

It is unnecessary to express an opinion as to the correctness of the decision of the Chancellor in *Price v. Wade*, as it has no application to such a case as this. Here no leave to issue execution was necessary. The respondent had issued execution in due time, and its renewal after the expiration of the 20 years was a mere ministerial act on the part of the officer of the Court by whom it was renewed, whose duty it was to sign the memorandum required by Rule 572, when the respondent produced the execution, while according to its terms it was still in force, and requested him to sign it.

Upon the whole, I am of opinion that the appeal should be allowed with costs and the order appealed from reversed, and that there should be substituted therefor an order dismissing with costs the respondent's motion to set aside the execution.

---

JANUARY 18TH, 1915.

KILBUCK COAL CO. v. TURNER & ROBINSON.

*Contract—Supply of Coal by Brokers to Retailers—Prices Mentioned in Contract—Subsequent Variation—Evidence—Onus—Consideration—Account—Credits—Estoppel—Counterclaim—Findings of Trial Judge—Reversal on Appeal.*

Appeal by the plaintiffs from the judgment of LENNOX, J., ante 158.

The appeal was heard by MEREDITH, C.J.O., GARROW, MACLAREN, MAGEE, and HODGINS, JJ.A.

W. H. Harris, for the appellants.

H. L. Ebbels, for the defendants, respondents.

The judgment of the Court was delivered by MEREDITH, C.J.O.:—The action is brought to recover the balance of an account for coal sold and delivered by the appellants to the respondents. The matter in controversy is, whether the respondents are liable to pay for the coal at the prices charged in the account, or liable only to pay at the prices mentioned in a contract entered into between the parties on the 5th June, 1912; and there is no dispute as to the coal which was shipped to the