

288 21.5. 344

Part  
2448  
4957

**Vol. I**  
**TRANSCRIPT OF RECORD**

---

---

**Supreme Court of the United States**

**OCTOBER TERM, 1932**

**No. 504**

---

**APPALACHIAN COALS, INCORPORATED, ET AL.,  
APPELLANTS,**

*vs.*

**THE UNITED STATES OF AMERICA**

---

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF VIRGINIA**



---

---

**FILED NOVEMBER 10, 1932**

**(37,201)**

(37,201)

SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1932

No. 504

APPALACHIAN COALS, INCORPORATED, ET AL.,  
APPELLANTS,

*vs.*

THE UNITED STATES OF AMERICA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF VIRGINIA

VOL I

INDEX

	Original	Print
Record from district court of the United States, Western District of Virginia.....	1	1
Caption.....(omitted in printing)..	1	
Petition .....	2	1
Answer .....	33	22
Defendants' Exhibit "A"—Plan of organization of Appalachian Coals, Incorporated.....	74	50
Defendants' Exhibit "B"—The regional sales agency plan .....	114	104
Expediting certificate of the Attorney General of the United States.....	167	151
Order to hear cause on August 1, 1932, at Asheville, N. C.	169	151
Findings of fact and conclusions of law.....	170	152
Opinion, Parker, J.....	269	219
Concurring opinion, Soper, J.....	295	241
Final decree.....	297	243
Stipulation re statement of evidence.....	299	244
Narrative statement of evidence.....	300	244
Offers in evidence.....	300	244
Testimony of Frederick G. Tryon.....	301	246

## INDEX.

	Original	Print
Testimony of John F. Barkley.....	317	258
Morris G. Woodhull.....	323	263
George E. Hendrick.....	324	264
M. G. Geiger.....	332	271
Reuben B. Robertson.....	335	274
George B. Sheppard.....	337	275
John Behuke.....	342	279
Charles F. Carter.....	344	281
William B. Hitchcock.....	348	285
Frank Swihart.....	350	280
Cornelius Y. Reamer.....	353	288
Offers in evidence.....	354	290
Testimony of William J. McGarry.....	350	291
Howard N. Eavenson.....	304	298
E. S. Moore.....	371	305
Statement showing comparison of capacity and mines operated by members of Appalachian Coals, Inc., and by others.....	374	307
Testimony of James D. Francis.....	385	316
Government Exhibit No. 17.....	454	373
Letter, May 18, 1932, from Hal E. Booth to John Lord O'Brian.....	454	373
Letter, January 12, 1932, from Hal E. Booth.....	456	374
Questionnaire for use solely by Pittsburgh district regional sales committee.....	457	375
Testimony of Ben E. Tate.....	569	460
James D. Francis (recalled).....	577	467
J. M. Dewberry.....	590	478
B. W. Whitfield.....	599	485
Charles A. Albright.....	602	488
Scott Litton.....	605	490
Hal E. Booth.....	611	495
Charles F. B. Ward.....	625	506
Robert L. Boykin.....	637	514
J. M. Dewberry (recalled).....	651	525
S. L. Yerkes.....	654	527
William G. Polk.....	668	539
John C. Cosgrove.....	673	543
F. A. Jordan.....	690	556
G. V. Allen.....	696	562
Harry B. Miles.....	703	568
Fred R. Prosser.....	707	571
George M. Jones, Jr.....	714	577
J. A. Howe.....	718	581
Milton E. Robinson, Jr.....	735	596
Landon C. Bell.....	738	598
Colloquy between court and counsel.....	749	607
Testimony of Howard N. Eavenson (recalled).....	750	608
Memorandum re stipulation No. 7, Defendants' Exhibit No. 1.....	853	685

	Original	Print
Testimony of Calvin Holmes.....	854	686
Edgar C. Mahan.....	865	695
J. W. Davin.....	900	721
Clarence W. Watson.....	907	726
Charles C. Dickinson.....	928	741
Offers in evidence.....	979	781
Government's Exhibits:		
No. 1.....	980	782
Stipulation No. 1.....	980	782
Rider A—Plan of organization of Smokeless Coal Corporation.....	984	785
Rider B—Report of committee, dated February 10, 1932.....	1023	837
Rider C—Plan of organization of Northern Coals, Inc.....	1024	838
Rider D—Suggest forms of contracts.....	1082	888
Rider E—Plan of organization of Fairmont Coal Sales, Incorporated.....	1091	902
No 2.....	1104	948
Stipulation No. 2.....	1104	948
Table 1—Production and markets of defendant producers (1929).....	1105	948a
Table 2—Production and markets of defendant producers (1930).....	1113	948e
Table 3—Production and markets of defendant producers (1931).....	1121	948i
No. 3.....	1129	949
Stipulation No 3.....	1129	949
Table 1—Production of defendant producers in Appalachian territory.....	1132	951
Table 2—Non-captive non-member mines in Appalachian territory.....	1137	956
Table 3—Captive mines in Appalachian territory.....	1142	961
Table 4—Markets where Appalachian coal and other bituminous coal are sold in substantial quantities, 1929.....	1143	962a
Table 5—4 sheets of tables showing stock subscription, production in 1931, average annual production 1923-1931, and period during which present rate of production can be maintained.....	1144	963
Table 6—3 sheets showing sales sub-agents designated by each defendant in Exhibit C to contract with Appalachian Coals, Inc., page 11.....	1148	968
Table 7—5 sheets of tables showing name of mine, date mine developed, and remaining recoverable tonnage.....	1151	971
No. 4.....	1156	979

	Original	Print
Stipulation No. 4.....	1156	979
Table 1—Index numbers of average yearly wholesale prices of certain commodities, and groups of commodities, 1913 to 1931.	1157	980
Table 2—Explanation of source of prices used by Bureau of Labor Statistics in compiling index numbers given in Table 1	1158	981
No. 5.....	1159	982
Stipulation No. 5.....	1159	982
Charts numbered 1 to 9, showing relation of bituminous coal to other commodities, 1913 to 1931.....	1160	982a
No. 6—Tabulation showing coal consumed in by-product coke ovens classified as between (a) low volatile, (b) high volatile from east- ern Kentucky, southern West Virginia, Vir- ginia, and Tennessee, and (c) high volatile from all other fields.....	1189	982j
No. 7—Tabulation of coal used to generate power .....	1170	983
No. 8—Tables 1 and 2—Comparison of bitu- minous coal and other fuels.....	1171	986
No. 9—Tables 1 and 2—Total energy consumed in 20 counties in Michigan.....	1173	988
No. 10—Chart showing distribution of Appa- lachian coal.....	1175	990a
No. 11—Chart showing consumption of coal for generation of power.....	1176	990b
No. 12—Chart showing consumption of fuel oil for generation of power.....	1177	990c
No. 13—Chart showing consumption of natural gas for generation of power.....	1178	990d
No. 14—Bryant Paper Company report Decem- ber 17, 1929.....	1179	991
No. 15—Bryant Paper Company Ohio coal analysis, July 11, 1931.....	1180	992
No. 16—Stipulation and tabulation showing gross income and net income or deficit for year 1929 of certain industries based on in- come tax return.....	1181	992
No. 17—Letters from Hal E. Booth.....	1183	995
No. 18—Harlan County production.....	1186	997
No. 18A—Harlan County realization.....	1187	998
No. 19—Analysis of data from which Defend- ants' Exhibit No. 7 was prepared.....	1188	998
Note as to omission of Exhibit No. 20.....	1189	999
No. 21—Stipulation with reference to percent- ages of coal sold in various States by the de- fendants .....	1190	999
No. 22—Stipulation relating to the percenage of the defendants' production.....	1192	1000

	Original	Print
Defendants' exhibits:		
No. 1.....	1194	1000
Stipulation .....	1194	1000
Table 1—Annual production of bituminous coal, net tons, and average annual production by decades in the United States, 1822 to 1930, inclusive.....	1196	1002
Table 2—Production of bituminous coal by States, years 1914-1931.....	1198	1004
Table 3—Production of bituminous coal in States east of Mississippi River by coal commission fields, 1923-1930.....	1199	1004
Table 4—Production, imports, exports, and home consumption of bituminous coal, 1910-1931, in net tons.....	1200	1005
Table 5—Production, number of employees, average realization, and average annual spot price of bituminous coal per net ton, 1906-1931 .....	1201	1005
Table 6—Distribution of bituminous coal by producing districts and consuming States. Percentage of each State's total receipts in territory of Appalachian Coals, Inc., 1929, short tons.....	1202	1006a
Table 7—Number and production of commercial bituminous coal mines in the United States in 1921, by classes.....	1203	1006b
Table 7—Number and production of commercial bituminous coal mines, by size classes in 1925.....	1204	1006c
Table 8—Tonnage and realization, 1926-1930, Appalachian Coals, counties.....	1205	1007
No. 2..... (omitted in printing) ..	1206	
Stipulation..... (omitted in printing) ..	1206	
Statement showing movement of coal all-rail in tons of 2,000 lbs. during years 1931, 1930, and 1929, together with percentage of total shipped, etc. (omitted in printing) .....	1212	
No. 3..... (omitted in printing) ..	1342	
Stipulation .....	1342	
Tables showing statement of rates on coal in cents per ton of 2,000 lbs. from various producing districts (omitted in printing) .....	1349	
No. 4.....	1412	1008
Stipulation No. 10.....	1412	1008
Table showing profit and loss, income and taxes of the coal mining industry based on income tax returns, July 8, 1931....	1414	1009

	Original	Print
No. 5.....	1415	1010
Stipulation No. 11.....	1415	1010
Table showing profit and loss comparisons for the year 1927.....	1416	1010a
Table showing details of extraordinary items and surplus adjustments item shown in attached profit and loss com- parisons for the year 1927.....	1417	1010b
Table showing profit and loss compari- sons for the year 1928.....	1418	1010c
Table showing details of extraordinary items and surplus adjustments item shown in attached profit and loss com- parisons for the year 1928.....	1419	1010d
Table showing profit and loss compari- sons for the year 1929.....	1420	1010e
Table showing details of extraordinary items and surplus adjustments item shown in attached profit and loss com- parisons for the year 1929.....	1421	1010f
Table showing profit and loss compari- sons for year 1930.....	1422	1010g
Table showing details of extraordinary gains or losses shown in attached profit and loss comparisons for year 1930....	1423	1010h
Table showing profit and loss comparisons for year 1931.....	1424	1010i
Table showing details of extraordinary items and surplus adjustments shown in attached profit and loss comparisons for year 1931.....	1425	1010j
No. 6—Stipulation as to maps.....	1426	1011
No. 6A—Two-sided map, gas and oil trunk lines .....	1427	1012a
No. 6B—Electric transmission lines blue- print .....	1429	1012c
No. 7.....	1430	1013
Stipulation .....	1430	1013
7 sheets of tables showing corporation re- turns for 1929 by major industrial groups and sub-groups.....	1431	1014
No. 8—Eleven tables of production statistics..	1438	1022
No. 9—Large map entitled "Appalachian Coals, Inc., coal fields, coal consumption and pro- duction and relative freight charges from Appalachian and other available eastern dis- tricts to principal market areas".....	1440	1028
No. 10—Tabulation showing total spent by Georgia industries for light, heat and power in 1929 .....	1450	1029

INDEX.

vii

	Original	Print
No. 11—Tabulation showing total spent by North Carolina industries for light, heat and power in 1929.....	1451	1029
No. 12—Tabulation showing total spent by South Carolina industries for light, heat and power in 1929.....	1452	1030
No. 13—Tabulation showing total spent by Virginia industries for light, heat and power in 1929.....	1453	1031
No. 14—6 sheets of tabulation showing the movement of tonnage to State and City named from coal producing districts supplying them; freight rates from each of districts of origin to point of destination, etc. ..	1454	1031
No. 15—Statement of total average cost of production in Kanawha District.....	1461	1040
No. 16—Statement of cost of production and realization in Harlan (Ky.) District .....	1462	1040
No. 17—Report of cost of production in the Williamson District.....	1464	1042
No. 18—8 sheets of tabulation showing coal mines on L. & N. R. R. in Eastern and Southeastern Kentucky, Eastern Tennessee and Virginia, rated for car supply July 10, 1932, separated as between defendant and non-defendant companies and showing active and inactive mines, joint mines and captive mines .....	1465	1043
No. 19—Receipts of Bituminous Coal at Duluth, Superior, Ashland and Washburn docks....	1474	1049
No. 20—Sales made by Pilgrim Coal Company..	1475	1050
No. 21—List of cities in North Dakota, Minnesota and South Dakota using natural gas....	1476	1050
No. 22—Oil burner installations, Minneapolis and St. Paul.....	1477	1051
No. 23—Map showing freight rates to Toledo, Lima and Findlay, Ohio.....	1478	1052
No. 24—Chart showing annual supply of energy from mineral fuels and water power in the United States .....	1479	1052
No. 25—Chart showing consumption of bituminous coal in the United States by railroads, utilities and steel works.....	1480	1052
No. 26—Tabulation showing consumption of fuel in United States by public utility power plants and production of electric power by fuels and by water power in 1929 (July 26, 1932)....	1481	1053
No. 27—Annual supply of energy from mineral fuels and waterpower, 1819-1930.....	1482	1056
No. 28—(Table #9) Per cent of total heating value contributed by several mineral fuels		



	Original	Print
in United States, 1819-1930.....	1483	1057
No. 29—(Table #10) Consumption of fuels in the United States.....	1484	1059
No. 30—(Table #11) Production of natural gas, petroleum and coal by States, 1929....	1485	1060
No. 31—(Table #12) Estimated replacement of bituminous coal consumption in 1930.....	1487	1062
No. 32—Table showing by-product coke oven plants .....	1488	1063
No. 33—Bituminous shipments to Lower Peninsular of Michigan, 1929.....	1489	1065
No. 34—Bituminous shipments to State of Indiana, 1929 .....	1490	1066
No. 35—Bituminous shipments to State of Ohio, 1929 .....	1491	1067
No. 36—Bituminous shipments to States of North Carolina, South Carolina and Georgia, 1929 .....	1492	1068
No. 37—Companies in Georgia that have changed from coal to natural gas, oil and hydroelectric power.....	1493	1069
No. 38—Recapitulation of Active and Inactive Mines .....	1495	1071
No. 39—Statement showing names of some industries in Northern Ohio and Southern Michigan that have changed from coal to fuel oil .....	1503	1079
No. 40—Report of U. S. Coal Commission, Sept. 12, 1923.....	1504	1079
No. 41—Landstreet-Downey Coal and General Coal Contract.....	1505	1080
No. 42—Landstreet-Downey Coal and North American Sales Agency Agreement.....	1509	1084
Order approving statement of evidence.....	1516	1089
Petition for appeal.....	1517	1090
Order allowing appeal.....	1519	1091
Memorandum: Copy of order allowing appeal for adverse party lodged in clerk's office.....	1520	1092
Assignment of errors.....	1521	1092
Supersedeas and cost bond on appeal (omitted in printing) .....	1536	
Citation and service.....(omitted in printing)..	1538	
Præcipe for record.....	1540	1101
Stipulation re transcript of record.....	1542	1102
Clerk's certificate.....(omitted in printing)..	1544	
Statement of points to be relied upon and designation of parts of record to be printed.....	1545	1103
Stipulation re omission of Appellant's Exhibits 2 and 3....	1549	1104