

was entered into. The date of the instrument is not material. The actual date may be shewn. In *Leake on Contracts*, 185, it is said: "Extrinsic evidence is also admissible to shew the time when the agreement was made, and such evidence is admissible although the written agreement itself contain a date." *Hall v. Cazenove*, 4 East. 477.

I have considered the evidence in respect to damages and I assess the same against the defendant at the sum of thirty-five dollars (\$35) with costs.

The costs will be on the higher scale.

But I think that the plaintiff really ought to be willing to accept the price and costs applicable to that sum, it being below \$80, that is, on the lower scale, and let the defendant have the safe if it is at this time worth taking out of the hands of the carrier and warehouseman.

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## NOVA SCOTIA.

SUPREME COURT.

TRIAL AT ANNAPOLIS.

OCTOBER 20TH, 1910.

THE LEHIGH VALLEY COAL CO. v. KING.

*Sale of Goods — Cargo of Coal — Expenses of Discharging  
Cargo—Liability for—Evidence.*

J. J. Ritchie, K.C., for plaintiff.

O. T. Daniels, K.C., for defendant.

Action for balance of an account for goods sold and delivered.

GRAHAM, E.J.:—The dispute in this case is in respect to a sum of \$66.48 which the defendant was obliged to pay in expenses for discharging a cargo of coal in order to obtain the cargo. The plaintiff—an American company—sold to him at Annapolis the coal, and was to charter the ship to carry it. By the contract, of April 30th, 1909, between plaintiff's agent and defendant, the freight was to be ninety cents per ton, afterwards varied by telegraph to \$1