

Plaintiff and defendant, both being shareholders in the Ottawa Coal Co. and dealers in coal there, must be taken to have understood the principles and rules upon which it was conducted. The only prices actually fixed by the Ottawa Coal Co. from time to time were those at which coal brought to Ottawa should be taken over by the company, and those at which dealers were to sell to consumers.

Defendant went to plaintiff to obtain coal, and plaintiff agreed to let him have it. Plaintiff says that when the price was discussed he told defendant that he did not wish to make anything out of him; that he would charge defendant only what the company charged him, plaintiff, and that, as he could not say what that would be until the company settled the price, he would charge defendant approximate prices in the meantime. Defendant contradicts this and says that plaintiff agreed to sell him the coal at the cost price to himself from the mines, with an added allowance for screenings; that both he and plaintiff knew what the cost price was from the shippers' circulars; that he agreed to pay and plaintiff agreed to sell for that price; and that the Ottawa Coal Co. prices did not enter into the bargain; that the accounts made out from time to time by plaintiff and handed to him, set forth the actual prices at which he bought; that they were subject to no alteration; and that he paid these accounts in full settlement of each delivery referred to in them.

There is, therefore, a clear and direct conflict of testimony between plaintiff and defendant.

I am unable to see how plaintiff can succeed upon the claim he has made, upon the evidence before us. He says the price paid him by defendant is less than that charged him by the Ottawa Coal Co. for the coal he sold defendant, and he claims the difference; but the uncontradicted evidence shewing the manner in which the company dealt, proves that plaintiff was entitled to transfer coal to another dealer without being charged for it any profit to the company, and that this was carried out in settling up accounts between plaintiff and the company at the end of the year. In theory the coal in plaintiff's yard belonged to the company; in practice it was his own; when he sold to a consumer he accounted for the profit to the company; when he sold to a dealer he did not. The profit for which he had to account to the company on sales to consumers was the difference between the two prices, one being that at which the company was supposed to buy from the dealer, and the other being that paid by the consumer to the dealer. The company was supposed to pay the dealer the actual cost price to him of the coal delivered at