

Annual Wage Payments Made by the Bituminous Coal Industry in 1923, 1929 and 1933.”]

(1671) [There was offered and received in evidence as Defendants’ Exhibit 55 a statement entitled “Number of Men Employed in Bituminous Coal Mines in 1931, in Specified Counties.”]

(1671) [On motion of Mr. Critchlow, without objection by counsel for the plaintiff, the Court took judicial notice of the contents of the Annual Coal Reports, United States Bureau of Mines, formerly United States Geological Survey, for the years 1917 to 1933, as published in the Mineral Resources of the United States for those years.]

[fol. 784] (1666) [Counsel for the plaintiff in open court amended the bill of complaint by adding subparagraphs (5) and (6) to paragraph 17 of the bill of complaint, to which amendments the counsel for all of the defendants consented.]

(1942) [On motion of counsel for the plaintiff and consent of counsel for all of the defendants, paragraph 17 of the bill of complaint was further amended by adding subparagraphs (2a), (2b) and (2c) and paragraph 26 of the bill was amended by adding an additional clause at the end of the third sentence therein.]

[fol. 784a]

STIPULATION

It was also stipulated that the Court and any appellate court might take judicial notice of the contents of the Congressional Hearings and Reports listed below:

[fol. 784b] List of Certain Congressional Hearings and Federal Investigations Relating to the Bituminous Coal Industry

1913. Conditions in Paint Creek, West Virginia:

Hearings before a subcommittee of Senate Committee on Education and Labor, 63d Congress, 1st Session, pursuant to S. Res. 37, authorizing investigation of Paint Creek District. 2298 pp. 2 maps.

1914. Conditions in the Coal Mines of Colorado:

Hearings before the subcommittee of the Committee on Mines and Mining, pursuant to H. Res. 387. A resolution

authorizing and directing the Committee on Mines and Mining to make an investigation of conditions in the coal mines of Colorado.

Report on the coal strike investigation made under H. R. 387, printed as House Document 1630, 63d Congress, 3d session.

1915:

Report of the U. S. Coal Commission on the labor difficulties in the coal fields in Colorado, during the years 1914 and 1915. Printed as House Document 859, 64th Cong., 1st Session.

1917. Price Regulation of Coal and Other Commodities:

Hearings before Committee on Interstate Commerce, United States Senate, 65th Cong., 1st Sess., on S. 2354, a bill to amend the Act to regulate commerce, and on S. J. Res. 77, to provide further for the national security and defense by regulating the production, sale and distribution of coal. 503 pp.

1918. Shortage of Coal:

Hearings before the subcommittee of Senate Committee on Manufactures, 65th Congress, 2d session, pursuant to S. Res. 163, directing the Committee to investigate causes of shortage of coal and sugar. Coal. 1788 pp., 3 vols.

1919. Increased Price of Coal:

Hearings before a subcommittee of Senate Committee on Interstate Commerce, 66th Cong., 1st Session, pursuant to S. Res. 126, Part 1. 483 pp.

S. Res. directed the Committee to make inquiry into causes which have brought about enormous increase in market price of coal and to report its findings with a view to congressional or executive action.

1920. U. S. Bituminous Coal Commission. Majority and Minority Reports to the President. 120 pp.:

(Commission was appointed by Executive communication, dated December 6, 1919.)

1920-1921. Coal and Transportation :

Hearings before the Select Committee on Reconstruction and Production, U. S. Senate, 66th Congress, 3d Session, pursuant to S. Res. 350. 2361 pp. 3 vols.

[fol. 784c] 1921. Publication of Production and Profits in Coal :

Hearings before Senate Committee on Manufactures, 66th Congress, 3rd Session, on S. 4828, a bill to promote the general welfare by gathering information respecting the ownership, production, distribution, costs, sales and profits in the coal industry and by publication of same, and to recognize and declare coal and its production and distribution charged with public interest and use. 2235 pp.

1921. The Coal Problem :

Hearings before a subcommittee of Senate Committee on Interstate Commerce, 67th Congress, 1st Session, on S. 41, to provide for reasonable rates for the transportation of coal; on S. 42, to provide for the appointment of a Federal Coal Commissioner; on S. 824, to provide for a Federal Coal Commissioner, and directing the Director of the Geological Survey to act as such commissioner. 43 pp.

1921. West Virginia Coal Fields :

Hearings before the Committee on Education and Labor of the Senate on Conditions in the West Virginia Coal Fields, 67th Congress, 1st session, pursuant to S. Res. 80, directing the Committee on Education and Labor to investigate the recent acts of violence in the coal fields of West Virginia and adjacent territory and the causes which led to the conditions which now exist in said territory.

1922. Investigation of Wages and Working Conditions in the Coal Mining Industry :

Hearings before House Committee on Labor, 67th Congress, 2d Session, on H. R. 11022, to establish a Commission to inquire into labor conditions in the coal industry. 561pp.

1923. Report of the United States Coal Commission:

Transmitted pursuant to the Act approved September 22, 1922. (Public No. 347.) 2719 pp., 4 vols. and Atlas. S. Doc. No. 195, 68th Congress, 2nd Session.

1926. Coal Legislation:

Hearings before the Committee on Interstate and Foreign Commerce, House of Representatives, 69th Congress, 1st Session, on Coal Legislation.

1928. Conditions in the Coal Fields of Pennsylvania, West Virginia, and Ohio:

Hearings before the Committee on Interstate Commerce, U. S. Senate, 70th Congress, 1st Session, pursuant to S. Res. 105, a resolution to investigate conditions in the coal fields of Pennsylvania, West Virginia and Ohio.

1929. Bituminous Coal Commission:

Hearings before the Committee on Interstate Commerce, U. S. Senate, 70th Congress, 2nd Session, on S. 4490. A bill to regulate interstate and foreign commerce in bituminous coal, provide for consolidations, mergers, and cooperative marketing; regulate the fuel supply of interstate carriers; require the licensing of corporations producing and shipping coal in interstate commerce; and to create a bituminous coal commission, and for other purposes.

[fol. 784d] 1932. To Create a Bituminous Coal Commission:

Hearings before a subcommittee of the Committee on Mines and Mining, U. S. Senate, 72d Congress, 1st Session, on S. 2935, a bill to regulate interstate and foreign commerce in bituminous coal; provide for consolidations, mergers, and cooperative marketing; require the licensing of corporations producing and shipping coal in interstate commerce; and to create a bituminous coal commission, and for other purposes. 1351 pp., 2 vols.

1935. Stabilization of the Bituminous Coal Mining Industry:

Hearings before a subcommittee of the Committee on Interstate Commerce, U. S. Senate, 74th Congress, 1st ses-

sion, on S. 1417, a bill to stabilize the bituminous coal industry and promote its interstate commerce, etc. 624 pp.

1935. Stabilization of Bituminous Coal Mining Industry:

Hearings before a subcommittee of the Committee on Ways and Means, House of Representatives, 74th Congress, 1st Session, on H. R. 8479. 661 pp.

[fol. 785]

STATEMENT OF EXCEPTIONS

(NOTE.—Figures in parentheses indicate pages in the original transcript of the evidence.)

The following exceptions to rulings made by the Court during the progress of the trial were duly taken, noted and allowed:

(210) The plaintiff took exception to the entry of so much of the order of injunction pendente lite against defendant Carter Coal Company and its officers, and order denying preliminary injunction against Guy T. Helvering, et al. (Tr. 207-209) as denied relief against defendants Guy T. Helvering, et al. and as directed the giving of a bond as a condition of the relief against the defendants Carter Coal Company, et al.

(400) Mr. Whitney moved to strike the following portion of Mr. Tryon's testimony:

"But the fact that there are 34 days of seasonal idleness that cannot be avoided does not make the loss of time any less serious to the worker or to the owner of the mine."

The objection was overruled. An exception was taken.

(401) Mr. Whitney objected to the following question by Mr. Critchlow to Mr. Tryon:

"Q. Mr. Tryon, what was the economic position of the mine workers during this pre-war period?"

as irrelevant. (407) The objection was overruled. An exception was taken.

(618) Mr. Whitney objected to testimony by Mr. O'Neill as to the wages paid by his company and moved to strike

out previous testimony of Mr. O'Neill with respect to wages on the ground that the witness stated that there was more representative evidence. The objection and motion were overruled. An exception was noted.

(857) Mr. Lewin objected to the following question by Mr. Whitney to Mr. Findlay on cross examination as calling [fol. 786] for a legal conclusion:

“Q. Now, Mr. Findlay, as an expert on the coal industry, what provisions do you find in this statute which in your opinion will have the effect of tending to enforce the statute against those who otherwise will break it?”

The objection was overruled. An exception was noted.

(868) Mr. Lewin objected to the following question by Mr. Whitney to Mr. Findlay on cross examination as calling for a legal conclusion:

“Q. Well, that brings us back to this tax. Was there a similar tax in respect of the old code?”

“A. No.”

The objection was overruled. An exception was noted.

(869) Mr. Lewin objected to the following question by Mr. Whitney to Mr. Findlay:

“Q. Mr. Findlay, can you think of any other provision in the new code that differs from the old code?”

The objection was overruled. An exception was noted.

(918) Mr. Whitney objected to the following question by Mr. Critchlow to Mr. Reed as a question of law for the Court:

“Q. Do you regard wage cutting as an unfair method of competition?”

The objection was overruled. An exception was taken.

(944-945) Mr. Whitney objected to the following question by Mr. Critchlow to Mr. Mahan on the ground that the witness did not know what the industry generally would do:

“Q. And would pay it if there was a stabilized price which would enable them to do so?”

which followed after the question and answer:

“Q. The industry generally, universally, or generally wants to pay a fair wage, does it not?”

“A. That is absolutely true.”

The objection was overruled. An exception was taken.

(995-996) Mr. Whitney moved that examples in the case be confined throughout the evidence to representative or average examples. The motion was denied. An exception was taken.

(1002) Mr. Whitney moved to strike out testimony by Mr. Murray to the effect that employees were denied the right to assemble for any purpose that might have had to do with [fol. 787] their civic or social betterment, as not responsive. The motion was overruled and an exception was noted.

(1002-1003) Mr. Whitney objected to the following question by Mr. Lewin to Mr. Murray as having nothing to do with the case:

“Q. Mr. Murray, when you say they were isolated there, and that there was colonization, will you just describe that a little more fully?”

The objection was overruled. An exception was taken.

(1071) Mr. Whitney moved to strike out the testimony of Mr. Murray as to leases and evictions as hearsay, not the best evidence, incompetent, and introduced for the purpose of prejudice. (1075) The objection was overruled. An exception was taken.

(1129-1130) Mr. Whitney objected to the admission of Defendants' Exhibit No. 27 as entirely collateral. The objection was overruled. An exception was noted.

(1221-1222) Mr. Whitney objected to the following question by Mr. Lewin to Mr. Lubin:

“Q. Briefly, in your opinion, what are the chief steps which should be taken in the industry to alleviate those conditions?”

The objection was overruled. An exception was noted.

(1228) Mr. Whitney objected to the following question by Mr. Lewin to Mr. Lubin:

“Q. Will you state your reasons for your belief?”

as being outside the issues in the case. The objection was overruled. An exception was taken.

(1232-1233) Mr. Whitney objected to Mr. Lewin's questioning Mr. Lubin as to his opinion as to the effect of fixing

minimum prices. The objection was overruled. An exception was taken.

[fol. 788] (1270) Mr. Whitney objected to the following question by Mr. Lewin to Miss Roche on the ground of its being outside the issues in the case:

“Q. What effect upon the union did this strike of 1913 to 1915 have?”

The objection was overruled. An exception was taken.

(1270-1271) Mr. Whitney objected to the following question by Mr. Lewin to Miss Roche on the ground that there is nothing in the statute bearing upon or preventing combinations:

“Q. Was there any combination among the coal operators to oppose the bringing-about of better labor conditions?”

The objection was overruled. An exception was taken.

(1273-1274) Mr. Whitney objected to the following testimony by Miss Roche as immaterial:

“The men did not have a checkweighman at any of our mines but one, and that particular checkweighman had been elected at a meeting at the mine tippie under the supervision of the mine superintendent. He was in no sense representative of the miners. He was one of the industrial spies that had been maintained in the company for years—”

The objection was overruled. An exception was taken.

(1274-1275) Mr. Whitney objected to the following testimony by Miss Roche as being outside the issues in the case:

“The Witness: One of the further causes of great unrest and dissatisfaction was the employment by the company of industrial spies. We maintained at that time the head of a former detective agency—”

The Court overruled the objection after the following colloquy:

“The Court: Does she testify that these conditions existed in other companies?”

“Mr. Lewin: Yes.

“By Mr. Lewin:

[fol. 789] “Q. Am I correct in that, Miss Roche?

“A. Our company was typical of the industry.”
An exception was taken.

(1284-1285) Mr. Whitney objected to the offer in evidence of Defendants' Exhibit No. 39, a copy of an agreement between Rocky Mountain Fuel Company of Colorado and the United Mine Workers of America, on the ground of immateriality. The objection was overruled. An exception was taken.

(1290-1291) Mr. Whitney objected to the following question (underlined) by Mr. Lewin to Miss Roche:

"Q. From your knowledge and experience in the industry, do you believe a stabilization of prices necessary or desirable?"

"A. I believe it is necessary and desirable, in the interest of all three parties, the industry, the public, and the workers.

"Q. *Will you tell us your reasons for believing that?*"

on the ground of irrelevancy. The objection was overruled. An exception was taken.

(1292) Mr. Whitney objected on the ground of irrelevancy and immateriality to the following question by Mr. Lewin to Miss Roche:

"Q. To what extent, if any, have conditions in the industry which prevailed prior to 1933 in your State brought about waste in coal resources?"

The objection was overruled. An exception was taken.

(1519-1520) Mr. Whitney objected to the admission of Defendants' Exhibit No. 41 on the ground of irrelevancy and immateriality. The objection was overruled. An exception was noted.

(1548-1551) Mr. Whitney objected to the admission in [fol. 790] evidence of Defendants' Exhibits Nos. 42, 43, 43A, 43B and 43C on the ground of irrelevancy. The objections were overruled. Exceptions were taken.

(1554-1559) Mr. Whitney objected to the request of Mr. Critchlow from Mr. Carter of information relative to realization and costs of Carter Coal Company by months since January 1, 1935. The objection was sustained. An exception was noted.

(1568) Mr. Critchlow objected to the introduction in evidence of Plaintiff's Exhibits Nos. 70, 70A and 70B on the ground of immateriality. The objection was overruled. An exception was taken.

(1589-1592) Mr. Critchlow objected to the admission in evidence of Plaintiff's Exhibits Nos. 84 and 85 on the ground of immateriality and irrelevancy. The objection was sustained. An exception was taken.

(1615-1616) Mr. Critchlow objected to the admission of Plaintiff's Exhibit No. 87 as immaterial. The objection was overruled. An exception was taken.

[fol. 791]

Exhibits

Be it further remembered that at the hearing of the above-entitled cause before Mr. Justice Adkins, the following exhibits were offered and received in evidence:

[fol. 792]

PLAINTIFF'S EXHIBIT 1

Certificate of Incorporation of Carter Coal Company

First. The name of this corporation is Carter Coal Company.

Second. The location of its principal office in the State of Delaware is in the City of Wilmington, County of New Castle. The name of the agent therein and in charge thereof is Delaware Trust Company.

Third. The objects and purposes for which and for any of which this Corporation is formed, are, to do any or all of the things herein set forth to the same extent as natural persons might or could do, viz: To buy, lease, hold, sell, encumber, mortgage and otherwise acquire, enjoy and dispose of lands and interests in lands, within the State of Delaware, or any other States, Districts, Territories or Colonies of the United States, and in any and all foreign countries, subject to the laws of such State, District, Territory, Colony or Country; and within the State of Delaware, and in any and all other States, Districts, Territories or Colonies of the United States, and in any and all foreign Countries, subject to the laws of such State, District, Territory, Colony or Country, to lease, construct, and otherwise acquire, enjoy and dispose of storehouses, warerooms and all other buildings; to buy and sell all kinds of merchandise; to mine, quarry and prepare for market, and buy and sell or otherwise acquire and dispose of coal, iron, rock,

stone, clay and all minerals, metals and timber; to manufacture, sell and otherwise dispose of all articles made from coal, minerals, metals, wood, clay, stone, rock and other substances, and to operate plants of all kinds for the manufacture or preparation of such articles; to conduct a general farming business and buy, sell and deal in farm products and live stock of all kinds; to purchase, hold, assign, transfer, mortgage, pledge or otherwise dispose of the shares of the capital stock of, or any bonds, securities or evidences of indebtedness created by, any other incorporation or corporations of the State of Delaware, or any other State, District, Territory or Colony of the United States, or of any foreign country, and while owner of such stock to exercise all the rights, powers and privileges of ownership, including the right to vote thereon; to purchase, hold and re-issue the shares of its capital stock.

Fourth. The enumeration of the foregoing specific objects and powers shall not be held to limit or restrict in any manner the objects and powers of this Corporation, but the Corporation shall have all the powers conferred upon it by the laws of Delaware to do any and all things permitted to Corporations organized under the Act hereinafter referred to whether hereinbefore enumerated or not.

Fifth. The total authorized capital stock of this Corporation is five million (\$5,000,000.00) divided into fifty thousand shares of the par value of one hundred dollars each.

Sixth. The amount of capital stock with which the Corporation will commence business is Fifteen Hundred dollars, being Fifteen shares of one hundred dollars each.

Seventh. The names and places of residence of each of the original subscribers to the capital stock and the number of shares subscribed for by each, are as follows:

Geo. L. Carter, Johnson City, Tennessee—3 Shares.
[fol. 794] S. R. Jennings, Johnson City, Tennessee—3 Shares.

J. C. Stone, Johnson City, Tennessee—3 Shares.

W. B. Kegley, Wytheville, Virginia—3 Shares.

Harry W. Davis, Wilmington, Delaware—3 Shares.

Eighth. This Corporation is to have perpetual succession.

Ninth. The private property of the stockholders shall not be subject to the payment of corporate debts to any extent whatever.

Tenth. In furtherance, and not in limitation of the powers conferred by statute, the Board of Directors are expressly authorized to make, alter, amend and rescind the By-Laws of this Corporation.

We, the undersigned, being each of the original subscribers to the capital stock hereinbefore named, for the purpose of forming a Corporation to do business both within and without the State of Delaware, and in pursuance of an Act of the Legislature of the State of Delaware entitled "An Act Providing a General Corporation Law" (approved March 10th, 1899) and the acts amendatory thereof and supplemental thereto, do make and file this certificate, hereby declaring and certifying that the facts herein stated are true, and do respectively agree to take the number of shares of stock hereinbefore set forth, and accordingly have hereunto set our hands and seals, this seventeenth day of December, A. D. 1912.

Geo. L. Carter. (Seal.) S. R. Jennings. (Seal.)
J. C. Stone. (Seal.) W. B. Kegley. (Seal.)
Harry W. Davis. (Seal.)

In Presence of: William W. Pusey, 2d, as to G. L. C.
William W. Pusey, 2d, as to S. R. J. T. F. Davis. T. F.
Davis. William W. Pusey, 2d, as to H. W. D.

[fol. 795] STATE OF TENNESSEE,
County of Washington, ss:

Be it remembered, that on this seventeenth day of December, A. D. 1912, personally appeared before me, T. F. Davis, a Notary Public for the State of Tennessee, J. C. Stone and W. B. Kegley, parties to the foregoing Certificate of Incorporation, known to me personally to be such, and severally acknowledged the said Certificate to be the act and deed of the signers respectively and that the facts therein stated are truly set forth.

Given under my hand and seal of office the day and year aforesaid.

T. F. Davis, Notary Public.

T. F. Davis, Washington County, Tennessee, Notary Public.

My Commission Expires July 12, 1915.

[fol. 796] STATE OF DELAWARE,
County of New Castle, ss:

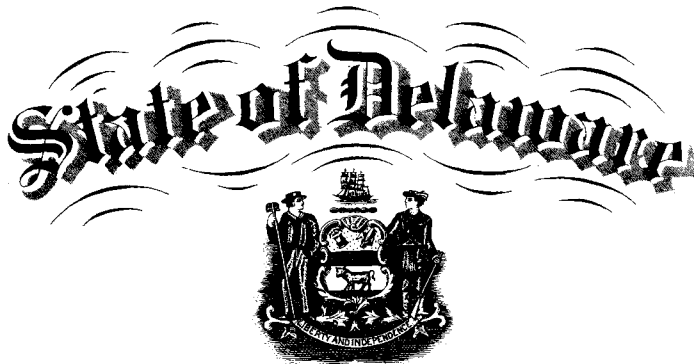
Be it remembered, that on this 18th day of December, A. D. 1912, personally came before me, William W. Pusey 2d, a Notary Public for the State of Delaware, George L. Carter, S. R. Jennings and Harry W. Davis, parties to the foregoing Certificate of Incorporation, known to me personally to be such, and severally acknowledged the said Certificate to be the act and deed of the signers respectively and that the facts therein stated are truly set forth.

Given under my hand and seal of office the day and year aforesaid.

William W. Pusey, 2d, Notary Public.

William W. Pusey, 2d, Notary Public, State of Delaware.
Appointed Mch. 19, 1912, term four years.

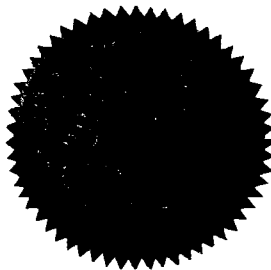
(Here follows photolithograph, side folio 797.)



Office of Secretary of State.

I Walter Dent Smith, Secretary of State of the State of Delaware,
do hereby certify that the above and foregoing is a true and correct copy of
Certificate of Incorporation of the "CARTER COAL COMPANY", as
received and filed in this office the eighteenth day of December,
A. D. 1912, at 5 o'clock P.M.

*In Testimony Whereof, I have hereunto set my hand
and official seal at Dover, this seventeenth day
of October in the year of our Lord
one thousand nine hundred and thirty-five.*



Walter Dent Smith
Secretary of State.

[fol. 798]

PLAINTIFF'S EXHIBIT 2

Carter Coal Company

Certificate of Amendment of Certificate of Incorporation

Carter Coal Company, a corporation organized and existing under an Act of the Legislature of the State of Delaware, entitled "An Act providing a General Corporation Law", approved March 10, 1899, and the Acts amendatory thereof and supplemental thereto, the Certificate of Incorporation of which Corporation was duly filed in the office of the Secretary of the State of Delaware on December 18, 1912, desiring to amend its said charter or Certificate of Incorporation, does hereby certify as follows:

I. That at a meeting of the Board of Directors of the said Corporation, duly held on February 6, 1922, the following Resolutions were duly adopted:

"Resolved, that it is advisable that the Certificate of Incorporation of this Corporation be amended, so that Article Fifth thereof shall read as follows:

'Fifth: The authorized capital stock of the Corporation shall consist of forty thousand (40,000) shares of Preferred Stock, of the par value of \$100, each, amounting in the aggregate to Four Million Dollars (\$4,000,000), par value, and fifty thousand (50,000) shares of Common Stock, without nominal or par value.

'The Preferred Stock shall be entitled to receive, out of surplus or net profits, dividends cumulative from and after February 1, 1923, at the rate of six per cent per annum, payable quarterly on the first day of each of the months of February, May, August and November in each year. No dividends shall be declared or paid upon any of [fol. 799] the Common Stock, so long as any of the Preferred Stock is outstanding, unless prior thereto or simultaneously therewith provision shall be made for the retirement of all the Preferred Stock then outstanding.

'On any liquidation, dissolution or distribution of capital assets (whether voluntary or involuntary), the Preferred Stock shall be entitled to receive an amount equivalent to the par value thereof and the amount of any accumulated and unpaid dividends thereon, with interest on overdue instalments of dividends at the rate of six per cent. per

annum from the respective dates upon which the same should have been paid, as hereinbefore provided. After distribution shall have been made to the Preferred Stock, as herein provided, but not prior thereto, the Common Stock of the Corporation shall be entitled to receive all the remainder of the assets of the Corporation.

‘The Corporation will have the right to redeem the Preferred Stock on any quarterly dividend date, in whole or in such portions as, from time to time, the Board of Directors may determine, upon the payment of an amount equivalent to the par value thereof and the amount of any unpaid dividends accumulated thereon, with interest on overdue instalments of dividends at the rate of six per cent. per annum from the respective dates upon which the same should have been paid, as hereinbefore provided. If less than the whole amount of outstanding Preferred Stock shall be so redeemed at any time, the stock to be redeemed shall be selected in such manner as the Board of Directors may by Resolution determine. At least thirty days’ notice in advance of such redemption shall be mailed to each holder of Preferred Stock to be redeemed at his address registered with the Corporation, and, if less than all the shares owned by such holder is to be redeemed, the notice shall specify the number of such shares to be redeemed. On and after the date fixed for such redemption, unless the Corporation shall not, after proper demand, have paid [fol. 800] to the respective holders of the shares so called for redemption the redemption price thereof, the stock so called for redemption shall cease to be entitled to any dividends and the respective holders thereof shall have no other right or interest therein or in the Corporation or in the assets thereof, by reason of the ownership of such shares, except to receive payment therefor at the said redemption price, upon presentation and surrender of their respective certificates therefor.

‘So long as any of the Preferred Stock is outstanding, the Corporation shall not, without the written consent or affirmative vote of at least seventy-five per cent. of the outstanding Preferred Stock, execute any mortgage upon any of its assets at any time, or cause or suffer any lien in the nature of a mortgage to be placed thereon, to secure indebtedness in excess of the aggregate principal amount of Twelve Million Dollars (\$12,000,000) and interest; and,

without the written consent or affirmative vote of at least seventy-five per cent. of the outstanding Preferred Stock, the authorized amount of Preferred Stock of the Corporation shall at no time be increased.

‘So long as the Corporation shall not be in default, as hereinafter provided, the Preferred Stock shall have no right to vote for any purpose or on any subject at, or to receive notice of, any meeting of stockholders, except as otherwise expressly provided by law. If, however, the Corporation shall at any time be in default in the payment of any four quarterly dividends on the Preferred Stock, thereafter, the Preferred Stock shall have the right to receive notice of all meetings of stockholders and, at any such meeting, the Preferred Stock, shall for any and all purposes, have voting rights equal to the Common Stock in respect of number of votes cast for each share, and such rights shall continue in the Preferred Stock until all [fol. 801] unpaid accumulated dividends shall have been declared and paid, and thereupon the Preferred Stock shall cease to have voting rights, except as expressly provided by law, or until the Corporation shall again be in default in the payment of four quarterly dividends.

‘Anything herein contained to the contrary notwithstanding, in case the Corporation shall at any time be in default in the payment of any quarterly dividend or dividends on any of the Preferred Stock, such Preferred Stock shall be entitled to receive, upon the payment of and in addition to the quarterly dividend or dividends so in default, a further dividend payable out of surplus or net profits in an amount equivalent to interest on the amount of such quarterly dividend or dividends at the rate of six per cent. per annum for the period during which such default shall have continued.

‘*Any* any meeting of stockholders, each share of stock entitled to vote thereat shall be entitled to one vote.

‘The Preferred Stock shall have no preemptive right in or right to subscribe for any additional stock of whatever class which may at any time be issued by the Corporation. The Common Stock shall have no preemptive right in or right to subscribe for any additional Preferred Stock which may at any time be issued by the Corporation; but the holders of Common Stock, in proportion to their respective holdings, shall be entitled to subscribe for and

purchase any additional Common Stock or securities convertible into Common Stock which may, from time to time, be issued by the Corporation for cash.'

"Resolved, that a Special Meeting of the stockholders of this Corporation be called, to be held at the office of the Corporation on February 6, 1922, at eleven o'clock, A. M., for the purpose of considering and taking action upon the said proposed amendment, and for the purpose of taking action upon and of transacting such other and further [fol. 802] matters incidental to the foregoing, including the approving or authorizing of any action of the Board of Directors in relation thereto, as may be brought before the meeting.

"Resolved, that Charles R. Barrett and Everett W. Barto be and are hereby appointed judges to act at the said meeting."

II. That thereafter, pursuant to the said Resolutions of the Board of Directors, a Special Meeting of the stockholders of the said Corporation was duly called and held at the office of the Corporation, in accordance with the law, and upon such notice as the By-laws of the said Corporation provided, on February 6, 1922, at eleven o'clock, A. M.

III. That, at the said Special Meeting, the vote of the stockholders entitled to vote, by ballot, in person or by proxy, was taken for and against the said proposed amendment, which vote was conducted by Charles R. Barrett and Everett W. Barto, the two judges appointed for that purpose by the Board of Directors, as aforesaid, and that, by vote conducted as aforesaid, the persons holding the majority of the stock of the Corporation entitled to vote (there being but one class of stock outstanding) voted in favor of the said amendment, all as appears by the duplicate Certificates made out by the said Judges, one of which is hereto attached, marked "Exhibit A".

In witness whereof, the Carter Coal Company has made this Certificate under its corporate seal and the hands of its President and Secretary.

Carter Coal Company, by S. D. Camden, President;
H. H. Warfield, Secretary. (Carter Coal Company, Incorporated, Seal, 1912.)

[fol. 803] STATE OF NEW YORK,
County of New York:

Be it remembered, that on the 25th day of September, 1922, personally came before me, Charles R. Chatterton, a Notary Public in and for the County and State aforesaid, S. D. Camden and H. H. Warfield, President and Secretary, respectively, of the Carter Coal Company, a corporation of the State of Delaware, the corporation described in and which executed the foregoing Certificate, known to me personally to be such, and severally executed the said Certificate before me; and the said S. E. Camden duly acknowledged the said Certificate to be his act and deed as such President, and the act and deed of said Corporation, and that the seal affixed to said Certificate is the corporate seal of the said Corporation, and that the facts therein stated are truly set forth.

Given under my hand and seal of office the day and year aforesaid.

Charles R. Chatterton, Notary Public.

New York County No. 461. New York County Registrars No. 3394.

My Commission expires March 30, 1923.

Charles R. Chatterton, Notary Public, New York County.

[fol. 804] Carter Coal Company

Judges' Certificate

We, the undersigned, Charles R. Barrett and Everett W. Barto, do hereby certify that we were duly appointed by the Board of Directors of the Carter Coal Company to act as Judges for the purpose of conducting the vote of the stockholders of the said Corporation at the Special Meeting thereof held on February 6, 1922, to consider the proposition of amending the Charter or Certificate of Incorporation of the said Corporation, so that Article Fifth thereof should read as follows:

“Fifth. The authorized capital stock of the Corporation shall consist of forty thousand (40,000) shares of Preferred Stock, of the par value of \$100 each, amounting in the aggregate to Four Million Dollars (\$4,000,000), par value, and fifty thousand (50,000) shares of Common Stock, without nominal or par value.

“The Preferred Stock shall be entitled to receive, out of surplus or net profits, dividends cumulative from and after February 1, 1923, at the rate of six per cent. per annum, payable quarterly on the first day of each of the months of February, May, August and November in each year. No dividends shall be declared or paid upon any of the Common Stock, so long as any of the Preferred Stock is outstanding, unless prior thereto or simultaneously therewith provision shall be made for the retirement of all the Preferred Stock then outstanding.

“On any liquidation, dissolution or distribution of capital assets (whether voluntary or involuntary), the Preferred Stock shall be entitled to receive an amount equivalent to the par value thereof and the amount of any accumulated and unpaid dividends thereon, with interest on overdue instalments of dividends at the rate of six per cent. per [fol. 805] annum from the respective dates upon which the same should have been paid, as hereinbefore provided. After distribution shall have been made to the Preferred Stock, as herein provided, but not prior thereto, the Common Stock of the Corporation shall be entitled to receive all the remainder of the assets of the Corporation.

“The Corporation will have the right to redeem the Preferred Stock on any quarterly dividend date, in whole or in such portions as, from time to time, the Board of Directors may determine, upon the payment of an amount equivalent to the par value thereof and the amount of any unpaid dividends accumulated thereon, with interest on overdue instalments of dividends at the rate of six per cent. per annum from the respective dates upon which the same should have been paid, as hereinbefore provided. If less than the whole amount of outstanding Preferred Stock shall be so redeemed at any time, the stock to be redeemed shall be selected in such manner as the Board of Directors may by Resolution determine. At least thirty days' notice in advance of such redemption shall be mailed to each holder of Preferred Stock to be redeemed at his address registered with the Corporation, and, if less than all the shares owned by such holder is to be redeemed, the notice shall specify the number of such shares to be redeemed. On and after the date fixed for such redemption, unless the Corporation shall not, after proper demand, have paid to the respective holders of the shares so called for redemption the redemp-

tion price thereof, the stock so called for redemption shall cease to be entitled to any dividends and the respective holders thereof shall have no other right or interest therein or in the Corporation or in the assets thereof, by reason of the ownership of such shares, except to receive payment therefor at the said redemption price, upon presentation and surrender of their respective certificates therefor.

[fol. 806] “So long as any of the Preferred Stock is outstanding, the Corporation shall not, without the written consent or affirmative vote of at least seventy-five per cent. of the outstanding Preferred Stock, execute any mortgage upon any of its assets at any time, or cause or suffer any lien in the nature of a mortgage to be placed thereon, to secure indebtedness in excess of the aggregate principal amount of Twelve Million Dollars (\$12,000,000) and interest; and, without the written consent or affirmative vote of at least seventy-five per cent. of the outstanding Preferred Stock, the authorized amount of Preferred Stock of the Corporation shall at no time be increased.

“So long as the Corporation shall not be in default, as hereinafter provided, the Preferred Stock shall have no right to vote for any purpose or on any subject at, or to receive notice of, any meeting of stockholders, except as otherwise expressly provided by law. If, however, the Corporation shall at any time be in default in the payment of any four quarterly dividends on the Preferred Stock, thereafter the Preferred Stock shall have the right to receive notice of all meetings of stockholders and, at any such meeting, the Preferred Stock, shall for any and all purposes, have voting rights equal to the Common Stock in respect of number of votes cast for each share, and such rights shall continue in the Preferred Stock until all unpaid accumulated dividends shall have been declared and paid, and thereupon the Preferred Stock shall cease to have voting rights, except as expressly provided by law, or until the Corporation shall again be in default in the payment of four quarterly dividends.

“Anything herein contained to the contrary notwithstanding, in case the Corporation shall at any time be in default in the payment of any quarterly dividend or dividend [fol. 807] ends on any of the Preferred Stock, such Preferred Stock shall be entitled to receive, upon the payment of and in addition to the quarterly dividend or dividends so in default, a further dividend payable out of surplus

or net profits in an amount equivalent to interest on the amount of such quarterly dividend or dividends at the rate of six per cent. per annum for the period during which such default shall have continued.

“At any meeting of stockholders, each share of stock entitled to vote thereat shall be entitled to one vote.

“The Preferred Stock shall have no preemptive right in or right to subscribe for any additional stock of whatever class which may at any time be issued by the Corporation. The Common Stock shall have no preemptive right in or right to subscribe for any additional Preferred Stock which may at any time be issued by the Corporation; but the holders of Common Stock, in proportion to their respective holdings, shall be entitled to subscribe for and purchase any additional Common Stock or securities convertible into Common Stock which may, from time to time, be issued by the Corporation for cash.”

That, at the said Special Meeting, the vote of the stockholders entitled to vote, by ballot, in person or by proxy, was taken for and against the said proposed amendment; that the said vote was conducted by the undersigned, as Judges appointed for that purpose, as aforesaid; that, as such Judges, we decided upon the qualifications of voters at the said meeting and accepted their votes, and that, when the said vote was completed, we counted and ascertained the number of shares voted respectively for and against the said amendment, and we declared, and do hereby declare, that the persons holding the majority of the voting stock of the said Corporation (there being but one class of stock outstanding) voted for and in favor of the said amendment. [fol. 808] And we further certify as follows:

I. The number of shares of stock, issued and outstanding entitled to vote at the said meeting, was fifty thousand (50,000).

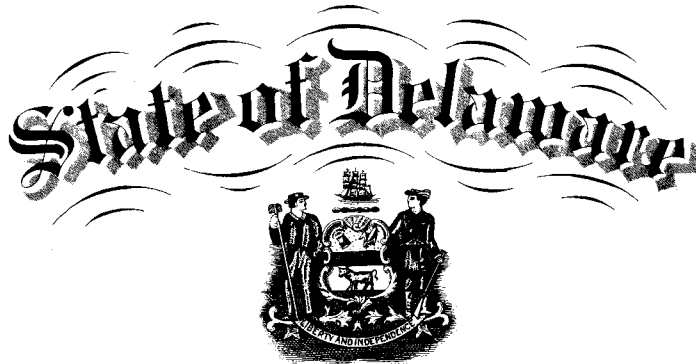
II. The number of shares voted for the said amendment was fifty thousand (50,000).

III. The number of shares voted against the said amendment was none.

In witness whereof, we have made out the foregoing Certificate, in duplicate, and subscribed our names hereto, this 6th day of February, 1922.

Everett Wheeler Barto, Charles R. Barrett, Judges.

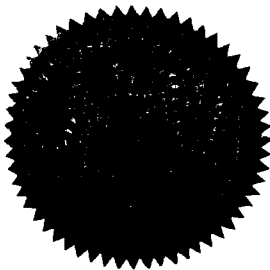
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Office of Secretary of State.

I Walter Dent Smith, Secretary of State of the State of Delaware,
do hereby certify *that the above and foregoing is a true and correct copy of*
Certificate of Amendment of Certificate of Incorporation of the
"GARTER COAL COMPANY", as received and filed in this office the
twenty-eighth day of September, A. D. 1922, at 1 o'clock P.M.

In Testimony Whereof, I have hereunto set my hand
and official seal at Dover, this seventeenth *day*
of October *in the year of our Lord*
one thousand nine hundred and thirty-five.



Walter Dent Smith

Secretary of State.

[fol. 810]

PLAINTIFF'S EXHIBIT 3

Certificate of Amendment of Certificate of Incorporation
of Carter Coal Company

Pursuant to Section 26 of the General Corporation Law of the State of Delaware

We, the undersigned, W. W. Stevenson, President, and C. E. Beachley, Secretary, of Carter Coal Company, a Delaware corporation (hereinafter called the Corporation), hereby make this Certificate under the corporate seal of the Corporation and do hereby certify as follows:

1. The Certificate of Incorporation (as amended) of the Corporation shall be amended so that Article Fifth thereof shall read as follows:

“Fifth. The total number of shares of all classes of stock which the Corporation shall have authority to issue is Eighty thousand (80,000), of which Forty thousand (40,000) shares, each of the par value of \$100, shall be Preferred Stock, Thirty thousand (30,000) shares, each of the par value of \$1, shall be Class A Common Stock, and Ten thousand (10,000) shares, each of the par value of \$1, shall be Class B Common Stock.

“A statement of the designations and the powers, preferences and rights, and the qualifications, limitations or restrictions thereof, of all classes of stock of the Corporation is as follows:

“The Preferred Stock shall be entitled to receive, out of surplus or net profits, dividends cumulative from and after February 1, 1923, at the rate of six per cent. per annum, payable quarterly on the first day of each of the months of [fol. 811] February, May, August and November in each year. No dividends shall be declared or paid upon any of the Class A Common Stock or the Class B Common Stock, so long as any of the Preferred Stock is outstanding, unless prior thereto or simultaneously therewith, provision shall be made for the retirement of all the Preferred Stock then outstanding.

“On any liquidation, dissolution or distribution of capital assets (whether voluntary or involuntary), the Preferred Stock shall be entitled to receive an amount equiva-

lent to the par value thereof and the amount of any accumulated and unpaid dividends thereon, with interest on overdue instalments of dividends at the rate of six per cent. per annum from the respective dates upon which the same should have been paid, as hereinbefore provided. After distribution shall have been made to the Preferred Stock, as herein provided, but not prior thereto, the Class A Common Stock and the Class B Common Stock of the Corporation shall be entitled to receive, ratably, all the remainder of the assets of the Corporation.

“The Corporation will have the right to redeem the Preferred Stock on any quarterly dividend date, in whole or in such portions as, from time to time, the Board of Directors may determine, upon the payment of an amount equivalent to the par value thereof and the amount of any unpaid dividends accumulated thereon, with interest on overdue instalments of dividends at the rate of six per cent. per annum from the respective dates upon which the same should have been paid, as hereinbefore provided. If less than the whole amount of outstanding Preferred Stock shall be so redeemed at any time, the stock to be redeemed shall be selected in such manner as the Board of Directors may by [fol. 812] resolution determine. At least thirty days’ notice in advance of such redemption shall be mailed to each holder of Preferred Stock to be redeemed at his address registered with the Corporation, and, if less than all the shares owned by such holder is to be redeemed, the notice shall specify the number of such shares to be redeemed. On and after the date fixed for such redemption, unless the Corporation shall not, after proper demand, have paid to the respective holders of the shares so called for redemption the redemption price thereof, the stock so called for redemption shall cease to be entitled to any dividends and the respective holders thereof shall have no other right or interest therein or in the Corporation or in the assets thereof, by reason of the ownership of such shares, except to receive payment therefor at the said redemption price, upon presentation and surrender of their respective certificates therefor.

“So long as any of the Preferred Stock is outstanding, the Corporation shall not, without the written consent or affirmative vote of at least seventy-five per cent. of the outstanding Preferred Stock, execute any mortgage upon any

of its assets at any time, or cause or suffer any lien in the nature of a mortgage to be placed thereon, to secure indebtedness in excess of the aggregate principal amount of Twelve Million Dollars (\$12,000,000) and interest; and, without the written consent or affirmative vote of at least seventy-five per cent. of the outstanding Preferred Stock, the authorized amount of Preferred Stock of the Corporation shall at no time be increased.

“So long as the Corporation shall not be in default, as hereinafter provided, the Preferred Stock shall have no right to vote for any purpose or on any subject at, or to [fol. 813] receive notice of, any meeting of stockholders, except as otherwise expressly provided by law. If, however, the Corporation shall at any time be in default in the payment of any four quarterly dividends on the Preferred Stock, thereafter, the Preferred Stock shall have the right to receive notice of all meetings of stockholders and, at any such meeting, the Preferred Stock shall for any and all purposes, have voting rights equal to the Class A Common Stock in respect of number of votes cast for each share, and such rights shall continue in the Preferred Stock until all unpaid accumulated dividends shall have been declared and paid, and thereupon the Preferred Stock shall cease to have voting rights, except as expressly provided by law, or until the Corporation shall again be in default in the payment of four quarterly dividends.

“Anything herein contained to the contrary notwithstanding, in case the Corporation shall at any time be in default in the payment of any quarterly dividend or dividends on any of the Preferred Stock, such Preferred Stock shall be entitled to receive, upon the payment of and in addition to the quarterly dividend or dividends so in default, a further dividend payable out of surplus or net profits in an amount equivalent to interest on the amount of such quarterly dividend or dividends at the rate of six per cent. per annum for the period during which such default shall have continued.

“Except as otherwise expressly required by the laws of the State of Delaware and as hereinbefore provided with respect to the Preferred Stock, neither the holders of Preferred Stock nor the holders of Class B Common Stock shall possess any voting power, and the holders of Class A Common Stock shall exclusively possess voting power for

[fol. 814] the election of directors and for all other purposes. The amount of the authorized stock of any class or classes of stock of the Corporation may be increased or decreased by the affirmative vote of the holders of a majority of the Class A Common Stock at such times as the holders of the Class A Common Stock have exclusive voting power as hereinabove provided, and by the affirmative vote of the holders of a majority of the Class A Common Stock and Preferred Stock, at such times as the holders of Preferred Stock, also possess voting power as herein above provided. At any meeting of stockholders, each share of stock entitled to vote thereat shall be entitled to one vote.

“Unless otherwise determined by the Board of Directors, no holder of stock of the Corporation of any class or classes, now or hereafter authorized, or of any obligation of the Corporation that shall be convertible into, or exchangeable for, any share or shares of such stock, or of any warrant, option or other instrument that shall confer on the holder thereof the right to subscribe for or purchase or receive from the Corporation any share or shares of such stock, shall, as such holder, have any right to purchase or subscribe for (a) any stock of any class or classes, now or hereafter authorized, or any warrant or warrants, option or options or other instrument or instruments that shall confer upon the holder or holders thereof the right to subscribe for, or purchase or receive from, the Corporation any stock of any class or classes, now or hereafter authorized, which the Corporation may issue or sell, whether or not such stock shall be exchangeable for any stock of the Corporation of any class or classes, now or hereafter authorized, and whether or not such stock shall be out of the number of shares thereof authorized by this Certificate [fol. 815] of Incorporation as originally filed, or by any amendment thereof, or out of shares of its stock acquired by it after the issue thereof; or (b) any obligation which the Corporation may issue or sell that shall be convertible into, or exchangeable for, any shares of the stock of the Corporation of any class or classes now or hereafter authorized, or to which shall be attached or appurtenant any warrant or warrants, option or options, or other instrument or instruments that shall confer upon the holder or holders of such obligation, warrant or warrants, option or options, or other instrument or instruments, the right

to subscribe for or purchase or receive from the Corporation any shares of its stock of any class or classes, now or hereafter authorized, provided, however, that if the right to purchase or subscribe for common stock of any class (whether or not having voting power) shall be offered by the Corporation to the holders of Class A Common Stock, there shall be offered to the holders of Class B Common Stock, at the same price per share, the right to purchase or subscribe for a proportionate number of shares of common stock without voting power.”

2. Of said Ten thousand (10,000) shares of Class B Common Stock of the par value of \$1 each, one (1) share is to be issued in exchange for every five (5) shares of Common Stock without par value outstanding at the date of the taking effect of this Amendment to the Certificate of Incorporation of the Corporation, and every five (5) shares of Common Stock without par value then outstanding shall, by the taking effect of this amendment, be changed into one (1) share of Class B Common Stock of the par value of \$1 each. The aggregate amount of the capital of the Corporation represented by such shares of Class B Common Stock of the par value of \$1 each shall be the same as the aggregate amount of capital represented by the shares of Common Stock without par value so changed. The capital of the Corporation will not be reduced under or by reason of this Amendment.

3. The foregoing amendment has been duly adopted in accordance with the provisions of Section 26 of the General Corporation Law of the State of Delaware.

In witness whereof, we have signed this Certificate and caused the corporate seal of the Corporation to be affixed hereto, this 14th day of March, 1933.

W. W. Stevenson, President. C. E. Beachley, Secretary. (Carter Coal Company, Incorporated, Seal, 1912.)

Attest: C. E. Beachley, Secretary.

[fol. 817] STATE OF NEW YORK,
County of New York, ss:

Be it remembered, that on the 14th day of March, 1933, personally came before me Elon A. Williams, a notary pub-

lic in and for the County and State aforesaid, W. W. Stevenson, President of Carter Coal Company, a Delaware corporation, the corporation described in and on behalf of which was made the foregoing Certificate, known to me to be such, and that said W. W. Stevenson, as such President, duly signed said Certificate before me and acknowledged said Certificate to be his act and deed and the act and deed of said Corporation; that the signatures of said President and of the Secretary of said Corporation to said foregoing Certificate are in the handwriting of said President and said Secretary of said Corporation, respectively, and that the seal affixed to said Certificate is the corporate seal of said Corporation, and that the act of sealing, executing, acknowledging and delivering said Certificate was duly authorized by the Board of Directors and by the stockholders of said Corporation.

Given under my hand and seal of office the day and year last aforesaid.

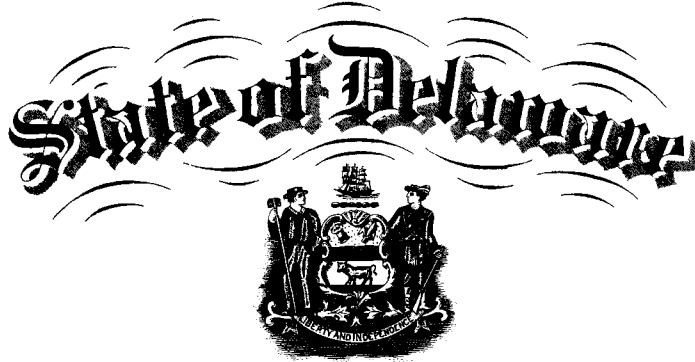
Elon A. Williams, Notary Public.

Notary Public, Kings Co. No. 37, Reg. No. 4035. Cert. filed in N. Y. Co. No. 66, Reg. No. 4-W-43.

My commission expires March 30th, 1934.

Elon A. Williams, Kings County Notary Public.

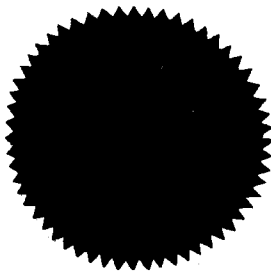
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Office of Secretary of State.

I Walter Dent Smith, *Secretary of State of the State of Delaware,*
do hereby certify *that the above and foregoing is a true and correct copy of*
Certificate of Amendment of the "CARTER COAL COMPANY", as received
and filed in this office the fifteenth day of March, A. D. 1933, at
9 o'clock A.M.

In Testimony Whereof, *I have hereunto set my hand*
and official seal at Dover, this seventeenth *day*
of October *in the year of our Lord*
one thousand nine hundred and thirty-five.



Walter Dent Smith
Secretary of State.

[fol. 819]

PL'FF'S EX. #4

Carter Coal Company

The undersigned, C. A. Hall, hereby certifies that he is Secretary of Carter Coal Company, a Delaware corporation, and that the copy of By-laws attached hereto is a true and correct copy of the By-laws of said Corporation, with all amendments and modifications to the date hereof.

Dated, October 21, 1935.

C. A. Hall, Secretary. (Corporate Seal.)

[fol. 820] By-Laws of Carter Coal Company

[fol. 821] Carter Coal Company

By-Laws

Article I

Section 1. Seal.—The corporate seal of Carter Coal Company (hereinafter called the Corporation) shall consist of a metallic stamp, circular in form, bearing in its center the word "Incorporated" and the figures "1912" and on the outer edge the name of the Corporation and the word "Delaware".

Article II

Section 1. Principal Office.—The principal office of the Corporation in the State of Delaware shall be in the City of Wilmington, County of Newcastle, and the name of the resident agent therein and in charge thereof shall be Delaware Registration Trust Company.

Section 2. Other Offices.—The Corporation may also have an office or offices at such other place or places, either within or without the State of Delaware, as the Board of Directors may from time to time determine or the business of [fol. 822] the Corporation require.

Article III

Shares and Certificates

Section 1. Certificates for Shares.—Each certificate for shares of the Corporation shall plainly state the number of

shares which it represents, and shall be in such form as shall be approved by the Board of Directors. The certificates for shares shall be numbered in the order of their issue, shall be signed by the President or Vice-President and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary, and the seal of the Corporation shall be affixed thereto.

Section 2. Transfer of Shares.—Certificates for shares of the capital stock of the Corporation shall be transferable on the stock books of the Corporation by the holder thereof, or by his attorney thereunto authorized by a power of attorney duly executed and acknowledged and filed with the Secretary of the Corporation, and on surrender of the certificate or certificates for such shares. Every certificate surrendered to the Corporation shall be marked “Cancelled”, with the date of cancellation. The person in whose name shares of stock stand upon the books of the Corporation shall be deemed to be the owner thereof for all purposes as regards the Corporation. No transfer of shares [fol. 823] shall be valid as against the Corporation, its stockholders and creditors for any purpose, except to render the transferee liable for the debts of the Corporation to the extent provided by law, until it shall have been entered in the share records of the Corporation. The Board of Directors may also make such additional rules and regulations as it may deem expedient concerning the issue and transfer of certificates for shares of the capital stock of the Corporation and may make such rules as it may deem expedient concerning the issue of certificates in lieu of certificates alleged to have been lost, destroyed or mutilated.

Section 3. Closing of Transfer Books.—The Board of Directors may close the stock transfer books of the Corporation for a period not exceeding fifty days preceding the date of any meeting of stockholders or the date for payment of any dividend or the date for the allotment of rights or the date when any change or conversion or exchange of capital stock shall go into effect, or for any other purpose deemed desirable by the Board of Directors; provided, however, that in lieu of closing the stock transfer books as aforesaid, the Board of Directors may fix in advance a date, not exceeding fifty days preceding the date of any meeting of stockholders or the date for the payment of any [fol. 824] dividend, or the date for the allotment of rights,

or the date when any change or conversion or exchange of capital stock shall go into effect, as a record date for the determination of the stockholders entitled to notice of, and to vote at, any such meeting, or entitled to receive payment of any such dividend, or to any such allotment of rights, or to exercise the rights in respect of any such change, conversion or exchange of capital stock, and in such case such stockholders and only such stockholders as shall be stockholders of record on the date so fixed shall be entitled to such notice of, and to vote at, such meeting, or to receive payment of such dividend, or to receive such allotment of rights, or to exercise such rights, as the case may be, notwithstanding any transfer of any stock on the books of the Corporation after any such record date fixed as aforesaid.

Section 4. Dividends, Surplus, etc.—Subject to the provisions of the Certificate of Incorporation of the Corporation, the Board of Directors may (1) declare dividends on the shares of the Corporation whenever and in such amounts as, in its opinion, the condition of the affairs of the Corporation shall render it advisable, (2) use and apply, in its discretion, any of the surplus of the Corporation in purchasing or acquiring in accordance with law any of the shares of the Corporation or any of its bonds, debentures, [fol. 825] notes, scrip or other securities or evidences of indebtedness and (3) set aside from time to time out of such surplus such sum or sums as it, in its absolute discretion, may think proper, as a reserve fund to meet contingencies or for equalizing dividends or for the purpose of maintaining or increasing the property or business of the Corporation or for any other purpose it may think conducive to the best interests of the Corporation.

Article IV

Stockholders

Section 1. Annual Meetings.—A meeting of the stockholders of the Corporation having voting powers shall, after the year 1933, be held on the third Wednesday in March in each year or, if a legal holiday, on the first day thereafter not a legal holiday, for the purpose of electing directors for the ensuing year and for the transaction of

such other business as may properly be brought before the meeting.

Section 2. Special Meetings.—A special meeting of the stockholders (except in special cases regulated by statute) may be called at any time by the President or a Vice-President or by the Board of Directors, and shall be so called on the written request of holders of record of at least one-fifth of the number of shares of the Corporation then outstanding and entitled to vote, which written request shall state the objects of such meeting. If such meeting shall not be called within five days after such request shall have been delivered at the office of the Corporation, the stockholders signing such request may appoint a chairman, who may be designated in such request and who may call a meeting by notice given as provided in the following section.

Section 3. Notice of Meetings.—Except as hereinafter in this Section provided or as may be otherwise required by law, notice of the time and place of holding each annual and special meeting of the stockholders shall be in writing and shall be delivered personally or mailed in a postage prepaid envelope, not less than ten days before such meeting, to each person who appears on the books of the Corporation as a stockholder entitled to vote at such meeting, and, if mailed, it shall be directed to such stockholder at his address as it appears on such books unless he shall have filed with the Secretary of the Corporation a written request that notices intended for him be mailed to some other address, in which case it shall be mailed to the address designated in such request. The notice of every special meeting, besides stating the time and place of such meeting, shall state briefly the purpose or purposes thereof, and no business other than that specified in such notice or germane [fol. 827] thereto shall be transacted at the meeting, except with the unanimous consent in writing of the holders of record of all the shares of the Corporation entitled to vote at such meeting. Notice of any meeting of stockholders need not be given to any stockholder, however, if waived by him, whether before or after such meeting be held, in writing or by telegraph, cable, radio or wireless, or if he shall attend such meeting in person or by proxy. Notice of any adjourned meeting need not be given.

Section 4. Place of Meeting.—All meetings of the stockholders of the Corporation shall be held at its principal office in the State of Delaware, or at such other place within or without the State of Delaware as may from time to time be fixed by the Board of Directors or as shall be specified or fixed in the respective notices or waivers of notice thereof; provided, however, that no change in the place of holding the annual meeting for the election of directors shall be made within sixty days next before the day on which the election is to be held.

Section 5. Stockholders Entitled to Vote.—Except where the transfer books of the Corporation shall have been closed or a date shall have been fixed as a record date for the determination of its stockholders entitled to vote, as provided in Section 3 of Article III of these By-Laws, no [fol. 828] share of stock shall be voted on at any election for directors which shall have been transferred on the books of the Corporation within twenty days next preceding such election of directors.

It shall be the duty of the officer who shall have charge of the stock ledger of the Corporation to prepare and make, at least ten days before every election of directors, a complete list of the stockholders entitled to vote at said election, arranged in alphabetical order. Such list shall be open at the place where said election is to be held for said ten days, to the examination of any stockholder, and shall be produced and kept at the time and place of election during the whole time thereof, and subject to the inspection of any stockholder who may be present.

Section 6. Quorum—At all meetings of the stockholders of the Corporation, except as otherwise provided by law, the holders of a majority of the outstanding shares of the Corporation, present in person or by proxy and entitled to vote thereat, shall constitute a quorum for the transaction of business. In the absence of a quorum a majority in interest of the stockholders so present or represented and entitled to vote may adjourn the meeting from time to time and from place to place until a quorum shall be obtained. At any such adjourned meeting at which a quorum shall be present any business may be transacted which might have been transacted at the meeting as originally called.

Section 7. Organization.—At each meeting of the stockholders, the President or, in his absence, a Vice-President shall act as chairman of the meeting and the Secretary of the Corporation or, in his absence, one of the Assistant Secretaries of the Corporation shall act as secretary of the meeting. In case at any meeting none of the officers who have been designated to Act as chairman or secretary of the meeting, respectively, shall be present, a chairman or a secretary of the meeting, as the case may be, shall be chosen by a majority in interest of the stockholders present in person or by proxy and entitled to vote at such meeting.

Section 8. Voting.—At each meeting of the stockholders each stockholder of record entitled to vote thereat shall be entitled to one vote for each share standing in his name on the books of the Corporation. Persons holding shares in a fiduciary capacity shall be entitled to vote the shares so held and persons whose shares shall be pledged shall be entitled to vote such shares unless in the transfer by the pledgor on the books of the Corporation he shall have expressly empowered the pledgee to vote thereon, in which [fol. 830] case only the pledgee, or his proxy, may represent said shares and vote thereon. The vote on shares may be given by the stockholder entitled thereto in person or by proxy duly appointed by an instrument in writing subscribed by such stockholder, or by his attorney thereunto duly authorized, and delivered to the secretary of the meeting; provided, however, that no proxy shall be valid after the expiration of three years from the date of its execution unless the stockholder executing it shall have specified therein the length of time it is to continue in force, which shall be for a period therein limited. At all meetings of the stockholders, a quorum being present, all matters, except as otherwise provided by law or by the Certificate of Incorporation of the Corporation or by these By-laws, shall be decided by a majority in interest of the stockholders of the Corporation present in person or by proxy and entitled to vote.

Article V

Board of Directors

Section 1. General Powers.—The property, affairs and business of the Corporation shall be managed by the Board of Directors.

Section 2. Number, Term of Office and Qualifications.—The Board of Directors shall consist of three directors, who [fol. 831] need not be stockholders of the Corporation. Each director shall continue in office until his term shall have expired and until his successor shall have been elected and shall have qualified or until his death or removal or until he shall have resigned. In case the number of directors shall be increased, additional directors shall be elected as provided in Section 7 of this Article V.

Section 3. Election of Directors.—Except as otherwise provided by law or by these By-Laws, at each meeting of the stockholders for the election of directors at which a quorum shall be present, the persons receiving a plurality of the votes cast shall be directors.

Section 4. Organization.—At each meeting of the Board of Directors, the President or, in his absence, a Vice-President or, in the absence of the President and Vice-Presidents, a chairman chosen by the majority of the directors present shall preside. The Secretary of the Corporation shall act as secretary of the Board of Directors. In case the Secretary shall be absent from any meeting of the Board of Directors, an Assistant Secretary shall perform the duties of the Secretary at such meeting and in case the Secretary and the Assistant Secretaries shall be absent from any meeting of the Board of Directors the Chairman may appoint any person to act as secretary of the meeting.

[fol. 832] Section 5. Resignations.—Any director of the Corporation may resign at any time by giving written notice to the President or to the Secretary of the Corporation. Such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Removal.—Any director may be removed with or without cause at any time by the affirmative vote of the majority in interest of the stockholders of record of the Corporation entitled to vote, given at a special meeting of the stockholders called for the purpose or at any annual meeting of stockholders; and the vacancy in the Board caused by such removal may be filled by the stockholders at such meeting.

Section 7. Vacancies.—Any vacancy in the Board of Directors (whether because of death, resignation, disqualification, an increase in the number of directors, removal or any other cause) may be filled either by the Board of Directors at any regular or special meeting thereof, by the vote of a majority of the directors in office at the time of such meeting or by the stockholders at the next annual meeting or any special meeting called for the purpose, and the director or directors so elected shall hold office for a term to expire at the next annual election of directors or until his or their successor or successors shall be duly elected and qualified.

Section 8. Place of Meetings.—The Board of Directors may hold its meetings, have one or more offices and may keep the books and records of the Corporation, except as may be otherwise required by the laws of Delaware, at such place or places within or without the State of Delaware as the Board may from time to time by resolution determine.

Section 9. Annual Meetings.—After each annual election of directors, the newly elected directors may meet for the purpose of organization, the election of officers and the transaction of other business at such place and time as shall be fixed by the stockholders at the annual meeting or by written consent of the directors, or upon such notice as is hereinafter in Section 11 of this Article V provided for special meetings of the Board of Directors.

Section 10. Regular Meetings.—Regular meetings of the Board of Directors shall be held at such times and places as the Board shall by resolution determine. Notice of regular meetings need not be given. If any day fixed for a regular meeting shall be a legal holiday, then such meeting which would otherwise be held on that day shall be held at the same

[fol. 834] hour and place on the next succeeding secular day not a legal holiday.

Section 11. Special Meetings.—Special meetings of the Board of Directors shall be held whenever called by the President or two of the directors. Notice of each special meeting shall be mailed to each director, addressed to him at his residence or usual place of business at least two (2) days before the day on which the meeting is to be held, or shall be sent to him at such place by telegraph, cable, radio or wireless, or be delivered personally or by telephone at least 24 hours prior to the time fixed for the meeting. Every such notice shall state the time and place but need not state the purposes, of the meeting. Notice of any such meeting need not be given to any director, however, if waived by him, whether before or after such meeting be held, in writing or by telegraph, cable, radio, or wireless, or if he shall attend such meeting in person, and any meeting of the Board of Directors shall be a legal meeting without any notice thereof having been given if all of the directors shall be present thereat.

Section 12. Quorum and Manner of Acting.—A majority of the directors in office at the time of any regular or special meeting of the Board of Directors shall constitute a quorum for the transaction of business at such meeting, provided [fol. 835] that in no case shall a quorum be less than one-third of the total number of directors nor less than two. The act of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board of Directors. In the absence of a quorum, a majority of the directors present may, without notice other than announcement at the meeting, adjourn the meeting from time to time until a quorum be had.

Section 13. Fees.—Each director shall be paid such fee, if any, as shall be fixed by the Board of Directors, for each meeting of the Board which he shall attend and in addition his transportation and other expenses actually incurred by him in going to the meeting and returning therefrom.

Article VI

Officers

Section 1. Number.—The officers of the Corporation shall be the President, one or more Vice-Presidents, the Secretary and the Treasurer, who shall be elected by the Board of Directors, and such Assistant Secretaries, Assistant Treasurers, and special subordinate officers as may from time to time be elected or appointed by the Board of Directors or appointed by the President.

Any two of the above offices may be held by the same [fol. 836] person.

All of the officers of the Corporation shall hold office for one year and until others are elected or appointed and qualified in their stead, unless in the election or appointment of the officer it shall be specified that he holds his office for a shorter period or subject to the pleasure of the Board of Directors or President.

All vacancies in such offices by resignation, death, removal or otherwise may be filled by the Board of Directors.

Section 2. The President.—The President shall be a Director and shall be the chief executive officer of the Corporation. He shall preside at all meetings of the stockholders and, at all meetings of the Board of Directors. He shall have general and active management of the business of the Corporation, shall see that all orders and resolutions of the Board are carried into effect, shall be ex-officio a member of all standing committees, and shall have the general powers and duties of supervision and management usually vested in the office of President of a corporation.

He shall submit a report of the operations of the Corporation for the fiscal year to the stockholders at their annual meeting and from time to time shall report to the Directors all matters within his knowledge which the interests of the Corporation may require to be brought to [fol. 837] their notice.

Section 3. Vice-Presidents.—The Vice-Presidents shall perform such duties as the Board of Directors shall, from time to time, require. In the absence or incapacity of the President, the Vice-President designated by the President or the Board of Directors shall exercise the powers and duties of the President.

Section 4. The Treasurer.—The Treasurer shall be the financial officer of the Corporation, shall keep all and accurate accounts of receipts and disbursements in books belonging to the Corporation, shall deposit all moneys and other valuables in the name and to the credit of the Corporation, in such depositories as may be directed by the Board of Directors, shall disburse the funds of the Corporation as may be ordered by the Board or the President, taking proper vouchers therefor, and shall render to the President and Directors at all regular meetings of the Board or whenever they may require it and to the annual meetings of the stockholders an account of all his transactions as Treasurer and of the financial condition of the Corporation.

He shall also perform such other duties as the Board of Directors may from time to time require.

If required by the Board of Directors he shall give the [fol. 838] Corporation a bond in a form and in a sum with surety satisfactory to the Board of Directors for the faithful performance of the duties of his office and the restoration to the Corporation in the case of his death, resignation or removal from office of all books, papers, vouchers, money and other property of whatever kind in his possession belonging to the Corporation.

At the request of the Treasurer, or in his absence or inability to act, the Assistant Treasurer or, if there be more than one, the Assistant Treasurer designated by the Treasurer, shall perform the duties of the Treasurer and when so acting shall have all the powers of and be subject to all the restrictions of the Treasurer. The Assistant Treasurers shall perform such other duties as may from time to time be assigned to them by the President, the Treasurer, or the Board of Directors.

Section 5. The Secretary.—The Secretary shall attend all meetings of the Board of Directors and of the stockholders and act as Clerk thereof and record all votes and the minutes of all proceedings in a book to be kept for that purpose, and shall perform like duties for the standing committees when required.

He shall keep in safe custody the seal of the Corporation and, when authorized by the Board, affix the seal to any [fol. 839] instrument requiring the same.

He shall see that proper notice is given of all meetings of the stockholders of the Corporation and of the Board

of Directors and shall perform such other duties as may be prescribed from time to time by the Board of Directors or by the President.

At the request of the Secretary, or in his absence or inability to act, the Assistant Secretary or, if there be more than one, the Assistant Secretary designated by the Secretary, shall perform the duties of the Secretary and when so acting shall have all the powers of and be subject to all the restrictions of the Secretary. The Assistant Secretaries shall perform such other duties as may from time to time be assigned to them by the President, the Secretary, or the Board of Directors.

Section 6. Delegation of Powers, Duties, Etc.—In the case of absence or inability to act of any officer of the Corporation, and of any person herein authorized to act in his place, the Board of Directors may from time to time delegate the powers or duties of such officer to any other officer or any director or other person whom they may select.

Section 7. Removal.—Any officer of the Corporation may be removed, either with or without cause, at any time, by resolution adopted by the Board of Directors at a special [fol. 840] meeting of the Board called for that purpose, or by any Committee or superior officer upon whom such power of removal may be conferred by the Board of Directors.

Article VII

Contracts, Checks, Notes, etc.

All contracts and agreements authorized by the Board of Directors shall, unless otherwise directed by the Board of Directors, or unless otherwise required by law, be signed by any two of the following officers: President, Vice-President, Treasurer or Secretary, and all checks, drafts, notes, bonds, bills of exchange and orders for the payment of money shall be signed by such officers as shall from time to time be fixed by resolution of the Board of Directors.

Article VIII

Fiscal Year

The fiscal year of the Corporation shall begin on the first day of January of each year.