

respondents on and before the 17th September, 1912, and was charged for at the prices mentioned in the contract.

By the terms of the contract the appellants agreed to sell to the respondents and they agreed to buy from the appellants "the entire requirements until April 1, 1913, approximately 1,500 tons," of the respondents, of anthracite coal, egg, stove, chestnut, and pea sizes, at stated prices per ton, and the coal was to be shipped only as requested by the respondents, and was to be delivered at Port Perry. The prices fixed were for "egg and stove \$6.95, chestnut \$7.15, pea \$5.65," all per gross ton of 2,240 pounds, with, in each of the months of July, August, and September, an increase of ten cents per ton, and the shipments after the 1st October were to be at the same prices as those of September, and the terms of payment were "cash on the 15th of the month following shipments."

The contract also provides as follows: "Every effort will be made for the prompt and faithful fulfilment of contract, but seller will not be responsible for the delivery of the same if prevented by strikes or combinations of miners or labourers, accidents in the mines, or interruption of transportation, or from any cause or any occurrence beyond seller's control. In such cases obligations to deliver coal under this contract are thereby cancelled to an extent corresponding to the duration of such interruptions, and no liability shall be incurred by the seller for damages resulting therefrom."

The appellants are coal brokers, and not coal producers, and, before or simultaneously with the making of the contract with the respondents, placed an order with the Susquehanna Coal Company for the supply of coal which the appellants contracted to sell to the respondents. As I understand the evidence, there was no formal contract entered into with the coal company, but the company were notified of the contract which the appellants had entered into with the respondents, and, in accordance with the course of dealing between the coal company and the appellants, there followed from this an undertaking on the part of the company to supply the coal in accordance with the terms, as to delivery, of the respondents' contract, but subject to the like conditions as to strikes, etc., as are contained in that contract.

There had been a strike in the mines of the coal company, which had resulted in their mines being "shut down" during the months of April and May, 1912, and during those months they mined no coal. After a strike there is generally some delay in getting the mines into working order again, and owing to the