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Company, the Northwestern Mining and Exchange Company, and the Lackawanna and Susquehanna Coal and Iron Company, was acquired and held by said Erie Company before the execution and delivery of said mortgage, and the question as to whether or not, in law or equity, the properties of said companies are to be considered as real estate or personal property belonging to said Erie Company, ignoring the fact of the existence of said incorporations, rests upon the following facts relating to their acquisition and control, which I deem established by said testimony and proofs, premising the same, however, with this statement :

In the complaint in this action, the plaintiff alleges the purchase or the acquisition of these stocks by the Erie Company to have been *ultra vires*, and in violation of the charter of said Erie Company, and that such purchase constituted a just ground for the forfeiture thereof. The answer of the Erie Company takes issue upon this allegation. From the facts hereinafter stated, it may be determined by this Court, as a question of law, whether such acquisition was *ultra vires* or not, and how far the status of the property is affected thereby.

A.—Prior to the year 1873, the Erie Railway Company had acquired coal lands and capital stock of coal companies with the view of providing fuel for its locomotives.

In 1868 it acquired the whole of the capital stock of the Towanda Coal Company, then owning 1,090 acres of coal lands in fee in Bradford County, Pennsylvania, and a large leasehold property, rented from the Barclay Railway Company and the Barclay Coal Company. This company has, since 1868, been managed by the Erie Company, and large supplies of bituminous coal have been received therefrom at a low price, just sufficient to mine and produce the same. Erie owns all its capital stock and bonds, and all were acquired prior to February 4th, 1874.

The Glenwood Coal Company was another company acquired by the Erie Company through Jay Gould, which furnished Erie Company with

large quantities of coal for fuel at low prices. This stock was transferred by Gould to Erie Company in 1873.

It does not appear that these coal companies ever made any profits, or declared any dividends, nor paid anything on account of the principal or interest of their bonded debt. They were managed by the Erie Company exclusively in its interests, and for the sole purpose of furnishing it fuel for its locomotives and engines at the cost of mining the same.

The property known as the "Erie Colliery, or the Whitmore property," at Carbondale, was also acquired by the Erie Company through Gould, and transferred to Watson as trustee, &c., by Gould in 1873, and subsequently this property was purchased by the Glenwood Company, and became a part of its coal lands. The property of the Glenwood Company, including the Erie Colliery, was afterwards sold under a foreclosure of a mortgage, and bought by the Hillside Coal and Iron Company in 187 , and the Glenwood Coal Company no longer has a corporate existence, having been formally dissolved under the laws of Pennsylvania,

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B.—Prior to and during the year 1873, the Erie Railway Company, by and through its directors (Mr. Watson being then President), inaugurated and developed the policy of acquisition of coal lands and coal interests to a much greater extent. It determined to acquire a large area of anthracite and bituminous coal lands in Pennsylvania for the future use and interest of the Erie Railway Company, and with the avowed object and policy—

1st. To secure for its locomotives and engines fuel for all time, upon reasonable terms or prices.

2d. To secure and hold for all time its traffic and business in the transportation of coal from the mines in Pennsylvania to market (which was very large), by owning and working coal mines of its own to such an extent as to provide coal for transportation to market, in case by future

Railway Company had advanced and paid on account of the lands, franchises and other property of this company the aggregate amount of \$857,813.32, which was charged on account, as heretofore described. At that time the lands and property of this and the Northwestern Mining and Exchange Company and the property and interest of the Erie Railway Company were called and referred to by its officers and directors and agents as the coal lands of the Erie Company.

2. The Northwestern Mining and Exchange Company. This company had been fully organized, and had issued, December 4th, 1873, all its capital stock to Mr. Watson as the trustee of the Erie Railway Company. The Erie Railway had advanced and paid on account of the lands, franchises and other property of this company, \$150,621.88, which was charged in account, as heretofore stated. At that time, as heretofore stated, the lands and franchises of this company and of the Hillside Coal and Iron Company were called and referred to by the officers, directors and agents of the Erie Railway Company as "the coal lands of the Erie Company."

3. The Glenwood Coal Company. Its whole capital stock and its bonds were held and owned by the Erie Railway Company, and it was operated as a coal company to supply coal for fuel to the locomotives and engines of Erie, as heretofore stated. (Gould held this stock for a long time previous as a trustee for Erie.) The Erie Railway Company worked this coal company almost exclusively for its own coal supplies.

4. The Towanda Coal Company. Its capital stock and its bonded indebtedness was owned and held by the Erie Railway Company, and had been so owned and held since 1868, and the company and its mines had been worked and managed almost exclusively to supply coal for the locomotives and engines of the Erie Railway Company.

K.—After the execution and delivery of the said mortgage of the