivered upon the contract of the 5th June, 1912, but was purchased from time to time by the respondents at the prices which were quoted to them by the appellants. The conduct of the parties throughout and the correspondence make it