

The defendants counterclaimed for \$2,000 damages by reason of inferior coal alleged to have been wrongfully loaded on the C. H. Burton by plaintiffs.

J. V. Teetzel, K.C., S. F. Washington, K.C., and A. M. Lewis, Hamilton, for plaintiffs.

J. W. Nesbitt, K.C., and J. G. Gauld, Hamilton, for defendants.

BOYD, C.—It appears to me very plain, upon all the evidence, that the contract for shipment of coal was made in the simple form contended for by defendants, and that it was not subject to any special conditions as contended by plaintiffs. The points urged by plaintiffs in evidence are that there were two representations made which influenced the making of the bargain by them: (1) that there was 14 feet of water at the Hamilton dock; and (2) that facilities would be afforded at that dock whereby 500 or 600 tons a day could be unloaded.

Defendants' letter of 13th October, confirming the oral contract, shews correctly what it really was, i.e., "charter of steamer 'Birkhead' and consorts 'Burton' and 'Blain' for about 2,400 tons of coal, Cleveland to Hamilton, at \$1.25. Application to be made at Cleveland to the agent of the Pennsylvania R. R. Co. for 1,000 to 1,200 tons, and the Gill Kirby Coal Co. for 1,200." . . . The great weight of evidence and circumstances is against there being any such term in the contract as that with regard to the 14 feet of water. . . . The claim made in the pleadings was that defendants refused to load 2,400 tons of coal, and would not give plaintiffs more than 2,053. This is disproved. Plenty of coal was there, but with the necessity of loading to 12 feet they could only carry 2,053. . . . There should be no recovery on account of the alleged shortage in the freight carried.

The claim for damages for delay and detention can not be based on any term in the contract as to the capacity of the dock to unload 500 or 600 tons per day, or that each of the boats was to be unloaded immediately on arrival at destination. There was no unreasonable delay in beginning to unload. . . . There was no room for all three to unload at the same time, they had to be taken seriatim, and the question of damage depends upon whether the work was duly prosecuted, having regard to the facilities as they existed at defendants' dock. . . . There appears to have been unusual despatch and no obstruction interposed by or attributable to defendants which interfered with the efficient and timely prosecution of the work. That the stuff on part of