

The appeal was heard by FALCONBRIDGE, C.J., STREET, J., BRITTON, J.

R. J. Sims, Ottawa, for defendant.

G. E. Kidd, Ottawa, for plaintiff.

STREET, J.—Plaintiff and defendant were both members of the Ottawa Coal Co., an incorporated company, having for its object the regulation of the price of coal in the city of Ottawa. Each dealer was a holder of shares in the company, the number of shares being fixed apparently by the extent of his dealings. The dealers made their own bargains for coal at the mines, but the coal became the property of the company when it reached Ottawa, at a price fixed by the company and based upon what is called the “circular” price of the shippers from the mines. The stock, however, which each dealer had bought at the mines was delivered on his own premises, and he accounted for his sales to the Ottawa Coal Co., at prices fixed by them from time to time. The difference between these prices and the prices at which the company had nominally taken it over from the dealers was the company’s profit, and was paid out as dividends. The company made no profit on sales of coal from one dealer to another, because such sales did not in any way affect the actual consumption of coal; they only had the effect of transferring the coal from one dealer to another, that is to say, from one of the company’s selling agents to another. But, as each dealer was bound to account at the end of the season for the coal he had received into his sheds, he was charged, upon transferring to another dealer a portion of his coal, a nominal price, which was adjusted at the end of the season. . . . The price charged the selling dealer by the company at the time of the transfer, therefore, did not mean that he was ultimately charged that price by the company, because it was adjusted at the end of the season so as to correspond with the amount he would have been credited with at the end of the season for so much coal on hand. The interim price charged was merely nominal, and the dealer who transferred coal to another neither lost nor gained, in the final result, whether this nominal price was \$2 a ton or \$10 a ton.

The only way in which, under this system, a dealer could make money, apart from the dividends on his stock, was by making his purchases at the mines at a price lower than the “circular” price; in that event he was able to realize and keep for himself the difference between what he paid for the coal delivered in Ottawa and what the Ottawa Coal Co. allowed him for it.