

13221

No. _____

Supreme Court of Illinois

Galena & Chicago Union
R. R. Co.

vs.

Menzies

SUPREME COURT,
Third Grand Division.

No. 233.

Gal & Chin
R.R. Co.

vs

Menzies

1872

15221

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM, 1861, AT OTTAWA.

GALENA & CHICAGO UNION
RAILROAD COMPANY

vs.

WILLIAM MENZIES.

} *Appeal from Cook Circuit Court.*

DAVID R. MARTIN AND
LUCIAN D. COMAN

vs.

WILLIAM MENZIES.

} *Appeal from Cook Circuit Court.*

POINTS BY APPELLANTS.

I.

The law respecting chattel mortgages does not apply to the fund in controversy or the contract out of which it grew. There is a great and material difference between "choses in possession" and "choses in action." The former only are within the intent and meaning of the chattel mortgage acts.

II.

The fund in controversy did not begin to accrue until July, 1857. The deed of further assurance was executed June 6th, 1857. Default in the payment of interest had been made long before that time. The clause in the deed of January 1st, 1856, referred to in the first instruction by the Court, given of its own mere motion, as containing a reservation of power which makes the deed fraudulent, was very materially modified by the deed of June 6, 1857, and as modified, the power ceased upon default in the payment of interest; and default having been made before the execution of that deed, and again on the first of July, 1857, before any of the fund in controversy accrued,—that power never was operative after the execution of the said deed.

And from that time the deeds were precisely the same as though the reservation had not been made. Even admitting, therefore, that the construction put upon the original deed by the first instruction of the Court to have been correct, if that deed stood alone; still we insist that

it conveyed to the jury a wrong impression as to the facts of the case, and in connection with the other facts of the case, as above referred to, was clearly erroneous.

Clauses of reservation are valid.

Gallott et al. vs. Lamberton, 1 Eng. R. 109.
Jackson vs. McKenny, 3 Wend. R. 233.
Jackson ex dem. vs. Staats, 11 John. R. 337.
Jackson ex dem. vs. Swart, 20 John. R. 85.
Carries et al. vs. Marly, 2 Yerg. R. 582.

If the reservation of the deed cannot be construed consistently with the validity of the deed, then it is repugnant and void.

2 Black. Com. 381.
 1 Eng. R. 120.
 4 Bacon Abrid. 526.
 4 Madd. R. 69.
 1 Comst. R. 96.
 Shepherd's Touchst. 100.
 1 Saund. R. 623, note 6.
 6 Mees & Welsb. R. 197.

III.

But admitting the reservation to be in full force, still we insist that it embraces only the peculiar items of property named in the clause of reservation. The general words "*or otherwise*" does not enlarge the meaning of the words of particular description. It is a general rule in the construction of instruments, that when general words are used alone they should be taken most strongly against the grantor; but when they follow words of particular description, they are controlled by the particular description, and do not enlarge its meaning.

IV.

Again, if the clause is operative, it is still but the reservation of a power necessary to enable the company to maintain itself and operate its road, especially as modified by the deed of further assurance, and would have existed in, and might have been exercised lawfully by, the company without being expressly reserved.

The express reservation of a power which would have existed without the reservation, and as a matter of necessity, certainly would not vitiate the instrument.

V.

The strict and technical construction of the reserved power contended for by the appellee below, and which will probably be insisted on here, and expressed in the instruction of the Court above alluded to, applies to voluntary assignments by insolvent debtors, and not to conveyances made in good faith for a valuable consideration, either absolute or as security for a *bona fide* debt.

VI.

Again, it is the duty of the Court in construing a deed to give effect to every part of it if possible, when there is no charge of bad faith or fraud in fact brought against it. If, however, it contains a clause so at variance with the other portions of the deed as to defy reconciliation, such clause will not be allowed to defeat the deed, but will be rejected as repugnant, and the deed will be sustained so as to protect those who have in good faith acted upon it.

VII.

There can be no doubt but that the fund in controversy, or the contract out of which it accrued, was embraced in the granting clause of the deeds. The general words, "*all its property, real and personal,*" "*all tolls, income, issues, and profits,*" and "*all its rights, credits and franchises,*" (Abst., p. 10) in the first deed, and the words "*all and singular the corporate property, tolls, incomes, issues, profits, rights, credits, and franchises,*" (Abst., p. 13,) in the second deed, are certainly broad enough to embrace it. And there can be no doubt that it was the intention of the company to make all its property and income of every kind, security for the bonds described in the deeds. If the power attempted to be reserved is repugnant to, and in law inconsistent with this intention, and the validity of the deeds, it must be rejected.

VIII.

We claim, then, that by the deeds themselves, the trustees of the bond-holders acquired a lien upon the fund in controversy, which of itself is sufficient to defeat the garnishment. The appellee has no stronger equity than the bond-holder. And the maxim "*prior est in tempore, potior est in jure,*" must prevail; Courts of law will take notice of, and protect, the rights of assignees and bond-holders through their trustees.

Mayhew vs. Scott and Tr., 10 Pick. R. 54.
Gardner et al. vs. Hoig and Tr., 18 Pick. R. 168.
Providence Co. Bank vs. Benson et al. 24 Pick. 204.
Willard vs. Sturtevant and Tr., 7 Pick. R. 194.

IX.

But when, in addition to all this, it is shown conclusively by the proof took possession of the Mineral Point Rail Road in pursuance of the deeds, and for default in the payment of the interest, and (Abst. pp. 21 to 27, the testimony of *Cobb* and *Beecher*,) that the trustees run and operated the road, and thereby in fact *earned* the fund in controversy, we say their right to it is unquestionable even if, without such possession and use, the appellee would be entitled to recover.

And on this account we insist the Court below erred in refusing the first, second, and third instructions asked by appellants. Drawing a bill upon a fund is a sufficient assignment of it, to give the payee a preference.

Connoley vs. Cheesborough, 21 Ala. R. 166.
Lovely vs. Caldwell, 4 Ala. R. 684.
Swisher vs. Fitch, 1 Smeed & Marsh. 541.
Brooks vs. Hildreth, 22 Ala. R. 469.
Mayhew vs. Scott & Tr., 10 Mass. R. 54.

X.

The Court below also erred in refusing the 5th instruction asked by appellants, and misstated the law in the second, third, and last instruction given of its own mere motion.

The ruling upon these instructions supposes that notice to the garnishees of the assignment, or an actual possession by the trustees of the fund, was necessary to defeat the garnishment before the service of the garnishee process.

This is clearly erroneous. It is sufficient if the assignment prior to the service is shown in the answer of the garnishee, or by the claimants upon the trial.

Payne vs. Mayor of Mobile, 4 Alabama R. 333.
Fortune vs. State Bank, 4 Alabama, R. 385.
Mitchell vs. Winslow et al., 2 Story R. 630-9.
Gardner vs. Hoig & Tr., 18 Pick. R. 168.
Story Eq. Jurisp., Sec. 1231.

XI.

We insist more strenuously upon the point last made, because it is evident from the return of the jury for further instructions after having once gone out, and from the character of the last instructions given by the Court at their solicitation, that the verdict of the jury turned in favor of the appellee solely upon the question of notice of the assignment to the garnishees before the service of process.

All the other questions were probably found in favor of the appellants, notwithstanding the other errors of the Court.

The case here is very different from what it would be, if the trustees were suing the garnishees for this money after they had paid it over to the Mineral Point Railroad Company, or its order, or other assignee. In such a case, it would be necessary for the trustees to show a notice to the garnishees, of the assignment to them, before the payment. Here, in fact, as appears from the form in which the judgment is entered up, (and the form is the one approved in the case of *Stahl et al. vs. Webster et al.*, 11 Ill. R., 511,) the Mineral Point Railroad is prosecuting the garnishees for the use of the appellee.

In other words, by the garnishment, the appellee has compelled the Mineral Point R. R. Co. to sue the garnishee for his benefit.

Strip these proceedings of its outside formalities, and it is this and nothing more. The charge of fraud, and want of notice comes from the appellee, through the Mineral Point R. R. Co., and in opposition to, and for the purpose of defeating its own deed. It is like a party pleading the fraud and want of notice of his own act, and this the courts never permit. It makes no difference, whether the notice of the assignment came to garnishee before or after service of process.

Wakefield vs. Martin & Tr., 3 Mass. R. 558.
Dix et al. vs. Cobb & Tr., 4 Mass. R. 508.

III.

By the 6th instruction asked for, on the part of appellants, and given to the jury, the Court instructed the jury that the appellee, by his garnishment, only acquired the rights of the defendant, the Mineral Point Railroad Co., against the garnishee, and this we insist is correct law; but it is certainly entirely at variance, and inconsistent with the instructions of the Court, given upon its own mere motion, and with the refusal of the Court to give the 1st, 2d, 3d and 5th instructions asked for by appellants.

Marine & Ins. Co. vs. Weeks, 7 Mass. R. 438.
White vs. Jenkins et al., 16 Mass. R. 62.
Kettle vs. Harvey & Tr., 21 Vermont R. 301.
Erwin vs. Millington & Tr., 25 Vermont R. 242.
Hoyt vs. Swift, 13 Vermont R. 129.
Webb vs. Miller, 24 Miss. R. 638.
Harrell vs. Whiteman, 19 Alab. R. 135.
Cook vs. Watthall, 20 Alab. R. 334.
McGehee vs. Walker, 11 Alab. R. 273.

Property pledged for a debt cannot be taken by garnishment, until the debt is paid.

Patterson vs. Harland, 7 Eng. R. 158.

Nor can property in the hands of an assignee for the payment of a debt, be taken.

Kimball vs. Mulhern, 15 Ill. R. 266.

Most of these funds have accrued to the Receiver since he was appointed, and from earnings of the road while in his hands. These funds cannot be attached by a creditor.

Thomas vs. Merchants Bank, 9 Indge, 215.
Drake on Attach., sec. 525, 611, 615.
18 Wend R. 319.

SCATES, McALLISTER & JEWETT,
of Counsel for Appellants.

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The G. & C. N. R. Co

vs

Mangier
in and

Filed May 1st 1861

L. Leland

Clerk

The principal SUPREME COURT,

question in this case it seems to me is did the provision of these mortgages that the mortgages might claim the possession of the real & personal property was a fraud as to creditors

THIRD GRAND DIVISION, }
APRIL TERM, A. D. 1861. }

THE GALENA AND CHICAGO UNION
RAILROAD COMPANY, GARNISHEES, &C.,
APPELLANTS,

VS.

WILLIAM MENZIES,
APPELLEE.

DAVID R. MARTIN, AND
LUCIEN D. COMAN,
APPELLANTS,

VS.

WILLIAM MENZIES,
APPELLEE.

APPEALS FROM
COOK COUNTY
CIRCUIT COURT.

ABSTRACT OF RECORD.

- 1 On the 8th day of November, 1858, William Menzies sued out a writ of attachment against the estate, real and personal, of the Mineral Point
- 2 Railroad Company, with a summons to the Galena & Chicago Union Railroad Company to appear and answer, as garnishee of the defendant,
- 3 in due form, returnable on the third Monday of November then instant.
- 4 On the same day the writ was returned by the Sheriff without service as to the defendant, but duly served on the garnishee.

Far left

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On the 18th day of November, 1858, the plaintiff filed in the Court his allegations and interrogatories to be answered by the garnishee in substance, as follows :

Allegations.

- 5 That the garnishee had in its possession, custody, or charge, at the time of the service of process upon it, goods, chattels, moneys, credits, property and effects to a large amount belonging to defendants or in which the defendant was interested ; and that the garnishee, at the time of service, was also largely indebted to the defendant.

Interrogatories :

1. Whether the garnishee had, at the time of service of process, or at any time thereafter, any goods, chattels, moneys, credits, property or effects, in its possession, custody, or charge, belonging to defendant or in which the defendant was or is interested. If yea, state the amount &c.
- 6 2. Whether the garnishee was, at the time of the service of said process, or at any time thereafter, indebted to the defendant in any manner. If yea, how, in what amount, &c.

- 7 The answer of the garnishee was filed on the 21st day of March, 1859, and therein the garnishee states : That on the 10th day of October, 1853, a contract in writing was entered into between the Galena & Chicago Union Railroad Company and the Illinois Central Railroad Company of the one part, and the Mineral Point Railroad Company of the other part, respecting the completion of the Mineral Point Railroad and its operation in connection with the Galena & Chicago Union Railroad and the Illinois Central Railroad, for a period of twenty years, so that the business of the said roads should be, so far as the same could be properly controlled, mutually beneficial to the said parties; a copy of said contract is attached to and made part of the answer, as "Exhibit A."

That the Mineral Point Railroad was completed sometime in the Spring of 1857, since which time the Galena & Chicago Union Railroad Com-

pany have been operating in connection with said Mineral Point Railroad, and exchanging business with them under said contract; and that there was owing to the Mineral Point Railroad Company, or its assigns, *under said contract*, at the time of the service of process in this case, about \$10.000; and that on the date of the answer the amount was somewhat larger, all of which indebtedness accrued in the course of business transactions had between the parties under the contract.

All indebtedness otherwise than as above stated is denied, and the garnishee also denies having in its possession, charge, or control, at the time of the service of process, or subsequently, any goods, chattels, moneys, credits, or effects, belonging to the Mineral Point Railroad Company, or in which said Company was or is interested.

The garnishee, further answering, says: That the plaintiff ought not, by reason of its indebtedness aforesaid, to have or recover a judgment against it; because the Mineral Point Railroad Company, on the 1st day of January, 1856, by its deed of that date, duly executed, acknowledged and delivered, *granted, bargained, sold, transferred and conveyed* David R. Martin and Lucien D. Coman, of New York, their successors and assigns, the Railroad of said Company, constructed and to be constructed, from Mineral Point, Wisconsin, to Warren, Illinois; together with all and singular the *property, real and personal, tolls, income, issues, properties, rights, credits, and franchises*, pertaining to said Railroad;—To have and to hold the same unto the said Martin and Coman, their successors and assigns upon the trusts in said deed declared, which deed was duly recorded in the Recorder's offices of Iowa and Lafayette Counties, Wisconsin, and Jo Daviess County, Illinois; these being the Counties through which said road was laid out and constructed or in process of construction.

The answer further states that the Mineral Point Railroad Company afterwards and on the 16th day of June, 1857, in pursuance of a covenant of further conveyance and assurance in said deed contained, did, by its certain other deed duly executed, acknowledged and delivered, *grant, bargain, sell, transfer, release, quitclaim, convey and confirm* unto

11 said David R. Martin and Lucien D. Coman, the trustees in said deed named, and to the survivor of them, his successor or successors in said trust, all and singular the *corporate property, tolls, income, issues, profits, rights, credits* and *franchises* in said former deed mentioned or referred, to ; also all property acquired by said company subsequently to the date of said first deed ; — To have and to hold the same unto the said Martin and Coman and the survivor of them, his successor &c. in trust, and assigns, *upon the trusts* declared in said former deed, and especially for the benefit and security of the holders of certain bonds in said first deed described, to wit : 640 bonds of said Mineral Point Railroad Company, each for \$500, all dated the 1st day of January, 1856, which bonds are not yet due and are still outstanding and unpaid, in the hands of *bona fide* holders ; which said last mentioned deed was also duly recorded in the counties aforesaid, and copies of said deeds are attached to and made part of the answer as “ Exhibits B and C.”

12 The answer further states that the garnishees know of the execution of these deeds before the service of process on them ; and that they are advised and believe, that by said deeds all the indebtedness aforesaid, accrued and to accrue, from them to the Mineral Point Railroad Company, and all claims of the Mineral Point Railroad Company for per centage or otherwise, against said garnishees, growing out of said contract and the performance of it, were transferred and assigned by the Mineral Point Railroad Company to said Martin and Coman in trust for the purposes set forth in said deeds. And the garnishees say that they are informed and believe, and so state the fact to be, that said Martin and Coman, as trustees as aforesaid, claim all and every part of the indebtedness aforesaid under and by virtue of said deeds, and all indebtedness of said garnishees, accrued and to accrue under said contract. And they submit that said Martin and Coman, and not the Mineral Point Railroad Company, are entitled to have and receive the same ; and that the said plaintiff ought not to have or recover a judgment for said indebtedness, or any part thereof. And they pray to be discharged, with their costs, &c.

The answer is duly executed by the Galena and Chicago Union Railroad Company, and sworn to by William M. Larrabee, its Secretary.

13 **Exhibit A**, attached to foregoing answer, is a contract, dated October 10th, 1853, between the Mineral Point Railroad Company of the first part, and the Galena and Chicago Union Railroad Company, and the Illinois Central Railroad Company, of the second part, and is in stance as follows :

14 The party of the first part covenants and agrees to construct, and equip with a sufficient amount of rolling stock to transact its business, a good and substantial single track railroad from Mineral Point, in Wisconsin, to and intersecting the Illinois Central Railroad at or near Warren, Jo Daviess county, Ills., within two years from this date; the rails used to be T rails, and the work to be done in a substantial manner.

15 The party of the first part further covenants and agrees, that for the period of twenty years from 1st day of January next, it will transport all the freight which shall pass in a southerly direction over the Mineral Point Railroad, or any part of it—so far as it shall have the legal right to control the destination of such freight—to the Illinois Central Railroad at or near Warren; and that it will, during that time, by giving through tickets to passengers and by the exercise of all legal means, transport passengers going southerly on said Mineral Point Railroad, or any part of it, to the Illinois Central Railroad; and that it will at all times so regulate its tariff of charges for freight and passengers as to throw all the business of the Mineral Point Railroad, in both directions, upon the roads of the parties of the second part, so far as the same may be legally practicable.

The party of the first part also covenants and agrees that it will not during the said twenty years enter into any contract with any other railroad company in reference to the transportation of freight or passengers, without the consent of the parties of the second part.

The parties of the second part covenant and agree that they will, during the term of twenty years aforesaid, pay to the said party of the first part, as hereinafter stipulated, such sums as will, in the manner hereinafter specified, secure to said first party a net annual income equal

- 16 to eight per cent. per annum on the gross cost of its road and its equipments, including all incidental expenses, salaries, &c., *provided* such gross cost shall not exceed \$700,000; said payments to be made semi-annually, at such times as the parties of the second part shall make up their accounts.

- 17 That to determine the amount to be paid by said second parties, the net earnings of the Mineral Point Railroad resulting, from the business done exclusively, upon it shall be first ascertained, and to ascertain that, all incidental expenses of operating the road and of repairs shall be deducted from its annual gross receipts; and it is agreed that said expenses and repairs shall not in the whole exceed fifty per cent. of the actual gross receipts; that in addition to the sum so received by the first party from the net earnings of its road, the parties of the second part shall semi-annually pay, as aforesaid, to said party of the first part *such a proportion or per centage* of the gross amount received by the said companies respectively composing said party of the second part, for the transportation of freight and passengers which shall pass from the Mineral Point Railroad over the Central Railroad, or over the Galena and Chicago Union Railroad, or which shall pass from said roads, or either of them, over the Mineral Point Railroad or any part of it, as will, when added to the net earnings of the Mineral Point Railroad, to be ascertained as aforesaid, amount to eight per cent. per annum on the aforesaid gross cost of said Mineral Point Railroad — said cost not to exceed \$700,000, as aforesaid.

Provided, however, that this contract shall in no event involve the party of the second part in the payment of more than thirty per centum on the aforesaid receipts from the transportation of freight or passengers to or from the Mineral Point Railroad, as aforesaid.

It is further agreed that the parties of the second part shall not pay to the party of the first part any proportion or per centage of its receipts, arising from the transportation of freight or passengers passing over the Illinois Central Railroad, or the Galena & Chicago Union Railroad, to or from the Mineral Point Railroad, which shall go to, or come from, any point on the Mineral Point Railroad within eight miles of the Illinois Central Railroad.

(7)

- 18 The said party of the first part further covenants and agrees, that it will at all times, during the term of twenty years aforesaid, keep and maintain as high a tariff of charges, for transportation of freight and passengers, as the average rates charged by said parties of the second part on the same freight and passengers.

It is further stipulated between the said parties, that either party shall be allowed to have freight transported on their own cars over the road of the other party ; and that said party shall be entitled to a reasonable compensation for the use of its cars ; each party repairing the damage to cars that occur on its own road.

It is further stipulated by and between the parties, that the stipulations herein contained, providing for payment of per centage on freight and passengers by the parties of the second part to the parties of the first part, shall only apply to one hundred and twenty miles of the road of the Illinois Central Railroad Company, from the point of junction with the Illinois Central Railroad.

19 **Exhibit B, of Answer :**

This exhibit is a deed, dated January 1st, 1856, made between the Mineral Point Railroad Company, "a corporation duly constituted by the laws of the State of Wisconsin," party of the first part, and D. R. Martin and L. D. Coman, of the City of New York, parties of the second part; and recites that the Mineral Point Railroad Company, in the performance of its corporate powers, are now engaged in constructing a Railroad from Mineral Point, Wisconsin, to Warren, Jo Daviess County, Illinois; for that purpose, in part, have resolved to raise a sum of money by loan, for the purpose of purchasing iron rails and machinery therefor, and of aiding in the construction of said Railroad, and putting the same into operation, and for the objects and purposes aforesaid; and in order to secure the payment and satisfaction of the moneys to be raised as aforesaid, it is proposed and intended, by said party of the first part, to execute, issue and deliver 640 bonds, or writings obligatory, each for the sum of \$500, to be numbered respectively from 1 to 640, inclusive; which bonds are of even date herewith and in the following form :

No.

\$500.

UNITED STATES OF AMERICA — STATE OF WISCONSIN.

MINERAL POINT RAILROAD COMPANY.

CONVERTIBLE MORTGAGE BOND, secured on all the road and property, and by a special annual income of \$56,000 guaranteed jointly by the Illinois Central and the Galena & Chicago Union Railroads, as per articles of agreement dated October 10th, 1853.

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Know all men, by these presents, that the Mineral Point Railroad Company are indebted to D. R. Martin and L. D. Coman, of the City of New York, or bearer, in the sum of five hundred dollars, lawful money, &c., which sum said Company agree to pay to Martin and Coman, or bearer hereof, on the 1st day of January, 1881, at the Bank of Manhattan Company, in the City of New York, with interest at eight per cent., payable semi-annually, at said Bank, on the first days of January and July in each year, on presentation and surrender of annexed coupons as they become due; and in case of non-payment of interest for any half year, and the same remaining in arrears for sixty days, the principal to become due and payable. The Company also agree at any time within ten years to transfer to the holder hereof, at his election, five shares of the stock of said Company upon the surrender of this obligation and the unpaid coupons. This is one of a series of bonds of like tenor and date executed and issued in conformity with resolutions of the Board of Directors of said Company, passed September 5th, 1855, authorizing bonds to be issued to the amount of \$320,000, and the holder is entitled to the security of a mortgage, dated January 1st, 1856, upon the Company's line of road, depot grounds, &c., executed and delivered to said Martin and Coman in trust, to secure payment of principal and interest on said bonds, and duly recorded in the counties through which said road passes. The holder hereof is also entitled to the benefit of a sinking fund of \$5,400 per annum, to be set apart annually from the "Guaranteed Income" of said Company, as provided for in said mortgage, being sufficient to redeem the whole \$320,000 secured by said mortgage, within twenty-five years from the date of said bonds, and before they become due.

This bond not to be valid until the certificate hereon is signed by the

said trustees or their successors. This bond may pass by delivery, or may be registered on the books of the Company by the holder, and then no transfer shall be valid unless registered," &c.

In witness whereof the said Company, &c.

24 This is to certify, that the Mineral Point Railroad Company have executed to us a deed of trust, or mortgage, conveying the entire line of road, &c., with all its appurtenances, in trust for the benefit of the holders of their bonds, like the within, to be issued to an amount not exceeding \$320,000, with power to take possession of all or any part thereof, and use or sell the same, after a default in paying the interest or principal of said bonds, or any payment to the sinking fund; that the within is one of several bonds secured by said deed, and that said deed has been recorded in the proper Counties, &c.

..... } Trustees.
..... }

25 And whereas the said Company are of the opinion that said bonds, amounting to \$320,000, would be made more valuable and available by creating an additional security therefor, by means of a sinking fund, to be established for that purpose, by setting apart annually \$5,400, being part of the \$56,000 guaranteed as an annual income by the Galena and Chicago Union Railroad Company and the Illinois Central Railroad Company to the Mineral Point Railroad Company, which sum of \$5,400, together with accumulations of interest, will be sufficient to pay the principal and interest of said bonds at maturity thereof, "the said sinking fund above referred to was by resolution of the said Board of Directors irrevocably set apart, and appropriated for the purpose, and in the manner above specified."

26 Now, therefore, this indenture witnesseth that the said Mineral Point Railroad Company, in consideration of the premises, and in order to secure the payment of the said bonds and interest thereon accruing, and in consideration of *One Dollar* paid to the said Company by said parties of the second part at and before the sealing and delivery of these

presents, the receipt whereof is hereby acknowledged, have *granted, bargained, sold, transferred and conveyed*, and by these presents do grant, bargain, sell and convey to the said parties of the second part, their successor or successors in the trust hereby created, all their said road from the village of Mineral Point, Wisconsin, to the village of Warren, in the State of Illinois, being thirty-two and two-thirds miles of road constructed and to be constructed, together with all and singular the railways, land procured or occupied for right of way, together with bridges, fences, privileges and real estate owned by said company for the purposes of said road, or which may hereafter be acquired or owned by them, and all *tolls, income, issues and profits* to be had from the same, and all lands used for and occupied by depots or stations, with all buildings standing thereon, or which shall be procured therefor, together with all locomotives, engines, tenders, passenger cars and freight cars, shops, tools, and machinery now owned or hereafter to be acquired by said company and in any way belonging or appertaining to said railroad, now constructed and to be constructed, including all its property, real and personal, pertaining to said railroad, and *all its rights, credits and franchises* thereunto appertaining ; but nothing herein contained shall be so construed as to prevent the said party of the first part from selling, hypothecating or otherwise disposing of County or Town bonds, or other securities received in payment of stock or otherwise, or of any lands or other property of said company not necessary to be retained for the construction or convenient use of their railroad, nor from collecting moneys due said company on stock subscriptions or otherwise ; nor shall anything herein contained be so construed as to prevent the said party of the first part from collecting and appropriating towards the construction, use and repair of their said road ;

To have and to hold the said premises, &c., unto the parties of the second part, their successors, &c., upon the following *Trusts*—that is to say :

“ In case the said party of the first part shall fail to pay the principal or any part thereof or any of the interest on any of said bonds at any time when the same may become due and payable, according to the tenor thereof, when demanded ; or in case the said company shall, for and during any one year, until the said sum of \$320,000 together with the interest thereon shall be fully paid and satisfied, neglect or fail to pay to the said sinking fund the said sum of \$5,400, then, *after such default in the payment of any part of said principal or interest or any part of*

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said sum to said sinking fund, and the same remaining in arrear, then, upon request of such bond holders, the said parties of the second part, their successors in said trust, or assigns, may enter into and take possession of all or any portion of said premises, and, as the attorneys in fact or agents of the said party of the first part, by themselves, or agents, or substitutes, have, use and employ the same, making from time to time all needful repairs, alterations and additions thereto; and, after deducting the expense of such use, repairs, alterations and additions, apply the proceeds thereof to the payment of the principal and interest of all said bonds remaining unpaid, and to the supplying of any deficiency in the said sinking fund," — or said parties of the second part, upon written request of the holders of at least one half of said bonds, shall cause said premises to be sold at public auction in New York city, after giving forty days' notice of said sale, &c., and execute deeds to the purchasers for the said premises, which shall be a bar to all interest of said party of the first part, their successors and assigns, therein; and the said trustees, after deducting expenses, &c., to apply proceeds of said sale, or so much as may be necessary towards payment of the principal and interest due or unpaid on said bonds and supplying any deficiency in said sinking fund, rendering the balance to party of the first part.

Stipulation that no advantage shall be taken of any appraisement, valuation or extension laws by first party, and that no injunction or stay of proceedings shall be applied for or obtained to prevent such entry or sale as aforesaid.

"And said party of the first part hereby covenants, for the consideration aforesaid, to execute and deliver any further reasonable *and necessary conveyance of the premises*, or any part thereof, to the said parties of the second part, their successors or assigns, *for more fully carrying into effect the objects hereof*," and particularly for the conveying of property acquired by said first party subsequently to the date of this deed.

31

"And said party of the first part hereby further covenants, as aforesaid, that the money borrowed for the purpose aforesaid, upon the security of said bonds, shall be faithfully applied to the purchasing and the transportation of iron rails and machinery, and for the construction and

29

said sum to said sinking fund, and the same remaining in arrear, then, upon request of such bond holders, the said parties of the second part, their successors in said trust, or assigns, may enter into and take possession of all or any portion of said premises, and, as the attorneys in fact or agents of the said party of the first part, by themselves, or agents, or substitutes, have, use and employ the same, making from time to time all needful repairs, alterations and additions thereto; and, after deducting the expense of such use, repairs, alterations and additions, apply the proceeds thereof to the payment of the principal and interest of all said bonds remaining unpaid, and to the supplying of any deficiency in the said sinking fund," — or said parties of the second part, upon written request of the holders of at least one half of said bonds, shall cause said premises to be sold at public auction in New York city, after giving forty days' notice of said sale, &c., and execute deeds to the purchasers for the said premises, which shall be a bar to all interest of said party of the first part, their successors and assigns, therein; and the said trustees, after deducting expenses, &c., to apply proceeds of said sale, or so much as may be necessary towards payment of the principal and interest due or unpaid on said bonds and supplying any deficiency in said sinking fund, rendering the balance to party of the first part.

Stipulation that no advantage shall be taken of any appraisement, valuation or extension laws by first party, and that no injunction or stay of proceedings shall be applied for or obtained to prevent such entry or sale as aforesaid.

"And said party of the first part hereby covenants, for the consideration aforesaid, to execute and deliver any further reasonable *and necessary conveyance of the premises*, or any part thereof, to the said parties of the second part, their successors or assigns, *for more fully carrying into effect the objects hereof*," and particularly for the conveying of property acquired by said first party subsequently to the date of this deed.

31

"And said party of the first part hereby further covenants, as aforesaid, that the money borrowed for the purpose aforesaid, upon the security of said bonds, shall be faithfully applied to the purchasing and the transportation of iron rails and machinery, and for the construction and

extension of said road, and the expenses attending such loan and purchase; and that said rails and machinery so purchased shall be transported and used with due diligence in the construction, finishing and furnishing of said railroad."

On payment of the principal and interest of said bonds, or the conversion thereof into stock, the estate granted to the parties of second part to be void, and the right to said premises to revert to and revest in the party of the first part.

32 Mutually agreed that the parties of of the second part shall only be accountable for reasonable diligence in the management of the trusts aforesaid; and that they shall *not be responsible for the acts of any agent* employed by them when such agent is selected with reasonable care. And that said second parties shall be entitled to receive proper compensation for the trouble, &c., in case they have to take possession of said premises under this deed.

And it is provided that in case of the death, incapacity, or resignation of said parties, the estate hereby granted, and the trusts created, shall rest in, and devolve upon, such person or persons residing in the City of New York, as the Supreme Court of Wisconsin, upon application, shall appoint

33 The foregoing deed is duly executed by the Mineral Point Railroad Company, under its corporate seal, and acknowledged by Parley Eaton as President of the Company, April 18th, 1856, before the Clerk of the Circuit Court of Iowa County, Wisconsin, and was on the same day recorded in said County.

34

Exhibit C of Garnishee's Answer :

35 This is a deed made June 6th, 1857, between the Mineral Point Railroad Company, of the first part, and David C. Martin and Lucien D. Coman, of New York City, of the second part. It recites the execution of exhibit B, its record in the Register's office of Iowa County, Wis-

consin, on the 18th day of April, 1856, in the Register's office of Lafayette County, Wisconsin, April 21st, 1856, and in the Recorder's office of Jo Daviess County, Illinois, April 25th, 1856 — the purposes for which the same was executed, and sets forth, by way of recital, the entire granting clause of that deed, with a full description of the property conveyed by it; also the clause against so construing that deed as to prevent the company from selling or hypothecating county or town bonds, or other securities received in payment of stock, or lands, or other property not needed for the purposes of its road, or from collecting moneys due on stock subscription, &c. Also the covenant for further conveyance and assurance contained in said deed; and the fact that since the maturing of said deed, the Company have been engaged in constructing and equipping its road, and have also acquired certain machinery and rolling stock for the road and then in use upon it. And then proceeds in substance as follows :

Now this indenture witnesseth, that in compliance with said covenant for further assurance and in pursuance of a resolution of the Board of Directors of the Company, dated June 6th, 1857, authorizing the execution of said deed, and in consideration of one dollar, &c., the said party of the first part

"Hath granted, bargained, sold, transferred, released, quit claimed, and conveyed, and by these presents doth grant, bargain, sell, transfer, release, quit claim, convey, and confirm to said parties of the second part, trustees in said indenture of mortgage, and to the survivor of them, his successor and successors in said trust, *all and singular the corporate property, tolls, incomes, issues, profits, rights, credits,* and franchises in said indenture of mortgage mentioned or referred to. Also the locomotives, passenger cars, and freight cars, herein above mentioned, and particularly, all the property acquired by said party of the first part subsequently to the date of said indenture of mortgage, and comprehended in the description contained therein." To have and to hold &c., *upon the trusts* created and declared in and by said indenture of mortgage, and especially for the benefit and security of the holders of the bonds therein mentioned.

And it is further witnessed and declared by said parties to these presents, that the declaration in said indenture of mortgage quoted in the above recital, does not express their true intent and meaning, but that it

was the design and intent of said parties in executing said indenture, that said parties of the first part should not, and it is hereby declared and agreed that said party of the first part shall not be permitted to sell, hypothecate, or dispose, of any part of the property or effects mentioned in said indenture of mortgage, except upon the condition that said Company shall diligently proceed to collect and apply all means that may be acquired by such sale, hypothecation, or disposition, to the construction, or repair and improvement of its said railroad. *And provided also, that no default shall be made in the payment of the interest or principal of any of the bonds in said indenture of mortgage described; and that said indenture of mortgage shall be so read and construed.*

“ And it is further witnessed, declared and agreed, by and between said parties hereunto, that nothing in said indenture of mortgage contained shall be so construed as to prevent said parties of the second part, their successors in said trusts, or assigns, *from entering into, and taking possession of, said mortgaged premises and the proceeds thereof* immediately after said party of the first part shall fail to pay the principal, or any part thereof, or any of the interest, on any of said bonds, at any time when the same may become due and payable according to the tenor thereof, when demanded; nor from selling said mortgaged premises, or so much thereof as shall be necessary to discharge the principal and interest of said bonds in arrear when requested by the holders thereof, as provided in said indenture of mortgage. ”

41 It is further mutually agreed that upon a sale of said premises for the payment of the principal or interest of said bonds, that such part of said premises as are or may be within the States of Wisconsin or Illinois shall be sold in such manner as may be authorized by the laws of those States respectively, anything in said indenture of mortgage to the contrary notwithstanding; and that the said trustees or either of them may at such sale buy in said premises so sold, for the account of all the holders of said bonds then unpaid and unconverted into stock, for any price at which the same may be struck off, not exceeding the amount owing upon said bonds and the costs and expenses of sale, and hold the same for the benefit of said bondholders, as may be authorized by law — the interest of said bondholders in said premises so purchased to be in pro-

42 portion to the amount due upon the bonds held by them respectively ;
and then follows a covenant on the part of the company for such further
conveyance and assurance as the said parties of the second part or their
counsel shall reasonably desire, advise or require, for the purpose of
effecting the objects and purposes of said indenture.

43 **The foregoing deed** was duly executed and acknowledged before
the Clerk of the Circuit Court of Iowa County, Wisconsin, on the 6th
day of June, 1857.

44 May 12th, 1859, David R. Martin and Lucien D. Coman filed in said
Court their interpleader claiming the property, money, rights, credits
and effects sought to be recovered by the plaintiff below under the gar-
45 nishee process issued in said cause and served upon the Galena and Chi-
cago Union Railroad Company, and alleging in substance that they, the
said Martin and Coman, and not the said Mineral Point Railroad Com-
pany, are the owners of the property, money, rights, credits and effects
sought to be recovered by the plaintiff under said garnishee process.

December 20th, 1860, the plaintiff below filed his replication to the
answer of the garnishee, as follows :

Replication to Answer of Garnishees :

46 That at the time of the service of process on the garnishees, it had in
its possession, custody, and control, moneys and effects belonging to the
Mineral Point Railroad Company, and was indebted to the Mineral Pt.
46 Railroad Company in about the sum of \$10,000. That the deed men-
tioned in the answer did not convey to Martin and Coman any interest
in the said sum and sums of money in the hands of the garnishees under
the contract referred to in said answer ; nor did said deed convey to or
vest in said Martin and Coman, or either of them, any interest in or
right to any indebtedness from the Galena and Chicago Union Railroad
Company to said Mineral Point Railroad Company ; and the plaintiff
denies the allegations in said answer relating thereto.

That the Mineral Point Railroad Company did not, in pursuance of a

48 covenant for further assurance, by deed in said answer alleged to have
been made on the 6th day of June, 1857, nor in any other manner,
transfer or assign to said Martin and Coman, or either of them, the
indebtedness accrued and to accrue from the said garnishees to the
Mineral Point Railroad Company, or any part thereof, growing out
of the said contract referred to in said answer. And the plaintiff denies
all the allegations of said answer respecting said deed and the effect
thereof, and alleges that no part of the indebtedness of the garnishees to
the Mineral Point Railroad Company for moneys received by the gar-
nishees, under the contract aforesaid, was conveyed, transferred or as-
signed to said Martin and Coman, or either of them, but that the same
remained and was property of the Mineral Point Railroad Company,
49 who had the right to demand, have and receive the same from the gar-
nishees under and by virtue of the terms of the contract referred to, and
that the said Martin and Coman had and have no right whatever to de-
mand, have or receive the money owing by garnishees to the Mineral
Point Railroad Company under said contract.

That the deeds in the said answer alleged to have been made by the
Mineral Point Railroad Company to Coman and Martin were and are
fraudulent, and void, as to creditors of the Mineral Point Railroad
Company.

December 20th, 1860, the garnishees filed in said cause an additional
answer in substance as follows:

Additional Answer of Garnishees :

50 That the Mineral Point Railroad Company has never at any time paid
the interest secured, or intended to be, by the deed in the former answer
set forth. And that at the time of the service of the garnishee process
a large amount of said interest was in arrear and unpaid, and ever since
so continued.

51 That in January, 1856, and prior to the actual delivery and sale of said
bonds, the Board of Directors of said Mineral Point Railroad Company
passed and caused to be entered upon the records of their proceedings a
resolution as follows :

"Resolved, that the income of \$56,000, guarantied by the Galena & Chicago Union Railroad Company, and the Illinois Central Railroad Company, be and the same is hereby irrevocably pledged, as follows, viz: the sum of \$45,600 to the payment of the interest on \$320,000 of the first mortgage bonds; of \$150,000 of the second mortgage bonds, held by the county of Iowa; and of \$100,000 of the second mortgage bonds held by Alvan Wilkins; and the balance of \$10,500 to be applied as a sinking fund, for the payment at maturity of the bonds, as follows, viz: \$5,400 to the first mortgage bonds; and \$5,000 to the \$100,000 of second mortgage bonds above specified as given to Alvan Wilkins."

52 That, as the garnishees are advised and insist, by the resolution and the bonds and deed of trust set forth in the former answer, not only was the interest upon said bonds to be paid out of the indebtedness of the garnishees and the Illinois Central Railroad Company, under their contract with the Mineral Point Railroad Company of 10th October, 1853, but the sum of \$5,400 per annum was expressly, and irrevocably, set apart by said Mineral Point Railroad Company, as a sinking fund for the ultimate payment and redemption of the principal sum of \$320,000 of the bonds aforesaid secured or intended so to be by the said deed of trust.

53 That the whole accumulated indebtedness of the garnishees and the Illinois Central Railroad Company, under the contract of 10th of October, 1853, was at the time of the service of the garnishee process, and at the time of the former answer, largely less than the amount of money required for the purposes of said sinking fund. That at the date of said service the aggregate indebtedness of respondents and the Illinois Central Railroad Company was about \$11,500, whilst the principal of said sinking fund amounted to upwards of \$14,000. That at the date of said former answer, said indebtedness had not materially increased, whilst the principal of said sinking fund had increased to upwards of \$16,000.

That the Mineral Point Railroad Company was at the time of the service of the garnishee process, and ever since has been, in default, both in respect to said sinking fund and the payment of interest on said bonds. The said resolution and the deed of trust, aforesaid, contain all the provisions respecting said sinking fund made by said Company. And that

the bonds aforesaid, amounting to \$320,000, secured by said deed of trust, are the same bonds referred to in said resolution as "the first mortgage bonds," and that upon their face they purport to be secured by said deed of trust and said sinking fund.

54 That in consequence of the default of the Mineral Point Railroad Company, in the payment of interest. &c., said Martin and Coman instituted proceedings against said Company and others in the District Court of the United States for the District of Wisconsin, on the chancery side of said Court, for the foreclosure of said deed of trust, and that such proceedings were had in said Court; that afterwards, and at a special term of said Court, begun and held on the first Monday of April, A. D. 1859, and on the 21st day of April aforesaid, George W. Cobb was by the order and decree of said Court, appointed receiver of all and singular the property and effects of said Company. That said Cobb duly qualified as such receiver, and on or about the 1st day of May, 1859, took possession of the road, property and effects of said Company, as such receiver, and has ever since been in the possession and control of the same as receiver.

55 **Replication to additional answer of Garnishees**, filed December 20th, 1860, is in substance as follows :

56 The plaintiff denies each and every allegation in the additional answer contained, and alleges that no part of the interest on the bonds described in said answer was to be paid out of the indebtedness of the garnishees and the Illinois Central Railroad Co. under the contract referred to in
57 said answer. And that the Mineral Point Railroad Company never appropriated said indebtedness to the payment of interest on the bonds mentioned in said answer. That the sum of \$5,400 per annum was not, nor was any part thereof, in any manner set apart by said Mineral Point Railroad Company as a sinking fund for the payment of the principal sum of \$320,000, as stated in said answer, nor for any purpose whatever. But the plaintiff alleges that all sums of money and indebtedness accruing to the Mineral Point Railroad Company under said contract, have
58 at all times been subject to the control and disposition and order of said Company for its own uses, purposes and benefits; and that the same was,

at the time of the service of the garnishee process aforesaid, subject to the entire control, order, and disposition of said Company, and belonged to and was the property of said Company.

December 20th, 1860, the plaintiff filed his replication to the interpleader and claim of Martin and Coman in substance, as follows :

Replication to Interpleader :

60 That the plaintiff, by reason of anything by said Martin and Coman in their interpleader alleged, ought not to be barred from recovering the said property, rights, money, credits, and effects, or any of them, because he says that at the time of the service of the process, &c., the said garnishees had property, money, rights, credits and effects in their possession, belonging to the defendant, and were indebted to the defendant. And that the moneys, property, credits, and effects, sought to be recovered by the plaintiff under the garnishee process, belonged to and was the money, property, credits, and effects of the defendant, the Mineral Point Railroad Company, and the same had not been, nor had any part thereof been sold, transferred or assigned to said Martin and Coman or either of them, and they were not, nor never have been, the assignees or owners of said property, money, rights, credits or effects, nor any portion thereof, in manner and form as said Martin and Coman have in their interpleader in that behalf alleged.

61 January 31st, 1861, cause comes on for trial, and, by agreement, all
62 questions touching the legality or regularity of the interpleader of Mar-
63 tin and Coman are waived, and, by consent of parties in open Court, the issues upon answers of garnishees and the interpleader of Martin and Coman are to be tried together. Jury sworn to try the issues.

Verdict of Jury :

64 We the jury find that the garnishees have in their hands the sum of \$11,164, and that the same was the property of the Mineral Point Railroad Company at the time of the service of process, &c., and subject to

65 said process ; that the amount of plaintiffs' debt at this time was \$8,929
26 ; and we further find that the interpleaders have no right to said
money as against said plaintiff.

66 **Motion for new Trial** by garnishees, and also by claimants.
Motions for new trial overruled, and

67 **Judgment** on the verdict in favor of the Mineral Point Railroad
Company, for use of plaintiff, against the garnishees, for \$8,929.26 and
costs, and against the claimants for costs.

Exceptions taken by garnishees and claimants respectively to the
overruling of motions for new trial, and an appeal prayed by them and
allowed by consent of parties, without any appeal bond.

69 **Bill of Exceptions** — Recites the consent of parties to the trial
of the issues on the answers of garnishees and interpleader together ;
70 the calling of the jury to try the issues, &c., and that the plaintiff, to
71 to 116 sustain the issues on his part, read to the jury the answer of the gar-
nishees as hereinbefore set forth.

William M. Larrabee, called for the plaintiff, testified as fol-
lows :

I am Secretary of the Galena and Chicago Union Railroad Company.
On May 1st, 1859, there was to the credit of the Mineral Point Railroad
Company, on the books of the Galena and Chicago Union Railroad Co.,
\$11,164.10 ; this was the balance on hand as money balance, liable to
be paid to the order of the Mineral Point Railroad Company at any
time.

Cross Examination :

The contract of 10th October, 1853, between the Mineral Point Rail-
road Company, of the one part, and the Galena and Chicago Union Rail-
road Co. and the Illinois Central Railroad Co., of the other part, set
out in answer of garnishees, was here shown to the witness, and offered

in evidence and read to the jury : and the witness testified, in answer to cross interrogatories, as follows :

That contract of October 10, 1853, by agreement of all the parties to it, went into operation about the 1st July, 1857 ; and the whole indebtedness of the Galena and Chicago Union Railroad Company referred to by me, accrued under the provisions of that contract. There may have been some items of the account not exactly under the contract ; but such items were more than overbalanced by claims against the Mineral Point Railroad Company ; so that the whole debt properly accrued under the contract.

Here the Plaintiff rested, and the garnishees and claimants, to sustain the issues on their part, introduced as a witness

George W. Cobb, who, being sworn, testified as follows :

116 I first became connected with the Mineral Point Railroad Company in September, 1856. At that time the company hired me to take charge of some grading on the road. The road was not completed until July, 1857. Luther Beecher was the principal contractor with the company to construct the road and furnish the rolling stock ; he had nothing to do with the grading. Mr. Beecher, by his contract, was to have possession of the road until the month of Sept., 1857. In Feb., 1857, Mr. Beecher requested me to take charge of the road under him ; I did so, until August or Sept., 1857, when Mr. Beecher came to me with a Mr. Nesbit, and told me to hold the road in spite of everybody. I was running the road during the Summer of 1857, merely as agent for Mr. Beecher. The men were paid by Mr. Beecher out of the earnings of the road. I have been familiar with the road ever since. The Mineral Point Railroad Company, since then, *has never had anything to do with the road ; it has never had possession of the road.* I have been running it myself, under general order of Beecher *for Trustees.* In February, 1857, *I was authorized and requested by the trustees, Martin and Coman,* to put in an interpleader for them for some property on the road, which had been levied on by an attachment issued from the Circuit Court of Jo Daviess county, *and to protect their interest.* They sent me the original deed of trust executed to them by the Mineral Point Railroad Company and I have had it ever since.

Original of Exhibit B, attached to the answer of garnishees, shown to witness and identified as the instrument sent to him by trustees Martin and Coman, and the same was then offered in evidence and read to the jury.

Witness then proceeded — I have power of attorney from the trustees Martin and Coman, but not dated so far back. (Power of attorney produced and identified.) Prior to my receivership, I made my monthly reports to Mr. Beecher *with the expectation that he would lay them before the trustees*. The money in the hands of the Galena and Chicago Union Railroad Company was earned whilst I was running the road. The Mineral Point Railroad Company never had anything to do with it. *I held the road from August 1857, under the general charge of Beecher, for the trustees*. The Mineral Point Railroad Company made several attempts to get possession of the road from me, but never got possession. *I never reported to the company*. At the time of giving me instructions, Beecher was Vice President of the company.

Cross Examination : I never requested the Trustees to have me appointed receiver, or to take any proceedings in Wisconsin to recover possession of the road. I may have suggested the idea of foreclosing the deeds of trust, for the purpose of closing out the matter. Mr. Beecher is and has for three years been President of the Company. Parley Eaton was President prior to that time and Mr. Beecher *Vice President*. There was no change in the books used by me from the time Beecher had possession of the road, until I took possession of it *as Receiver*. The business was done and all papers made out in the name of the company. I transacted the business in the name of the company, until May, 1859, when I took possession as receiver. I have not the contract between Beecher and the company.

Re-examination Direct.

The railroad business up to the receivership was done in the name of the company. The power of attorney I received by mail from the trustees, or their attorneys in Wisconsin. I have corresponded with Mr. Coman; I saw him in New York, in March, 1859, the next week after

the power of attorney was sent, and had a conversation with him about the power.

I had been previously in possession of the road for the trustees, and in that conversation he approved of my acts whilst in my possession; I was in possession of the road when I was appointed receiver, so that the possession was not in fact changed by the receivership. The parties, through Mr. Coman, requested me to attend to their interests.

Re-Cross Examination :

The matter has not been entirely with Beecher prior to the receivership; I corresponded *principally* with Mr. Beecher; but little with the trustees direct.

122 **The power of attorney** from Coman and Martin to witness Cobb are was offered, and read in evidence, dated March 18th, 1859, and authorizing Cobb as their agent and attorney to protect and preserve the property described in and covered by its first mortgage of the Mineral Point Railroad Company, from waste, trespass or injury, and to take all lawful means to keep and hold the same for the benefit of the bonds secured by said mortgage; provided they should incur no pecuniary responsibility by any act of their attorney, &c.

124 Acknowledgement of the power of attorney before a commissioner for Wisconsin.

Luther Beecher called and sworn as a witness, on part of garnishees and claimants, testified as follows :

125 The contract for building the Mineral Point Railroad was originally made with Alvan Wilkins; he failed and I took the contract from him, and subsequently contracted directly with the company; I commenced on the road about 1st of June, 1856, by bargaining for iron in Philadelphia; I bought one thousand tons and shipped it to Chicago, and then to Warren; I was engaged in constructing the road until about the 2nd July, 1857; about the 1st June, 1856, I had fifty or sixty men on the

ground ready to lay the track ; I commenced at Warren, Illinois ; I was there and set the men at work ; about one mile of the road is in Illinois, the rest is in Wisconsin ; I had the control of the road until it was finished ; when it commenced running I still had control of it ; Mr. Temple had charge of the road and trains for me until February, 1857 ; I then changed him and put in Mr. Cobb, who managed for me until August, 1857 ; I knew Mr. Coman and Mr. Martin, the trustees of the bond holders, personally.

In August, 1857, I had more than half of the first and second mortgage bonds of the Mineral Point Rail Road Company, and more than half of the stock of the company. *I took the first mortgage bonds, amounting to \$320,000, in part payment for building the road.* The first interest coupons on the first mortgage bonds became due July 1st, 1856, the second, January 1st, 1857, and the third, July 1st, 1857—*none of which was paid ; in consequence of the default in the payment of interest I communicated with the trustees about taking possession of the road ;* this was in the latter part of July, 1857, and I then owned about \$205,000 of the first mortgage bonds, the rest was in the hands of parties to whom I had sold them, and who were uneasy on account of not getting their interest ; I told the trustees, that as I was the heaviest bond holder, they had better wait until I went out and learned how matters stood ; I was then in New York ; I went out and made an examination about the middle of August, 1857 ; I went over the road, looked over the books and talked with the directors of the road ; they seemed to have no interest in the road ; *said they had built the road and somebody else must run it ;* Cobb was then in possession of the road under me ; I made inquiries about his ability, and was satisfied with him, *and then delivered the road to him and directed him to hold it for the trustees, against the company, and all the world ;* I learned also that suits had been commenced against the company. I went back to New York and told the trustees how matters stood ; I explained to them what I had done, and recommended Mr. Cobb as a suitable person to represent and act for them ; they approved of what I had done, and said they would send out the papers to Mr. Cobb ; *both Mr. Coman and Mr. Martin approved of what I had done.*

Mr. Cobb continued to hold the road as agent for the trustees ; he made his reports to me, as he had done before under me, and I placed these

128 reports before the trustees, either verbally, or by showing the report, almost every month. Towards the last part of the time, the reports were made to the attorneys of the trustees, who, Mr. Coman said were paid for attending to the business ; and he himself declined to have much to do with it personally, unless paid for it. Cobb continued in possession as agent until the Spring of 1859, when he was appointed Receiver, and took possession of the road in that capacity. Prior to that time, he had reported to me, and through me, to the trustees. He then reported to the attorneys of the trustees directly. I have been familiar with the business of the Mineral Point Railroad Company for five or six years. The company has never had possession of the road. The place of business of the company was at Mineral Point, Wisconsin ; I think the law so required. The company was organized under a law of the State of Wisconsin.

The Charter of the Company was here offered in evidence, and sections one and two of the original law, and section five of an amendment thereto, approved March 7th, 1853, read to the jury.

SECTION 1. Appoints certain persons commissioners to open books and receive subscriptions to the capital stock of the Mineral Point Railroad Company, and provides the manner of doing it.

129 SECTION 2, fixes the capital stock of the company, amount of shares, and provides, that when one thousand shares are subscribed for and five dollars paid in on each share, the subscribers to the stock and their associates, &c., shall be a corporation, &c., under the name and style of the Mineral Point Railroad Company, with all the usual provisions and incidents of a corporation, &c.

130 SECTION 5, of the amendment aforesaid, authorizes said company *in its corporate* capacity, to borrow any sum of money from any person or persons, &c., at any rate of interest that may be agreed upon, and to make, execute and deliver "all necessary writings, notes, bonds, mortgages or other papers and securities, in amount and kind as may be deemed expedient by said corporation, in consideration of said loan or in the discharge of any liability incurred in the construction, &c., of its road, &c.

Cross Examination of Luther Beecher.

- 131 I have had desk room in different offices in New York City since 1856 ; I did not raise money on the paper of the Mineral Point Railroad Company, on or after November, 1857. In the Fall of 1857, I took to New York some paper signed by the officers of the Mineral Point Railroad Company, to renew some old paper of the company. The amount may have been from \$65,000 to \$70,000. Some of it went to George Ackerman. I think he filled up the paper in his own handwriting ; at one time about \$8000, and at another time from \$25,000 to \$30,000 ; I can't now tell to whose order these drafts were made ; I have not seen them since 1857. I think I have endorsed drafts signed by Parley Eaton. I know nothing of any judgments on drafts of the company endorsed by me. Originally I let Mr. Ackerman have some such paper to be filled up by him ; he said he wanted it to use. I let him have the paper above referred to, to renew the old paper, which he had taken and used. I did not borrow a dollar of Mr. Ackerman to use on the Mineral Point Railroad, after August, 1857. I always supposed there was about \$30,000 of the paper in his hands ; I now suppose there was more of it. My contract with the Mineral Point Railroad Company is not with me ; I think it is at Detroit.
- 131

The first I knew of the proceedings in Wisconsin, under which Cobb was appointed receiver, was by letter from the trustees, stating that they had been called upon by holders of the first mortgage bonds, to the amount of \$165,000, to commence the proceedings ; and that Foster and Thompson, of New York, were designated as attorneys. They, Messrs. Foster and Thompson, prepared the papers and sent them to attorneys at Janesville, Wisconsin. I was informed, and always supposed, that a majority of the bonds were represented in these proceedings.

By my original contract I was to have possession of the road until September 1st, 1857 ; I did not then surrender the road to the company, *because, I had previously delivered it over to the trustees* ; from February, 1857, till August, 1857, Cobb reported to me as my agent, but the expenses were larger than the earnings of the road ; I think he continued to send me monthly statements until May, 1859, and that he has continued to send me a synopsis of the reports down to the present time ; *the company never did run the cars.*

132

In September, 1856, I think there was a mile of the road in use, and the cars of the Illinois Central Railroad Company ran over to carry iron : in November, 1856, about eight miles of road was done, and freight was conveyed over it so far as any was offered ; do not know whether anything was paid ; in June, 1857, both freight and passengers was conveyed over the road ; I supposed they were charged for ; my directions were to run the road and collect reasonable pay.

Re-examination direct :

134

No part of the sinking fund was ever paid in by the company ; the trustees did not make any settlement of the moneys in the hands of the garnishees, for the reason that the companies were understood to be short of funds ; they did not know either the amount in the hands of the garnishees, as no statement had ever been made, and it was understood, and supposed, that the amount accrued was not sufficient to pay one set of coupons ; it was generally understood that no money had accrued until 1858 ; and it was spoken about very soon after the default in payment of interest due, in July, 1858 ; and also there was some talk about it after the default in January, 1858 ; I think Mr. Coman talked of coming out in 1858 ; but it was ascertained that the money accumulated was not enough to pay one set of coupons ; he said he must be paid for coming, and upon learning the facts, he did not come but left it with the attorneys to manage ; the garnishee proceedings in Chicago, and some proceedings of a Mr. Keep who was a creditor of the company, in Wisconsin, hastened the foreclosure proceedings.

On the part of the garnishees and claimants, was next offered in evidence :

An Act of the Legislature of the State of Wisconsin,

Entitled "An act concerning railroads," approved October 10th, 1856, and sections 1, 2, 3, and 4, was read to the Jury.

Sec. 1. Provides that any railroad company may borrow money at such interest, and on such terms, as may be agreed upon ; and may execute one or more trust deeds, or mortgages, or both as occasion may re-

quire, on their road, &c., for the amount borrowed or owing by said company, and may make such provisions, in such deed of trusts, or mortgages, for pledging or transferring their *railroad track, rights of way, depot grounds, rights, privileges, franchises, and immunities, &c., in any manner whatever*, as security for any bonds, debts, or sums of money, secured by such trust deeds or mortgages as they shall think proper; and further provides, that in case of any sale, under said deed of trust, or mortgage, the purchasers shall *acquire and exercise all the franchises, &c.,* of the company, and may organize anew under the same or any other name.

136
137
138

Sec. 2. Provides that the rolling stock of railroad companies shall be fixtures; and that such rolling stock, and all subsequently acquired right of any depot grounds, &c., shall be subject to the lien of such trust deed, or mortgage, in the same manner as the property owned by the company at the date of such deed, or mortgage. That such deed of trust, or mortgage, and any release, or satisfaction thereof, may be recorded in office of Secretary of State with the same effect as though recorded in the several counties through which the railroad passes; and such road shall be evidence and notice to all persons, in the same way, as though records thereof were made in the counties.

Sec. 3. Provides that any railroad company may annually, or oftener, as its Board of Directors shall deem expedient, set apart, and appropriate a sum of money, not exceeding fifty per cent. of its net earnings, as a sinking fund to pay off, or reduce its indebtedness accruing in the construction of its road, &c.; and the same so set apart shall be applied in retiring or paying off its bonds, &c., as its Board of Directors shall deem expedient.

Sec. 4. "That all mortgages or trust deeds heretofore executed by any railroad company, are hereby declared to be included within, and subject to the provisions of this act, as fully and effectually as if its provisions had been incorporated in its charter prior to, and at the time of the execution of said mortgages or trust deeds. *Provided however*, that such railroad company shall first accept of the provisions of this act by a resolution of its Board of Directors, and shall cause a copy thereof, un-

der the certificate of its secretary, with the corporate seal attached thereto, to be filed in the office of Secretary of State. ”

139 There is a further provision in this section, that it shall not affect any liens upon the property of railroad companies, acquired subsequently to the execution of their mortgages or deeds of trusts, and prior to their acceptance of the provisions of this act, and the filing of such acceptance in the office of the Secretary of State.

140 **The next evidence** introduced on the part of the garnishees and
141 claimants, was an exemplification under the great seal of the State of Wisconsin, of a resolution of the Board of Directors of the Mineral Point Railroad Company, passed June 6th, 1857, accepting the provisions of the act of October 10th, 1856, above set forth, and of the certificate of the secretary of said company, under the seal of the company attached, the Secretary of State certifying that the same was filed in his office June 8th, 1857, and duly recorded in the book kept for that purpose.

The garnishees and claimants next offered in evidence, and read to the jury, *original deed* of further assurance, dated June 6th, 1857, executed by the Mineral Point Railroad Company to Martin and Coman, which is set out in the answer of the garnishees as “exhibit C. ”

142 **The Garnishees and Claimants** here rested, and

143 **The Plaintiff** then offered in evidence transcripts of two judgments
to in the Supreme Court of New York, against the Mineral Point Railroad
150 Company, and in favor of William Menzies, and the other in favor of George Ackerman, purporting to have been upon certain obligations of the said company, made by Luther Beecher, Vice President of said company, and endorsed by him.

151 **The foregoing is all the evidence**, and the counsel for the garnishees and claimants, thereupon, asked the court to instruct the jury as follows :

1. That if the jury believe from the evidence, that the funds in question, alleged to be in the hands of the garnishees, the Galena & Chicago Union Railroad Company, accumulated under and arose out of the contract made by, and between, the Mineral Point Railroad Company of the one part, and the Galena & Chicago Union Railroad Company and the Illinois Central Railroad Company, parties of the other part, bearing date the 10th day of October, 1853, and given in evidence.

152 + And if the jury also believe from the evidence, that the Mineral Point Railroad Company made default in the payment of interest, provided to be paid in and by the deeds of trust to Coman and Martin, set out in the answer of the garnishees and given in evidence, or made default in the sinking fund, also provided for in said trust deeds; and that such default occurred prior to Sept, 1857; and that the trustees, Martin and Coman, by reason of such default, took possession of the road and property of said Mineral Point Railroad Company under said deeds, and continued such possession during all the time when the funds in question were accumulating, then the jury will find the right to said money in the said Martin and Coman, and that there is nothing due from the said garnishees to the Mineral Point Railroad Company.

Refused.

+ 2. If the jury believe from the evidence, that the money in controversy, accrued under the contract between the Mineral Point Railroad Company and the Galena & Chicago Union Railroad Company and the Illinois Central Railroad Company, whilst the Mineral Point Railroad was in the possession of, and operated by, Martin and Coman, or their agents in pursuance of the power conferred on them by the deeds offered in evidence, then said money belonged to the said Martin and Coman, and the jury must find the issues on the interpleader for them.

Refused.

3. If the jury believe from the evidence, that Martin and Coman took possession of the Mineral Point Railroad, in July or August, 1857, in pursuance of the deeds of trust offered in evidence, and on account of default in the payment of the interest on the bonds secured by said deeds, then whilst they so remained in possession and use of said road, the

1. That if the jury believe from the evidence, that the funds in question, alleged to be in the hands of the garnishees, the Galena & Chicago Union Railroad Company, accumulated under and arose out of the contract made by, and between, the Mineral Point Railroad Company of the one part, and the Galena & Chicago Union Railroad Company and the Illinois Central Railroad Company, parties of the other part, bearing date the 10th day of October, 1853, and given in evidence.

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Refused.

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Refused.

3. If the jury believe from the evidence, that Martin and Coman took possession of the Mineral Point Railroad, in July or August, 1857, in pursuance of the deeds of trust offered in evidence, and on account of default in the payment of the interest on the bonds secured by said deeds, then whilst they so remained in possession and use of said road, the

earnings thereof belonged to said Martin and Coman, to be applied by them in pursuance of said deeds.

Refused.

153

4. If the jury believe from the evidence, that the funds garnished, and in question, are a part of the \$56,000 guaranteed fund mentioned in the deed of trust given in evidence, then the jury are instructed that such deed of trust is effectual in law to transfer the right to said fund to Martin and Coman, the grantees in said deed.

Refused

5. It was not necessary that the garnishees should be notified of the assignment of the money in its hands, before the service of the process upon it, in order to make such assignment effectual against the plaintiff.

Refused.

6. The plaintiff, by his garnishee proceedings, only acquires the rights of the defendant, the Mineral Point Railroad Company, in or upon the money or property in the hands or possession of the garnishees; and if the jury believe from the evidence, that the money in controversy had been transferred by the Mineral Point Railroad Company, so as to vest in the claimants, Martin and Coman, the equitable right to it, as against the Mineral Point Railroad Company, before the service of process in this case, then they must find for the claimants upon the interpleader, and in favor of the garnishees.

Given.

154

7. An absolute assignment of money, in the hands of third persons, is an authority to the assignee to receive the money so assigned.

Refused.

8. It was not necessary for the claimants in their interpleader to set out the title by which they claimed the money in controversy, and having claimed the money generally, they may establish their right to it by any competent testimony showing such right.

Given.

9. The Jury are instructed, that no written authority was needed to constitute Mr. Cobb the agent of Martin and Coman; and if the jury believe from the evidence, that Luther Beecher, having possession of the Mineral Point Railroad Company, as contractor, in July or August, 1857,

and at the same time being a holder of the bonds of the Mineral Point Railroad Company, secured by the deed in evidence, delivered said road to Mr. Cobb for the trustees, in said deed; and the said trustees, on being advised thereof, immediately ratified and approved of said Beecher's acts in the premises; then the appointment of said Cobb, so made and ratified, was equivalent to an actual original appointment by said trustees.

Given.

155

10. The deed of trust offered in evidence, conveyed to the trustees the contract with the Galena & Chicago Union Railroad Company, and the Illinois Central Railroad, offered in evidence, and all indebtedness of said companies under it in trusts for the purposes specified in said deed.

Given.

11. The word "premises," as used in the clause of the deed of January 1st, 1856, conferring the power to take possession and sell, upon the trustees, included all the property described in the granting clause of the deed, and does not mean simply the railroad and rolling stock of the company.

Given.

The Court gave the 6th, 7th, 8th, 9th, 10th, and 11th instructions, but refused the 1st, 2nd, 3d, 4th, and 5th instructions aforesaid; and to the refusal of said last mentioned instructions, the garnishees and claimants respectively excepted.

The Court, of its own motion, then gave the following instructions to the jury:

156

1. The jury are instructed by the Court that, assuming that by the terms of the trust deeds in evidence, the income derivable under the contract with Galena and Illinois Central Railroads, passed to the trustees, Martin and Coman, yet it nevertheless passed subject to the right, on the part of the Mineral Point Railroad Company, to collect, receive, and dispose of any moneys due, or to grow due, under said contract; and the Court instructs the jury as matter of law that an assignment of a debt or chose in action, or other property, with a reservation to the party making the assignment, to collect, receive or sell the same, as a fraud at law; and that

nothing passes by it, as against attaching creditors, unless actual possession of the debt is obtained by the assignee under his deed or notice to the debtor, that the right of the assign or to control the debt has ceased by virtue of the deed before the service of the process upon the garnishee.

Given.

3 2. And therefore, if the jury find from the evidence there was a default, but that no possession was taken under the deed by the trustees, or the debt in anywise reduced to possession by them till after the service of the garnishee process in this cause, then they will find that the property in the said debt was subject to the process, and that the trustees acquired no rights by the deed as against attaching creditors of the Mineral Point Railroad Company.

Given.

157

3 3. And the Court further instructs the jury, that if they find from the evidence, that the trustees actually took possession under the trust deed, before the service of the process upon the garnishee, *but that no notice was given to the Galena Railroad of such possession*, and that by reason of default in the payment of the interest or principal of the bonds secured by the trust deed, the said Mineral Point Railroad Company had ceased to have any right to control or collect any money due to it, then the jury will find that the said debt was subject to the plaintiff's claim, in the hands of the Galena Railroad, and that the trustees have no right as against them.

Given.

To the giving of said instructions, and each of them, the garnishees and claimants separately excepted.

The jury retired to consider their verdict, and returned for further instructions, and were thereupon further instructed by the Court as follows:

158

" Under the third of the instructions, entitled ' by the Court,' the jury must find that *actual notice was given by the trustees of their possession and of their rights under the deed, not in writing merely, but notice by an agent would be sufficient. Mere possession of the road, unaccompanied by any other act to show notice, would not be sufficient.*

Union Railroad Company, to set aside the verdict of the jury, and for a new trial.

V.

The Court erred in rendering judgment against said company.

SCATES, McALLISTER & JEWETT,
Attorneys for Galena & Chicago Union R. R. Co.
Applicants.

ASSIGNMENT OF ERRORS by Coman and Martin.

I.

The Court erred in refusing the 1st, 2d, and 3d, instructions and each of them asked for on behalf of said claimants.

II.

The Court erred in giving the 4th and last instructions to the jury.

IV.

The Court erred in overruling the motion of said claimants, Martin and Coman, to set aside the verdict and for a new trial.

V.

The Court erred in rendering judgment against the claimants, Martin and Coman, and in favor of the plaintiffs below.

SCATES, McALLISTER & JEWETT,
Attorneys for Martin and Coman

233-159

The Galena & Chicago

Union R. R. Company

vs

William Menzies

Filed Apr. 25-1861

G. Ireland

Clark

To the giving of said instruction the garnishees and claimants respectively excepted.

159 **Verdict** of the jury, and motion to set aside the verdict, and for new trial by the garnishees and claimants.

160 **Motion** for new trial overruled and excepted to

Judgment on verdict, and

Appeal prayed for by garnishees and claimants and allowed by consent without appeal bonds.

ASSIGNMENT OF ERRORS

BY GALENA & CHICAGO UNION RAILROAD CO.

I.

The Court erred in refusing the 1st, 2d, 3d, 4th, and 5th instructions, and each of them, asked on behalf of the said company.

II.

The Court erred in giving to the jury the instructions numbered 1st, 2d, and 3d, entitled "by the Court."

III.

The Court erred in giving his 4th and last instruction to the jury.

IV.

The Court erred in overruling the motion of said Galena & Chicago

1
United States of America
State of Illinois, County of Cook Is.

Pleas before the Honorable George Manierre
Judge of the Seventh Judicial Circuit of the
State of Illinois and Sole presiding Judge of
the Circuit Court of Cook County in the
State aforesaid, ~~and~~ at a term thereof begun
and held at the Court House in the City of
Chicago in said County on the First Monday
(being the Seventh day) of January in the year
of our Lord One Thousand Eight Hundred and
Sixty one and of the Independence of said United
States the Eighty fifth.

Present, Honorable George Manierre
Judge of the 7th Judicial Circuit of the State of
Illinois.

Carlos Haven, State Attorney

A. C. Husing, Sheriff of Cook County

Attest, Wm. L. Church Clerk

Be it Remembered, that heretofore to wit: On
the Eighth day of November A. D. 1858 William
Meinzie Plaintiff by Messrs. Smith & Dwyer
his Attorneys, sued out of the Court aforesaid
a certain writ of attachment against the estate

real and personal of the Mineral Point Rail Road Company, Defendant with a summons to the Galena and Chicago Union Rail Road Company to appear and answer as Garnishee of said Defendant, in the words and figures following to wit:

Attachment Writ

State of Illinois }
Cook County } s.s. The People of the State of Illinois to the Sheriff of said County, Greeting:

Whereas Edward M. Dewey, Attorney for William Menzies Plaintiff, hath complained on oath to William L. Church, Clerk of the Circuit Court of Cook County, that the Mineral Point Rail Road Company is justly indebted to the said Plaintiff in the sum of Seven thousand Six hundred & Nine dollars and seven cents and interest thereon from the 29 day of May 1858 at the rate of 7 per cent per annum and oath having also been made that the said Mineral Point Rail Road Company ^{resides out of this state so that} the ordinary process of law cannot be served upon it, but has property and effects within this State liable to attachment.

And the said Plaintiff having given bond and security, according to the act in such cases made and provided: We therefore command you, that

3)

you attach so much of the estate real and personal of the said Mineral Point Rail Road Company to be found in your County as shall be of value sufficient to satisfy the said debt and costs, according to the said complaint and such estate so attached in your hands to secure, or so to provide that the same may be liable to further proceedings thereupon according to law, at a term of the Circuit Court to be holden at Chicago within and for the County of Cook on the Third Monday of November inst. so as to compel the said Mineral Point Rail Road Company to appear and answer the complaint of the said Plaintiff and that you also summon the Galena & Chicago Union Rail Road Company as garnishee to be and appear before the said Court on the Third Monday of November inst. then and there to answer what may be objected against it when and where you shall make known to the said Court how you have executed this writ And you have then and there this writ.

Seas

Witness William L. Church Clerk
of our said Court and the seal thereof
at Chicago this eighth day of Nov.
ember in the year of our Lord One
Thousand Eight Hundred and Fifty eight
Wm L. Church Clerk

And afterwards to wit: on the said eighth day of November in the year last aforesaid, said Sheriff returned into the Court aforesaid said writ endorsed as follows to wit:

Sheriff's Return

The within named Mineral Point Rail Road Company not found in my County and no property found whereon to levy this writ. And served by reading and delivering a copy of the within writ to John B. Turner, President of the Galena & Chicago Union Rail Road Company, as garnishee this 8th day of Nov. 1858.

Fees: 1 service 50 c.
 1 copy 50 c.
 2 miles 10 c.
 1 return 10 c.
 = \$1.20.

John L. Wilson Sheriff
 By Thos. J. Holt, Deputy.

And afterwards to wit: on the 18th day of November in the year last aforesaid said Plaintiff by his said Attorneys filed in the Court aforesaid his certain allegations and interrogatories in words and figures following to wit:

Allegations & Interrogatories for Garnishee

Cook County Circuit Court

William Menzies

vs

The Mineral Point Rail Road Company

Attachment

November Term

A.D. 1858.

57)

Allegations and interrogatories to be answered by the Galena & Chicago Union Rail Road Company, who have been summoned as garnishees in the above entitled cause.

The said Plaintiff alleges that said Galena & Chicago Union Rail Road Company, garnishee aforesaid, had in its possession, custody or charge at the time when said garnishee process was served upon it or at some time thereafter, goods, chattels, moneys, credits, property or effects, to a large amount, belonging to said Defendant or in which the said defendant was or is interested. And said Plaintiff further alleges that said Galena & Chicago Union Rail Road Company, garnishee aforesaid, was at the time when said garnishee process was served upon it or at some time thereafter indebted to said Defendant in a large amount.

Ist Interrogatory. Had you the garnishee above named at the time when said garnishee process was served upon you or at any time thereafter any goods, chattels, moneys, credits, property or effects in your possession, custody or charge, belonging to said defendant or in which the said defendant was or is interested if yes, state the amount, value, kind and description of the same.

IInd Interrogatory. Have you, the said Galena &

Chicago Union Rail Road Company garnishee aforesaid at the time when said process was served upon you, or at any time thereafter, or are you now indebted to said defendant in any manner, whether due or to become due. If yes, state in what manner, for how much and when payable?

Smith & Dewey
Plffs Attys.

And afterwards to wit: on the 21st day of March A. D. 1859 and after the said Plaintiff has in the Court aforesaid recovered a judgment against the said defendant in said cause, the said Galena & Chicago Union Rail Road Company by Messrs Isaac McAllister & Jewett its Attorneys filed its answer to the several Interrogatories of the said Plaintiff in words and figures following to wit:

Answer of Garnishee

State of Illinois In the Cook County Circuit Court
County of Cook of the March Term A.D. 1859.
William Menzies

as } Attachment:
The Mineral Point Rail Road Company

The answer of the Galena and Chicago Union Railroad Company to the Garnishee Process served upon them in the above entitled cause.

These Respondents for answer unto

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the Garnishee Process aforesaid say, that on the Tenth day of October A.D. 1853 a contract in writing was made and entered into by and between the said Defendants "The Mineral Point Railroad Company" of the first part and these Respondents and the Illinois Central Railroad Company of the second part, respecting the completion of the Road of the said party of the first part and the operation of the same in connection with the roads of the said parties of the second part for the period of twenty years, so that the business of said Roads, so far as the same could be perfectly controlled by each of said parties should be made advantageous to the other for the period aforesaid, a copy of which said contract is herunto attached as a part of this answer marked: Exhibit "A" and to which reference is hereby made for fuller particulars.

Respondents further answering state, that since the completion of the Road of the said The Mineral Point Rail Road Company, sometime in the Spring of the year 1857 these Respondents have been operating in connection with the said Mineral Point Rail Road Company and exchanging business with them under said contract and that there was due and owing by these Respondents under said Contract to the said "The Mineral Point Rail Road Company" at the time of the service of said Garnishee

Process about the Sum of Ten thousand Dollars and that said indebtedness has been somewhat increased by the business transactions between these respondents and the said The Mineral Point Rail Road Company since the service of said Process and at the time of the rendering of this answer somewhat exceeds the said sum of Ten Thousand Dollars, all of which said indebtedness accrued in the course of the business transactions between these respondents and the said "The Mineral Point Rail Road Company" had and transacted under and in pursuance of the provisions of said Contract.

And these respondents further answering say that they were not at the time of the service of the Garnishee Process upon them in this case, have not since been and are not now in any manner indebted to the said defendants "The Mineral Point Rail Road Company" otherwise ^{than} as above stated.

Respondents further answering say, that they had not at the time of the service of said Garnishee Process upon them, have not since had and have not now any goods, chattels, moneys, credits, property or effects in their possession, custody or control, belonging to said defendants "The Mineral Point Rail Road Company" or in which the said Mineral Point Rail Road Company are, were or have been since said service, in

any manner interested.

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And these Respondents further answering say, that the said Plaintiff ought not by reason of their indebtedness above stated, to have or recover a judgment against them, these Respondents. Because they say, that they are informed and believe and so charge the fact to be, that the said "The Mineral Point Rail Road Company" on the first day of January A. D. 1856 by their Deed of that date duly executed, acknowledged and delivered granted bargained, sold, transferred and conveyed unto David R. Martin and Lucien D. Coman of the City of New York, their successors and assigns the Railroad of said Company, then constructed and to be constructed from the Village of Mineral Point in the State of Wisconsin to the Village of Warren in the State of Illinois, together with all and singular the property real and personal, tolls income, issues, properties, rights, credits & franchises pertaining to said Rail Road. To have and to hold the same unto the said David R. Martin and Lucien D. Coman, their successor and assigns upon the Trusts in said Deed declared, which said Deed was duly recorded in the Records Office of the Counties of Iowa and Lafayette in the State of Wisconsin and in the Records Office in and for the County of St. Louis in the

10)

State of Illinois, the same being the Counties through which said Rail Road was laid out and constructed or in process of construction.

And these Respondents further answering say that they are informed and believe and so charge the fact to be, that said Mineral Point Rail Road Company, afterwards and on the sixth day of June A.D. 1857 in pursuance of a covenant of further conveyance and assurance in the said Deed contained did by their certain other Deed in writing duly executed, acknowledged and delivered, grant, bargain, sell, transfer, release, quit claim, convey and confirm unto the said David R. Martin and Lucien D. Comon, the Trustees in said first Deed mentioned and to the survivor of them, his successor or successors in said Trust all and singular the Corporate property, tolls, income, issues, profits, rights, credits and franchises in said former Deed mentioned or referred to, also the Locomotives, Passenger cars and freight cars, in said second deed mentioned and particularly all the property acquired by said Mineral Point Rail Road Company, subsequently to the date of said first mentioned Deed. To have and to hold the same unto the said David R. Martin and Lucien D. Comon and to the survivor of them, his successor and successors in said Trust

11) and assigns upon the Trusts declared in said first mentioned Deed and especially for the benefit and security of the holders of certain Bonds in said first Deed described, that is to say: Six hundred and forty (640) Bonds of the said The Mineral Point Rail Road Company, each for the Sum of Five Hundred Dollars (\$500) all bearing date the first day of January A. D. 1856, which said Bonds are, as these Respondents are informed and believe, not yet due and are still outstanding in the hands of bona fide holders and wholly unpaid. which said last mentioned Deed was duly recorded in the County aforesaid and copies of ^{the} said Deeds are hereto attached as a part of this answer, marked "Exhibits B" and "C" to which they refer for greater particularity.

And these Respondents further answering say that they had knowledge of the execution of said Deeds before the service of process on them in this case and that they are advised and verily believe, that by the Deeds aforesaid all indebtedness aforesaid accrued and to accrue from these Respondents to the said "The Mineral Point Rail Road Company" and all claims of the said "The Mineral Point Rail Road Company" for percentage or otherwise against these Respondents, growing out of their contract aforesaid

13)

State of Illinois

County of Cook } J^r. William M. Larrabee, being first
 duly sworn, deposes and says, that he is the Secretary of
 the Galena and Chicago Union Rail Road Company
 the Respondents in the within and foregoing answer named.
 and that he has charge of the books and papers of said
 Respondents and is familiar with all their business trans-
 actions, that the foregoing answer of the said Respondents
 has been read to him and he knows the contents thereof.
 That the matters and things therein stated as of the
 knowledge of said Respondents are true and as to those
 matters and things, stated upon representations and belief
 he believes them to be true.

Subscribed and sworn to before me

this 15th day of March A.D. 1859 } W. M. Larrabee



Moses Mallett
 Notary Public

Exhibit "A"

Copy of Contract

between the Mineral Point, Ill. Contract & G. & C. U. R. R. Companies.

Articles of Agreement made and entered into
 this tenth day of October A.D. 1853 by and between
 the Mineral Point Rail Road Company by Mess^{rs}
 M. Strong President of said Company, party of

the first part and the Illinois Central Rail Road Company by William P. Burnall President and the Galena and Chicago Union Rail Road Company by John B. Turner President, parties of the second part.

The said parties hereby covenant and agree as follows:

The said party of the first part in consideration of the covenants and agreements of the said parties of the second part hereinafter contained, covenants and agrees that it will construct and fully equip with a sufficient amount of rolling stock to transact all the business that may be offered for transportation over it a good substantial single track Rail Road from Mineral Point in Wisconsin to and intersecting the Illinois Central Rail Road at or near Warren, So Daviess County Illinois, within two years from this date. Said Road to be laid with "T" rail of improved pattern, to be not less than fifty six pounds to the linear yard and be constructed in a substantial workmanlike manner And the said party of the first part further covenants and agrees that for the period of twenty years from the first day of January next, it will transport all the freight which shall pass in a southerly direction over the Mineral Point Rail Road or any part of it so far as it shall have the legal right to control the destination of such freight to the Illinois Central Rail Road at or near Warren

15)

and that it will during the said term of twenty years, by giving through tickets to passengers and by the exercise of all other means, which it legally can do, transport all passengers going southerly, over the Mineral Point Rail Road or any part of it to the Illinois Central Rail Road and that it will at all times so regulate its tariff of charges for freight and passengers as to throw all the business of the Mineral Point Road in both directions upon the Roads of the parties of the second part, so far as the same may be practicable legally.

And the said party of the first part covenants and agrees, that it will not during the period of twenty years aforesaid enter into any contract, agreement or stipulation with any other Rail Road Company in reference to the transportation of freight or passengers without the consent of said parties of the second part.

The said parties of the second part covenant and agree to and with the said party of the first part, that in consideration of the covenants and agreements of the party of the first part herein contained, they will during the term of twenty years from the first day of January next, pay to the said party of the first part in the manner hereinafter stipulated such sums as will in the manner hereinafter specified secure to the said party of the first part a net annual

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income equal to eight per centum per annum on the total gross cost of their Rail Road and its equipments including all incidental expenses, salaries, commissions interest and contingencies, provided such gross cost shall not exceed the sum of Seven hundred thousand Dollars, then eight per centum upon said sum of seven hundred thousand Dollars, such payment to be made semiannually at such times as the said parties shall make up their accounts.

That to determine the amount to be paid by said parties of the second part as aforesaid, the net earnings of the Mineral Point Rail Road, resulting from the business done exclusively upon it, shall be first ascertained and to ascertain that all the incidental expenses of operating the Road and the expenses of keeping it in repair shall be deducted from its annual gross receipts and it is agreed, that such incidental operating expenses and expenses of repair shall not in the whole exceed fifty percent of the actual gross receipts, that in addition to the sum so received by the said party of the first part, from the net earnings of its road, the said parties of the second part shall semiannually pay as aforesaid to the said party of the first part such a proportion or percentage of the gross amount received by said Companies respectively composing the said party of the second part

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for the transportation of freight or passengers which shall pass from the Mineral Point Rail Road over the Illinois Central Rail Road or over the Galena and Chicago Union Railroad or over any part of said Roads, or which shall pass from said Roads or either of them over the Mineral Point Railroad or any part of it, as well when added to the net earnings of the Mineral Point Rail Road to be ascertained as aforesaid, amount to eight per cent per annum on the aforesaid gross cost of the said Mineral Point Rail Road, which cost shall not exceed Seven Hundred thousand Dollars, as aforesaid. Provided however that this contract shall in no event involve the said party of the second part in the payment of more than thirty per centum on the aforesaid receipts from the transportation of freight or passengers to or from the Mineral Point Railroad as aforesaid.

It is further covenanted and agreed, that the said parties of the second part shall not pay to the said party of the first part any proportion or percentage of its receipts arising from the transportation of freight or passengers, passing over the Illinois Central Rail Road or the Galena and Chicago Union Railroad, ^{to or from the Mineral Point Rail Road} which shall go to or come from any point on the Mineral Point Railroad within eight miles of the Illinois Central Railroad.

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The said party of the first part further covenants and agrees, that it will at all times during the term of twenty years aforesaid, keep and maintain as high a tariff of charges for the transportation of freight and passengers as the average rates charged by the said parties of the second part on the same freight and passengers.

It is further mutually stipulated and agreed between the contracting parties, that either party shall be allowed to have freight transported in their own freight cars over the road of the other party and that such party shall be entitled to a reasonable compensation for the use of its cars, each party repairing all damages to cars that occur on its own road.

It is further stipulated and agreed, by and between the said contracting parties, that the stipulations herein contained, providing for the payment of percentage on freight and passengers by the parties of the second part to the party of the first part shall only apply to one hundred and twenty miles of the road of the Illinois Central Rail Road Company from the point of junction with the Illinois Central Railroad.

In Witness whereof this instrument is executed in the names and behalf and under the Seals of said several Companies by their respective

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Presidents, who have been specially authorized thereto by their respective Boards of Directors.

Signed:

Mineral Point Rail Road Co.

(seal)

By Moses M. Strong President

Signed:

Illinois Central R. R. Co.

(seal)

By W. P. Burrall President

Signed

Galena & Chicago Union R. R. Co.

(seal)

By John B. Turner President

Exhibit "B"

This Indenture made the first day of January in the year of Our Lord One Thousand Eight Hundred and Fifty Six between the Mineral Point Rail Road Company, a corporation duly constituted by the Laws of the State of Wisconsin party of the first part and D. R. Martin and L. D. Coman of the City of New York parties of the second part.

Witnesseth, that whereas the said Mineral Point Rail Road Company in performance of their corporate powers are now engaged in constructing a Rail Road from the Village of Mineral Point in Iowa County in the State of Wisconsin to the Village of Warren

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in the County of Jo Daviess in the State of Illinois for that purpose in part, have resolved to raise a sum of money by loan for the purpose of purchasing iron rails and machinery therefor and of aiding in the construction of said Rail Road and putting the same into operation and for the objects and purposes aforesaid and in order to secure the payment and satisfaction of the moneys to be raised as aforesaid it is proposed and intended by the said party of the first part, to execute, issue and deliver Six hundred and forty bonds or writings obligatory, each for the Sum of Five hundred Dollars, to be numbered respectively from One (1) to Six hundred & forty (640) inclusive, which bonds are of even date herewith and in the following form:

No. United States of America
State of Wisconsin \$500
Mineral Point Rail Road Company.

Convertible Mortgage Bond: Secured on all their Road and Property and by a Special annual income of \$56000, guaranteed jointly by the Illinois Central and Galena and Chicago Union Rail Roads as per Articles of Agreement dated October 10th A.D. 1853 and March 5th A.D. 1855

Know all men by these presents that the Mineral Point Rail Road Company are indebted to D. R. Martin and L. D. Coman of the City of New York or bearer

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in the Sum of Five Hundred Dollars lawful money of the United States of America, which sum the said Company promises and agrees to pay to D. R. Martin & L. D. Coman or bearer hereof on the first day of January in the year of our Lord One thousand Eight Hundred and Eighty one at the Bank of the Manhattan Company in the City of New York with interest thereon at the rate of Eight per centum per annum payable semi annually by the said Company at the said Bank of Manhattan Company on the first day of January and July in each year on the presentation and surrender of the annexed coupons as they severally become due And in the case of the nonpayment of interest for any half year when demanded as aforesaid and the same remaining in arrear for sixty days thereafter, the principal shall become due and payable on demand from and after such default with interest thereon accrued and in arrear And the said Rail Road Company also agree to transfer to the holder hereof at any time within ten years hereafter, when the holder elects to receive the same on delivery of this obligation and the unpaid coupons or interest warrants annexed to the trustee or treasurer of said Company five shares of One hundred dollars each in the Capital Stock of said Company in exchange for and satisfaction of this obligation. This is one of a series of Bonds

LB

to redeem the whole Three hundred and twenty thousand Dollars, secured by said Mortgage within twenty five years from the date of said bonds and before the same fall due. This Bond shall not be deemed obligatory or valid until the proper certificate hereon of the above named Trustees or their successors, shall be duly signed by them. This Bond may pass by delivery or may be registered on the books of the Company in the Cities of Milwaukee or New York at the option of the holder after which no transfer shall be valid unless it be registered as aforesaid and a certificate thereof endorsed on the Bond by the Treasurer or other officer of the Company designated for that purpose. Provided however that it may be transferred on said book to bearer and thereafter pass by delivery.

In Witness whereof the said Company have caused their Corporate Seal to be hereunto affixed and their President to sign and their Secretary to countersign the same and have also caused the coupons annexed to be signed by the Secretary this first day of January in the year of Our Lord One Thousand Eight Hundred and Fifty six at their Office in the Town of Mineral Point Wisconsin.

President
Secretary

24) This is to certify that the Mineral Point Railroad Company have executed to us a deed of trust or Mortgage conveying the entire line of road from Mineral Point Wisconsin to Warren in Illinois with all its appurtenances as specified in said instrument in trust for the benefit of the holders of their bonds of similar tenor to the within to be issued to an amount not exceeding three hundred and twenty thousand dollars with power to take possession of and use or sell the same or any part thereof after a default in paying the interest or principal of said bonds or any payment to the sinking fund and that the within is one of several bonds described in and secured by said deed and that we have caused the said deed to be recorded in the several Counties through which the said Road passes.

} Trustees.

And whereas the said Company are of the opinion that the said Bonds amounting to Three Hundred & twenty thousand Dollars as aforesaid would be rendered more valuable and available by creating an additional security for their ultimate payment and redemption by means of a sinking fund to be established for

25)

that purpose by annually setting apart the Sum of Five thousand four Hundred Dollars the same being a part of the Sum of Fifty six thousand dollars guaranteed as an annual income by the Galena and Chicago Union Rail Road Company and the Illinois Central Rail Road Company to the said Mineral Point Rail Road Company which Sum of Five Thousand four Hundred Dollars together with the accumulation of interest will form a capital sufficient to pay and satisfy the principal and interest of the said Bonds amounting to Three hundred and twenty thousand dollars aforesaid on or before the maturity thereof which said sum of Five thousand four hundred Dollars, the said sinking fund above referred to was by resolution of the said Board of Directors irrevocably set apart and appropriated for the purpose and in the manner above specified.

Now therefore this Indenture witnesseth that the said Mineral Point Rail Road Company in consideration of the premises and in order to secure the payment of the said bonds and interest thereon accruing and in consideration of One Dollar paid to the said Company by the said party of the second part at and before the sealing and delivery of these presents

the receipt whereof is hereby acknowledged, have
 granted bargained sold transferred and convey-
 ed and by these presents do grant bargain sell
 and convey to the said parties of the first part
 their successor or successors in the trust hereby
 created all their said Road from the Village
 of Mineral Point, Wisconsin to the Village of
 Warren in the State of Illinois being thirty
 two and two thirds miles of Road constructed
 and to be constructed together with all and ~~singular~~
 the Railways land procured or occupied for
 right of way, together with bridges, fences,
 privileges and real estate owned by said Comp.
 any for the purpose of said Road or which
 may hereafter be acquired or owned by them and
 all the tolls, income, issue and profits to be
 had from the same and all lands used for
 and occupied by depots or stations with all
 buildings standing thereon or which shall be
 procured therefor together with all locomotives,
 engines, tenders, passenger cars, and freight
 cars, shops, tools and machinery now owned
 or hereafter to be acquired by said Company
 and in any way belonging or appertaining to
 said ^{Rail} Road now constructed and to be constructed
 including all its property real and personal

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pertaining to said Rail Road and all its rights credits and franchises thereunto appertaining. But nothing herein contained shall be so construed as to prevent the said party of the first part from selling, hypothecating or otherwise disposing of County or Town bonds or other securities received in payment of stock or otherwise or of any lands or other property of said Company not necessary to be retained for the roadway, depots and stations, nor required for the construction or convenient use of their Rail Road, nor from collecting moneys due said Company on stock subscription or otherwise nor shall anything herein contained be so construed as to prevent the said party of the first part from collecting and appropriating towards the construction use and repair of their said Road.

To have and to hold the said premises and every part thereof with the appurtenances unto the said parties of the second part their successors in said trust and assigns upon the following trusts, that is to say:

In case the said party of the first part shall fail to pay the principal or any part thereof or any of the interest on any of said bonds

at any time when the same may become due and payable according to the tenor thereof when demanded or in case the said Company shall for and during any one year until the said sum of Three hundred and Twenty thousand dollars together with the interest thereon shall be fully paid and satisfied neglect or fail to pay to the said sinking fund the said sum of Five thousand four hundred dollars, then after such default in the payment of any part of said principal or interest on any part of such sum to said sinking fund and the same remaining in arrear, then upon request of the holder of such bond the said parties of the second part, their successors in said trust or assigns may enter into and take possession of all or any part of said premises and as the Attorneys in fact or agents of the said party of the first part by themselves or agents or substitutes have use and employ the same making from time to time all needful repairs alterations and additions thereto and after deducting the expenses of such use, repairs alterations and additions apply the proceeds thereof to the payment of the principal and interest of all said bonds remaining unpaid and to the supplying of any deficiency in the said sinking fund according to the said resolution creating and

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setting apart the same which may then exist.
Or the said parties of the second part - their successors or assigns in said trust at their discretion may or on the written request of the holders of at least one half of the said bonds then unpaid and unconverted into stock, shall cause the said premises or so much thereof as shall be necessary to pay and discharge the principal and interest of all such of said bonds as may then be unpaid and unconverted as aforesaid to be sold at public auction in the City of New York giving at least forty days notice of the time place and terms of such sale and of the specific property to be sold by publication thereof in two newspapers published in said City ~~of New York~~ of good circulation therein and by such other publication as may be required by law and execute to the purchaser or purchasers thereof a good and sufficient deed of conveyance in fee simple for the same which shall be a bar against the party of the first part their successors and assigns and all persons claiming under them of all right interest claim in or to said premises or any part thereof.
And the said Trustees after deducting from the proceeds of said sale the costs and expenses thereof and of managing said property, apply

so much of the proceeds as may be necessary to the payment of said principal and interest due or unpaid on said bonds and to the supplying of any deficiency in said sinking fund and shall restore the residue thereof to the party of the first part.

It being hereby expressly understood that in no case shall any claim or advantage be taken of any valuation or appraisement or extension laws by the said party of the first part nor any injunction or stay of proceedings or any process be applied for or obtained by them to prevent such entry or sale as aforesaid.

And the said party of the first part hereby covenant for the consideration aforesaid to execute and deliver any further reasonable and necessary conveyance of the premises or any part thereof to the said parties of the second part their successors in said trust and assigns, for more fully carrying into effect the objects here particularly for the conveying of any property subsequently to the date hereof acquired by said party of the first part and comprehended in the description contained in the premises.

And the said party of the first part hereby further covenant as aforesaid that the

money borrowed for the purpose aforesaid upon the security of said bonds shall be faithfully applied to the purpose of purchasing and the transportation of iron rails and machinery and for the construction and extension of said road and the expenses attending such loan and purchase, and that said rail and machinery so purchased shall be transported and used with due diligence in the construction, finishing and furnishing of said Rail Road.

It is hereby mutually agreed and these presents are upon this express condition that on payment of principal and interest of said bonds or the conversion thereof into stock in manner aforesaid the estate hereby granted to the said parties of the second part shall be void and the right of the premises hereby conveyed shall revert to and revert in the said party of the first part without any acknowledgment of satisfaction, reconveyance, recentry or other act.

And it is also further mutually agreed that the said parties of the second part their successors in said trust and assigns shall only be accountable for reasonable diligence in the management thereof and shall not be responsible for the acts of any agent employed by them.

when such agent is selected with reasonable discretion. And that said parties of the second part their successors in ^{said} trust or assigns shall be entitled to receive proper compensation for any labor or service performed by them in the discharge of their trust in case they shall be compelled to take possession of said premises or any part or manage the same.

And it is further mutually agreed that in case of the death, mental incapacity or resignation of both the said Trustees all their estate right, interest power and control in the premises shall be divested cease and determine and the same shall from thenceforth for the purpose aforesaid be vested in and all and singular the trusts and duties herein before and enumerated shall devolve upon such person as shall for that purpose be appointed by the Supreme Court of Wisconsin as hereinafter provided for and in such case the said party of the first part shall or in default to take proceedings therefor for thirty days, the holders of a majority of said bonds may apply to the Supreme Court of the State of Wisconsin to appoint a Trustee being resident of the City of New York to supply the place of the said parties of the second part and thereupon such new Trustee shall become

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vested for the purpose aforesaid with all the rights and interests hereby conveyed to or vested in the said parties of the second part, without any further assurance or conveyance of the same but if the same shall be necessary both or either of the parties hereto shall execute any necessary releases or conveyances for that purpose.

In Witness whereof the said party of the first part have caused their Corporate seal to be hereto affixed and these presents to be subscribed by their President the day and year first above written he being thereto specially authorized.



Mineral Point Rail Road Company

By Parley Eaton, President.

Scaled and delivered in presence of

Levi Sterling

George Henry

State of Wisconsin

County of Iowa

} ss. Be it remembered that in this Eighteenth day of April in the year of our Lord One Thousand Eight Hundred and fifty six before me James Hutchinson Clerk of the Circuit Court in and for Iowa County, Wisconsin aforesaid, duly authorized to take acknowledgments of deeds, personally came Parley Eaton Esq President of the Mineral Point Rail Road Company

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to me well known, who being by me duly sworn did depose and say, that he is President of the Mineral Point Rail Road Company, that he knows the Corporate seal of said Company, that the Seal affixed to the foregoing conveyance is the Corporate Seal of said Company And the said Parley Eaton Esqr. President did then acknowledge that he had voluntarily executed the said conveyance and affixed thereto the said Corporate Seal of said Company as and for the act and deed of the said Company in pursuance of a special authority contained in a resolution adopted by said Company.



In Witness whereof I have hereunto set my hand & affixed the seal of said Court this Eighteenth day of April A. D. 1856.

James Hutchinson Clerk
Circuit Court Iowa County Wisconsin.

State of Wisconsin }
Iowa County Wis. } I Joseph Lean Register of
Deeds of said County do hereby certify that the
above and foregoing written instrument was received
for Record on the Eighteenth day of April A. D. 1856
at 2 P. M. and is recorded in Vol. 6. of Mortgages
on pages 520. 521. 522. 523. 524. 525. 526 & 527.

Joseph Lean, Register of Deeds
Iowa Co. Wis.

"Exhibit. C."

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This Indenture made the Sixth day of June
in the year One Thousand Eight Hundred and
Fifty Seven between the Mineral Point Rail
Road Company, a corporation created under
and by virtue of an Act of the Legislature of the
State of Wisconsin, of the first part and David
R. Martin and Lucien D. Coman of the City
of New York, parties of the second part Witnesseth
Whereas by a certain Indenture of Mortgage duly
made executed and delivered by said party of the
first part hacto, bearing date the first day of
January One Thousand Eight Hundred and
Fifty Six recorded on the Eighteenth day of
April A. D. 1856 in the Office of the Register of
Deeds of Iowa County Wisconsin in Volume 6
of Mortgages on page 520 pc. also on the twenty
first day of April 1856 in the Register's Office
Lafayette County in said State in Volume 5
of Mortgages on page 223 pc. and on the twenty
fifth day of April A. D. 1856 in the Office
of the Clerk of the Circuit Court in and for
St. Davids County in the State of Illinois in
Book "I" of Mortgages pages 538 pc. the said
party of the first part did for the purpose of

36) securing the payments of the bonds mentioned in said Indenture, grant bargain, sell, transfer and convey to the said parties of the second part their successor or successors in the Trust thereby created the Rail Road of said Company constructed and to be constructed from the Village of Mineral Point in said State of Wisconsin to the Village of Warren in said State of Illinois together with all and singular the property real and personal, tolls, income, issues properties rights credits and franchises pertaining to said ^{Rail} Road in said Indenture of Mortgage mentioned or referred to, it being however declared that nothing therein contained should be so construed as to prevent said party of the first part from selling hypothecating or otherwise disposing of County or Town Bonds or other securities received in payment of Stock or otherwise or any lands or other property of said Company not necessary to be retained for the road, way, depot and stations nor required for the construction or convenient use of their Railroad nor from collecting moneys due said Company on Stock, subscriptions or otherwise nor to prevent the said party of the first part from collecting and appropriating toward the construction, use and repairs of their said Road To Have and to Hold the said premises and every part thereof with the appurtenances unto the said parties of the second part their

successors in said trust and assignees upon the trusts
 in said Indenture of Mortgage declared as by reference
 thereto and to the aforesaid records thereof will more
 fully and at large appear and to which reference is
 hereby made for certainty as to all the contents and pro-
 visions of said Indenture And whereas the said party
 of the first part did by said Indenture of Mortgage
 covenant for the consideration mentioned therein to exec-
 ute and deliver any further reasonable and necessary
 conveyance of the premises therein described or any part
 thereof to the said parties of the second part their
 successors in said trust and assignees for more fully
 carrying into effect the objects of said Indenture
 particularly for the conveying of any property subsequent-
 ly to the date thereof acquired by the said party of
 the first part and comprehended in the description
 contained in said premises And whereas since the
 execution and delivery of said Indenture of Mortgage
 the said party of the first part has been engaged
 in the construction and equipment of said Railroad
 in erecting its buildings and fixtures and supplying
 materials and machinery for said Road and has
 purchased and now is the owner of three locomotives
 called the "John C. Fremont" the "Mineral Point"
 and the "Warren" and also three passenger cars
 and forty freight cars used upon said Rail Road.

Witnesseth

Now this Indenture, that in compliance with said covenant for further assurance and in pursuance of a Resolution of the Board of Directors of said party of the first part passed the Sixth day of June A. D. 1857 authorizing the execution and delivery of these presents and also in consideration of the sum of One Dollar paid by said parties of the second part to said party of the first part before the sealing and delivery thereof, the receipt whereof is hereby acknowledged the said party of the first part hath granted bargained sold transferred released quit claimed and conveyed and by these presents doth grant bargain sell transfer release quit claim convey and confirm to said parties of the second part trustees in said Indenture of Mortgage and to the survivor of them, his successor and successors in said trust all and singular the Corporate property tolls income issues, profits rights credits and franchises in said Indenture of Mortgage mentioned or referred to. Also the locomotives, passenger cars and freight cars herein above mentioned and particularly all the property acquired by said party of the first part subsequently to the date of said Indenture of Mortgage and comprehended in the description contained therein.

To Have and to Hold and all and singular the said premises and every part thereof with the

appointances unto said parties of the second part and to the survivor of them, his successor and successors in said trust and assigns upon the trust created and declared in and by said Indenture of Mortgage and especially for the benefit and security of the holders of the bonds therein mentioned.

And it is further witnessed and declared by said parties to these presents that the declaration in said Indenture of Mortgage quoted in the above recital does not express their true intent and meaning, but that it was the design and intent of said parties in executing said Indenture, that said parties of the first part should not and it is hereby declared and agreed that said party of the first part shall not be permitted to sell, hypothecate or dispose of any part of the property or effect mentioned in said Indenture of Mortgage except upon the condition that said Company shall diligently proceed to collect and apply all means that may be acquired by such sale, hypothecation or disposition to the construction and equipment or repair and improvement of its said Railroad and provided also that no default shall be made in the payment of the interest or principal of any of the bonds in said Indenture of Mortgage described and that said Indenture of Mortgage shall be so read and constructed.

And it is further witnessed, declared and agreed, by and between said parties hereto that nothing in said Indenture of Mortgage contained shall be so construed as to prevent said parties of the second part, their successors in said trusts or assignees from entering into and taking possession of said mortgaged premises and the proceeds thereof immediately after said party of the first part shall fail to pay the principal or any part thereof or any of the interest on any of said bonds at any time when the same may become due and payable according to the tenor thereof when demanded, nor from selling said mortgaged premises or so much thereof as shall be necessary to discharge the principal and interest of said Bonds in arrears, whenever requested by the holders thereof as provided in said Indenture of Mortgage.

And it is further mutually agreed, that whenever said mortgaged premises shall be sold for the payment of the principal or interest of said Bonds or of any part of either, that such part of said premises as are or may be within the States of Wisconsin or Illinois shall be sold at such time and place and in such manner as shall be authorized by the laws of said States respectively any thing in said Indenture of Mortgage contained to the

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contrary notwithstanding, upon the sale of said premises
or any part thereof pursuant to either of the trusts
contained in said in said Indentures of Mortgage
that said parties of the second part and the survivor
of them, his successor and successors in said trust
and receiving the written request of the holders of a
majority in amount of said unpaid and unconverted
bonds are and each of them is hereby fully authorized
and empowered to purchase said premises for the account
of all the holders of said bonds then unpaid and
unconverted into stock for any price or sum at which
the same may be struck off not exceeding the full
amount that may then be owing upon said unpaid
and unconverted bonds with interest thereon and the
costs and expenses of the foreclosure of said Mortgage
and the sale of said premises and to take a conveyance
thereof and hold the same upon such trust for the
benefit of all the holders of said unpaid and
unconverted bonds as may be authorized by law
and it is hereby further declared that the relative
interest of the several bond holders in said premises
when purchased shall be in the proportion of the
amount due or owing upon said bonds to each
holder thereof respectively and the said party of the
first part doth covenant and agree with said
parties of the second part and the survivor of them

his successor or successors in the trust for the consideration expressed herein and in said Indenture of Mortgage to execute, acknowledge and deliver all and every such further deeds, conveyances and assurances in the law for the further and more effectual conveyance and assuring all and singular the premises heretofore mentioned to said parties of the second part and the more perfectly to convey into effect the object of said Indenture of Mortgage and particularly for the conveyance of any and all property that may be acquired by said party of the first part subsequent to the date hereof and comprehended in the description of the premises contained in said Indenture of Mortgage as by said parties of the ^{second} ~~first~~ part or the survivors of them, his successor or successors or the council of them or either of them shall be reasonably desired, advised or required.

In Witness whereof the said party of the first part hath caused these presents to be subscribed in its corporate name by the Presidents and its Corporate Seal to be herewith affixed the day and year first above written and the said parties of the second part hands and affixed their seals hereto.

Sealed and delivered in

the presence of

J. J. Crawford
M. Corwin

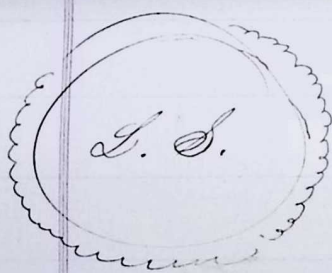
Parley Eaton Pres.

Mineral Point R. R. Co.

Attest: M. J. Henry, Sec.
Mineral Point R. R. Co.



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State of Wisconsin }
County of Iowa } I, Mark Corvin Clerk of
the Circuit Court within and for the County of Iowa
do hereby certify that on this day the 6th of June
A.D. 1857 personally appeared before me Pauley
Eaton President of Mineral Point Railroad Company
to me known to be the person who executed the fore-
going deed or instrument and acknowledged that
as such president he executed said Instrument for
the uses and purposes therein mentioned And I
further certify that the said instrument is executed
in conformity with the Laws of this State.



In Testimony whereof I have hereunto set
my hand and affixed the seal of said
Court at my Office in the City of
Mineral Point in the County aforesaid
the day and year first herein written.

M. Corvin, Clerk

And afterwards, to wit: on the 12th day of May
A. D. 1859 David R. Moulton & Lucien D. Conant
claimants by Messrs Scates McAllister & Jewett
their Attorneys filed in the Court aforesaid in said
garnishee proceedings their certain Interpleader in
words and figures following to wit:

144 Interpleader of Martin & Coman.

State of Illinois
County of Cook J.
William Menzies

In the Cook County Circuit
Court of the March Term A.D. 1859.

vs
The Mineral Point Railroad Company

} Attachment.

The Interpleader of
David R. Martin and Lucien D. Coman for
the Property, money, rights, credits and
effects, garnished in the above entitled
cause, in the possession of The Galena and
Chicago Union Railroad Company.

And now come David R. Martin and Lucien D.
Coman by Isates M^cAllister & Jewett their Attorneys
come and interplead in this suit for the property, money,
rights, credits and effects, sought to be recovered by
the said Plaintiff under the Garnishue Process issued
herein and served upon "The Galena and Chicago
Union Railroad Company" and which it is alleged
by the said Plaintiff belonged to the said Defendants
"The Mineral Point Railroad Company" and say
that the said Plaintiff ought not to have or recover
the said property, money, rights, credits and effects
or any or either of them or any part of the same

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 Because they say, that before the service of the said
 Garnishee Process to wit, on the 1st day of January
 A. D. 1856 the said Defendants "The Wisconsin Point
 Rail Road Company" by their Deed, duly executed
 acknowledged and delivered, sold transferred and
 assigned to them the said David R. Martin and
 Lucien D. Coman all of the said property money
 rights, credits and effects, so sought to be recovered
 by the said Plaintiff under the said Garnishee
 Process as aforesaid and all the income and profits
 of the same And they the said David R. Martin
 and Lucien D. Coman aver, that they have been
 ever since said sale and transfer as aforesaid and
 still are the assignees and owners of said property,
 money, right, credits and effects and of the income
 and profits thereof, of all which the said Garnishee
 before the time of the service of the said Garnishee Process
 had due notice. And this they the said David R.
 Martin and Lucien D. Coman are ready to verify
 Where^{fore} ~~they~~ they pray Judgment and that the said
 property money, rights, credits and effects and the
 income and profits thereof may be awarded to them.

Isates McAllister & Jewett
 Attys for Claimants.

And afterwards to wit: on the 20th day of December A. D. 1860 the said Plaintiff by his said Attorneys filed in the Court aforesaid, in said cause, his certain Replication to the answer of said Garnishee in words and figures following to wit:

Replication to Answer of Garnishee

State of Illinois }
County of Cook } p.
William Menzies

In the Cook County
Circuit Court of the March Term
A. D. 1859.

vs
The Mineral Point
Rail Road Company }

The Replication of William Menzies to the answer of The Galena and Chicago Union Rail Road Company to the Garnishee Process served upon them in the above entitled cause.

The said Plaintiff for reply to the said answer of the said The Galena and Chicago Union Rail Road Company alleges, that at the time of the service of the garnishee process in this case upon them, the said The Galena and Chicago Rail Road Company had in their possession custody and control moneys and effects belonging to the said defendant The Mineral Point Rail Road Company and were indebted to the said defendant The Mineral Point Rail Road Company

therefore in the sum of about Ten thousand Dollars

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And for further reply to said answer the said Plaintiff alleges that the deed mentioned and described in the said answer as having been made executed and delivered by the said The Mineral Point Rail Road Company to David R. Martin & Lucien D. Coman did not convey to said Martin & Coman any interest ^{the} whatever in said sum and sums of money in the hands of the said The Galena & Chicago Union Rail Road Company under the contract referred to in the said answer as being thereto annexed and marked: Exhibit "A" nor did the said deed convey to or vest in the said Martin & Coman or either of them any interest in or right to any indebtedness from the said The Galena and Chicago Union Rail Road Company to the said The Mineral Point Rail Road Company the defendant herein and the said Plaintiff denies each and every of the allegations in the said answer relating thereto.

And for further reply to said answer the Plaintiff alleges that the said defendant did not under or by virtue of a covenant for further assurance in the said deed heretofore mentioned conveyed nor in any other manner by deed in said answer alleged to have been made executed and delivered on the sixth day of June A.D. 1857

not in any other manner transfer or assigns to the
 said David R. Martin and Lucien D. Coman
 or either of them the indebtedness accrued and to
 accrue from the said The Galena & Chicago Union
 Rail Road Company to the said The Mineral Point
 Rail Road Company the Defendant in this cause
 or any part or portion thereof growing out of,
 resulting accruing or arising from the aforesaid
 Contract, referred to in said answer as being there,
 unto annexed and marked: Exhibit "A". And
 the said Plaintiff denies each and every allegation
 in said answer contained relating to the said debt
 alleged in said answer, to have been made and
 executed on the sixth day of June 1857 and
 the effect thereof and alleges that no part of the
 indebtedness from said The Galena & Chicago
 Union Rail Road Company to the said defendant
 for moneys received by the said The Galena &
 Chicago Union Rail Road Company for the said
 defendant under the Contract referred to in said
 answer as aforesaid was conveyed transferred or
 assigned to the said David R. Martin & Lucien
 D. Coman or either of them but that the same
 remained and was the property of the said defendant
 The Mineral Point Rail Road Company who had
 the right to demand have and receive the same

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 from the said The Galena and Chicago Union
 Rail Road Company under and by virtue of the
 terms of contract referred to in said answer and the
 said David R. Martin & Lucien D. Coman had
 and have no right whatever to have demand or
 receive from said The Galena and Chicago Union
 Rail Road Company the money held and received
 by the said Galena & Chicago Union Rail Road
 Company for the said defendant or owing by them to
 the said defendant under the contract referred to
 in said answer.

And the Plaintiff further alleges, that the deed
 in said answer alleged to have been made executed
 and delivered by the said The Mineral Point Rail
 Road Company the defendant herein to said
 David R. Martin & Lucien D. Coman were and
 are fraudulent and void, ^{as} to the creditors of the
 said The Mineral Point Rail Road Company.

Smith and Dewey
 Plaintiffs Attorney.

And afterwards to wit: on the 20.th day of
 December A. D. 1860 said Garnishee by its said
 Attorneys filed in the Court aforesaid in said
 cause its certain additional answer in words
 and figures following, to wit:

Additional Answer of Garnishee.

Cook County Circuit Court
February Term A.D. 1860.

William Menzies

vs.

Mineral Point Railroad Company } Attachment

The further and additional
Answer of the Galena and Chicago Union Rail
Road Company Garnishee of the said Defendant
filed herein by leave of Court.

And these Respondents for a further
and additional answer in the above cause say: That
they are informed and believe and charge it to be true
that the said Defendant the Mineral Point Rail
Road Company has never at any time paid the
interest upon the Bonds secured or intended so to be
by the Trust Deed in the former answer of these
Respondents set forth - And that at the time of the
service of said Garnishee Process upon these Respond-
ents in this cause a large amount of said interest
was in arrear and unpaid and has ever since so
remained.

And these Respondents further answering upon
information and belief state that on or about

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the Eleventh day of January A.D. 1856 and prior to the actual delivery and sale of the said Bonds aforesaid by the said The Mineral Point Rail Road Company, the Board of Directors of said Company passed and caused to be entered upon the Records of their Proceedings a Resolution as follows, to wit:

" Resolved, that the Income of \$50000, guaranteed by the Galena & Chicago Rail Road Company and the Illinois Central Rail Road Company be and the same is hereby irrevocably pledged as follows viz: The sum of \$45000 to the payment of the interest on \$320000 of the first Mortgage Bonds of \$150000 of the second Mortgage Bonds held by the County of Iowa and of \$100000 of the second Mortgage Bonds given to Alvan Wilkins and the balance of \$10400, to be applied as a sinking fund for the payment at maturity of the Bonds as follows viz: \$5400 to the first Mortgage Bonds and \$5000 to the \$100000 of second Mortgage Bonds above specified as given to Alvan Wilkins - "

And these Respondents are advised and so insist that by the said Resolution and the Bonds and Deeds of Trust set forth and described in their former answer herein, not only was the interest upon said bonds to be paid out of the Indebted,

ness of these Respondents and the said The Illinois Central Rail Road Company under their Contract with said Defendant of the 10th day of October A. D. 1853 but the sum of \$ 5400 per annum was expressly and irrevocably set apart by said Mineral Point Rail Road Company as a sinking fund for the ultimate redemption and payment of the principal Sum of \$ 320.000 being the Principal of the Bonds aforesaid secured or intended to be secured by the said Deeds of Trust to Coman & Martin aforesaid.

And these Respondents further answering upon information and belief, state that the whole accumulated Indebtedness of these Respondents and the said The Illinois Central Rail Road Company under their Contract of the 10th October A. D. 1853 aforesaid was at the time of the service of the paid Garnishee Process in this case and at the time of the making of said former answer largely less than the amount of money required for the purpose of said sinking fund. That at the date of said service the aggregate indebtedness of these Respondents and said "Illinois Central Rail Road Company" was about \$ 11.500 whilst the principal of said sinking fund amounted to upwards of \$ 14000. That at the date of the filing of said former answer

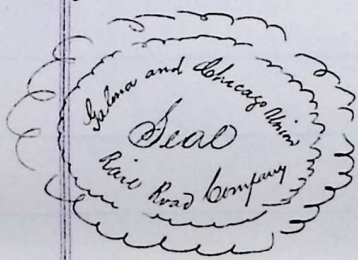
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said Indebtedness had not materially increased whilst said principal of said sinking fund had had increased to upwards of \$10000.

And these Respondents further say that they are informed and believe and charge it to be true that the said "The Mineral Point Rail Road Company" were at the service of said Garnishee Process and ever since have been in default—both in respect to said sinking fund and the payment of interest upon said Bonds—That the only provision for said sinking fund made by said Company is contained in the Resolution aforesaid and the Deeds of Trust referred to in the former answer of these Respondents and that the Bonds aforesaid amounting to the Sum of \$320,000 secured by said Deeds of Trust are the same Bonds referred to in said Resolution as "the first Mortgage Bonds" and that the same show upon their face, as set forth in the first of said Deed of Trust, that they are secured by said Deed of Trust and by said sinking fund.

And these Respondents further say, that they are informed and believe and so charge it to be true that in consequence of the default of the said The Mineral Point Rail Road Company aforesaid in the payment of interest &c. the said David R. Martin and Lucien D. Conant instituted proceedings against

the said Company and others in the District Court of the United States for the District of Wisconsin on the Chancery side of said Court for the foreclosure of the said Deeds of Trust according to the provisions thereof and that such proceedings were had in said Court that afterwards and at the Special Term of said Court begun and held on the 1st Monday of April A. D. 1859 to wit: on the 21st day of April aforesaid, one George W. Cobb was by the order and decree of said Court appointed Receiver of all and singular the property and effects of said Company. That said Cobb duly qualified as such receiver under said order and decree of said Court and on or about the 1st day of May A. D. 1859 took possession of the Road, property and effects of said Company and has ever since had the control and been in ^{possession} ~~possession~~ of the same as such Receiver.



Galena and Chicago Union
Rail Road Company
By W. M. Larrabee, Secretary.

State of Illinois
County of Cook J. William M. Larrabee, being
first duly sworn, deposes and says that he is the
Secretary of the Galena and Chicago Union

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Rail Road Company and has charge of the
Books and papers of said Company. That the
foregoing further and additional answer of said
Company as Garnishee of the Mineral Point
Rail Road Company has been read by him and
he knows the contents thereof and that the same is
true so far as the statements thereof are made as
of the knowledge of said Company and so far
as the same are made upon information and belief
he believes them to be true.

Subscribed and sworn to
before me this 15th day of
March 1860.

W. M. Larabee.



Charles N. Holden
Notary Public

And thereupon on the same day and year
last aforesaid, to wit: December 20 A.D. 1860
the said Plaintiff by his said Attorneys filed
in the Court aforesaid in said cause his certain
Replication to additional Answer of said
Garnishee in words and figures following to
wit:

Replication to Additional Answer of Garnisher

State of Illinois }
Cook County } p.
William Menzies

vs
The Menias Point
Rail Road Company }

Of the February Term
A. D. 1860.

The Replication of William Menzies the above named Plaintiff to the further and additional answer of The Galena and Chicago Union Rail Road Company Garnisher of the said Defendant.

And the said Plaintiff for a reply to the further and additional answer of the said The Galena and Chicago Union Rail Road Company, Garnisher of the defendant in this cause, deny each and every allegation in the said further and additional answer contained.

And the said Plaintiff, for further reply to said answer, alleges that no part of the interest upon the Bonds mentioned and described in said answer was to be paid out of the indebtedness of the said The Galena and Chicago Union Rail Road Company and the Illinois

57 Central Rail Road Company under the Contract mentioned and referred to in said answer And that the said Defendant had not nor ever has appropriated the said indebtedness of the said the Galena & Chicago Union Rail Road Company and the said The Illinois Central Rail Road Company under the said Contract to the payment of the interest on the bonds mentioned and referred to in said answer. And ~~that the said defendant had not nor ever has~~ of the Plaintiff further alleges that the sum of Five thousand four hundred dollars per annum of the said indebtedness of the said The Galena and Chicago Union Rail Road Company and the said The Illinois Central Rail Road Company under the Contract referred to in said answer was not nor was any part thereof in any manner set apart by the said defendant as a sinking fund for the ultimate redemption or payment of the principal sum of three hundred and twenty thousand Dollars as stated in said answer nor was the said Sum of Five thousand four hundred dollars or any part thereof set apart by said defendant for any purpose whatever But the Plaintiff alleges that all sum and sums of money and indebtedness accruing to

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the said defendant "The Mineral Point Railroad Company" under the Contract in said answer referred to, have at all times been subject to the control, disposition and order of the said defendant for its own uses purposes and benefits and that all sums of money and effects in the custody and control of the said The Galena and Chicago Union Rail Road Company and all indebtedness to the said defendant arising under the Contract aforesaid were at the time the Garnish Process was served upon said The Galena & Chicago Union Rail Road Company subject to the entire control order and disposition of said defendant and belonged to and was the property of said Defendant.

Smith and Durey
Plaintiff's Attys.

And afterwards, to wit: on the same 20th day of December in the year last aforesaid said Plaintiff by his said Attorneys filed in the Court aforesaid in said cause his certain Replication to the interpleader aforesaid in words and figures following to wit:

Replication to Interpleader.

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State of Illinois }
Cook County }
William Menzies

Of the March Term 1859

vs
The Mineral Point
Rail Road Company }

The Replication of
William Menzies the plaintiff in this cause to the
interpleader of David R. Martin and Lucius
D. Coman for the property, money, rights, credits
and effects garnished in the above entitled cause
in the possession of the Galena & Chicago Union
Rail Road Company

And the said Plaintiff as to the said inter-
pleader of the said David R. Martin and
Lucius D. Coman by them above interpleaded
for the property money rights credits and effects
sought to be recovered by the said plaintiff under
the garnished process issued herein and served
upon The Galena and Chicago Union
Rail Road Company and which it is alleged
by the said Plaintiff belong to the said defendant
The Mineral Point Rail Road Company
saith: That the said Plaintiff by reason of

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any thing by the said David R. Martin and
Lucius D. Corman in their interpleader alleged
ought not to be barred, from recovering the
said property, rights money, credits and effects
or any or either of them, because he saith
that at the time of the service of the said
Garnishu process upon the Galena & Chicago
Union Rail Road Company, the said The
Galena and Chicago Union Rail Road Company
had property money rights credits and effects
in their possession, belonging to the Defendant
and were indebted to the said Defendant and
that the said property money credits and effects
sought to be recovered by the said Plaintiff
by the Garnishu Process issued herein and
served upon The Galena & Chicago Union
Rail Road Company and all the income and
profits of the same belonged to and was the
money of property credits and effects of the said
defendant The Mineral Point Rail Road Company
and the same had not nor had any part thereof
been sold transferred or assigned to the said
David R. Martin & Lucius D. Corman nor
either of them and they were not nor even have
the assignees or owners of said property moneys
rights credits or effects nor any portion thereof

61 nor of the income or profits thereof in manner and form as the said David R. Martin and Lucius D. Coman have above in their said interpleader in that behalf alleged.

And this he, the said plaintiff prays may be inquired of by the Country &c.
 Smith and Dewey,
 Plaintiffs Attorneys

And afterwards to wit: at the January term of said Court just aforesaid to wit on the 31st day of January A. D. 1861 the following proceedings among others in said Court, were had and entered of record in said cause to wit:

William Menzies

vs The Galena and Chicago Union Rail Road Company, Garnishee of the Mineral Point Rail Road Company and Lucius D. Coman and David R. Martin, Interpleaders	} Garnishee &c. in Attachment.
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This day comes
 the said Plaintiff by Smith and Dewey his Attor-
 neys and the said Garnishee and Interpleaders by
 Scates, McAllister and Jewett their Attorneys also

come and it is agreed by and between the said parties now here in open Court, that all questions touching the legality or irregularity of the Interpleader of the said Coman and Martin filed herein, shall be waived and by like consent of said parties it is ordered, that a jury come, to try as well the issues joined upon the answer of the said Garnishee filed herein as upon the said interpleader of the said Coman and Martin; Whereupon come the jurors of a jury of good and lawful men, to wit: Joseph Kettlestrings, E. Sabin, Abraham Brokaw, James Crawford, Abraham Minier, Charles Sauter, William E. Sayre, Albert Joslyn, George Drake, G. F. Kidder, J. G. Smith and Joseph Carpenter, who being duly elected tried and sworn well and truly to try issues joined between the parties aforesaid and a true verdict render upon each, according to law and the evidence and after hearing a part of the evidence, the hour of adjournment having arrived by consent of said parties said jury is allowed to separate to meet the Court at nine O'clock on to morrow morning to which time the trial of said cause is now adjourned.

And afterwards, to wit: at the same term

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of said Court last aforesaid to wit: on the 1st day of February in the year last aforesaid the following further proceedings were had and entered of Record therein in said cause to wit:

William Menzies

vs

The Galena and Chicago Union
Rail Road Company Garnishee
of the Mineral Point Rail Road
Company and Lucien D. Coman
and David R. Martin, Interpleaders

Garnishee in
Attachment.

This day again
come the said parties by their Attorneys and the
Jurors of the Jury aforesaid also come and having
now heard all the evidence adduced by the parties
the argument as Counsel as well on the part of the
plaintiff as of the said Garnishee and Interpleaders
and instructions from the Court, retire to consider
of their verdict, with the further instruction
given by consent of said parties to sign and
seal up their verdict, when they shall have
agreed upon the same and afterwards separate to
meet the Court on the coming in thereof to morrow
morning at nine O'clock.

And afterwards, to wit: at the said term of said Court last aforesaid to wit: on the 2^d day of February in the year last aforesaid the following further proceedings were had and entered of record therein in said cause to wit:

William Menzies

vs

The Galena and Chicago Union
Rail Road Company, Garnishee
of the Mineral Point Rail Road Company } Garnishee & C. in
& Lucien D. Coman & David R. Martin } Attachment.
Interpleaders.

This day again come the said parties by their Attorneys and the jury aforesaid having agreed upon and sealed their verdict, return into Court and say: "We the Jury find that the Garnishees have in their hands the sum of Eleven Thousand One hundred and Sixty four Dollars and that the same was the property of the Mineral Point Rail Road Company at the time of the service of the Garnishee process in this suit and subject to said process, that the amount of the plaintiffs Debt at this time Eight thousand Nine hundred and twenty nine Dollars and twenty six cents and we further find

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that the said interpleaders have no right to said money as against the said plaintiff."

Whereupon the said Garnishees and Interpleaders by their Counsels move the Court for a new trial of said cause.

And afterwards to wit: at the ^{February} ~~same~~ term of said Court ^{for the year} last aforesaid to wit: on the 25th day of February in the year last aforesaid, the following further proceedings were had and entered of record therein, to wit:

William Menzies

The Galena and Chicago
Union Rail Road Company,
Garnishee of the Minneapoint
Rail Road Company & Lucien
D. Coman and David R. Martin
Claimants

Attachment.

And now come on to be heard the Motions of the said Garnishee Defendant The Galena and Chicago Union Rail Road Company and the Motion of the said Claimants David R. Martin and Lucien D. Coman heretofore entered in this cause to set aside the verdict of

the Jury herein and for a new trial And after arguments by counsel as well on the part of the said Plaintiff as on the part and behalf of the said Garnishee and Claimants, the Court being now fully advised in the premises, overrules the said Motions and each of them And it appearing to the Court from the stipulations and admissions of the said several parties by their Attorneys respectively and the receipts of the Clerk of this Court, that the moneys in controversy in those proceedings have been in pursuance of the stipulation of the said parties, deposited by the said Garnishee, the Galena and Chicago Union Rail Road Company with the Clerk of this Court, to abide the final determination of these proceedings. It is thereupon considered by the Court, that judgment be entered in this cause in favor of the said Plaintiff upon the verdict of the Jury aforesaid And that the said Defendant the Mineral Point Rail Road Company have and receive of the said Galena and Chicago Union Rail Road Company, Garnishee as aforesaid for the use of the said Plaintiff the amount of the judgment heretofore recovered in this Court by the said Plaintiff against the said Mineral Point Rail Road Company together with the

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interest and costs thereon all amounting to the
sum of Eight Thousand Nine Hundred ^{and twenty five cents}
Twenty Nine Dollars, and costs of suit,
to be satisfied and paid out of the money so
deposited as aforesaid by the said Galena and
Chicago Union Rail Road Company with the
Clerk of this Court and not otherwise.

And it is further considered by the Court
that the said Plaintiff have and recover of
the said Claimants David R. Martin and
Lucien D. Coman his costs about the interpleader
of the said Martin & Coman by him expended
and that he have execution therefor.

And the said Garnishee the Galena
and Chicago Union Rail Road Company and
the said Claimants David R. Martin & Lucien D.
Coman severally except to decision of the Court
in overruling the motions aforesaid made by
them respectively to set aside the verdict of the
jury and for a new trial and pray an Appeal
to the Supreme Court And the said Plaintiff
by his Attorney consenting thereto, it is ordered
by the Court that said Appeal be and the same
is hereby allowed without the making and filing
of any appeal Bond and that the said
Garnishee and the said Claimants have

fifteen days from the date of this entry within which to prepare and file their Bills of Exceptions.

And thereupon afterwards; to wit: on the Eighth day of March in the year last aforesaid the Said Garneshee and Interpleaders aforesaid, by their said attorney, files in the Court aforesaid in said cause their certain Bill of Exceptions in the words and figures following- to wit: -

Bill of Exceptions.

State of Illinois County of Cook ss
In the Circuit Court of said County:

William Menzies

vs

Galena & Chicago Union Rail
Road Company, Garnishes of
the Mineral Point Rail Road
Company & David R Martin &
Lucien D Concan Claimants
of the Money & property attached
in the hands of the Garnishes

Be it remembered that
this Cause having come on to be heard
at the January Term AD 1861 of said
Court to wit on the 31st day of January
AD 1861 that being one of the days of said
Term, it is ordered by the Court all the
parties by their Attorneys respectively Consenting
thereto, that the issues made therein upon
the Answer of the Garnishes, the Galena &
Chicago Union Rail Road Company, and the
issues made upon the Interpleader of the said
Claimants David R Martin & Lucien D
Concan be tried together and thereupon a

Jury having been Called and duly sworn to try and determine the issues aforesaid the said Plaintiff for the purpose of sustaining the issues on his part read to the Jury the Answer of the said Garnisher The Galena and Chicago Union Rail Road Company as follows

State of Illinois County of Cook ss

In the Cook County Circuit Court
of the March Term A.D. 1859.

William Menzies

vs

The Mineral Point Rail
Road Company

Attachment

The Answer of The
Galena and Chicago Union Rail Road Company
to the Garnisher Process served upon them in the
above Entitled Cause.

These Respondents for Answer
unto the Garnisher process aforesaid say that
on the Tenth day of October A.D. 1853 a
Contract in writing was made and Entered
into by and between the said Defendants "The
Mineral Point Rail Road Company" of the
first part, and these Respondents, and the

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the sum of Ten Thousand Dollars, and that said Indebtedness has been somewhat increased by the business transactions between these Respondents and the said The Mineral Point Rail Road Company since the service of said Process, and at the time of the making of this Answer somewhat exceeds the said sum of Ten Thousand Dollars, all of which said Indebtedness accrued in the course of the business transactions between these Respondents and the said "The Mineral Point Rail Road Company" had and transacted under and in pursuance of the provisions of said Contract.

And these Respondents further Answering say that they were not at the time of the serving of the Garnishu process upon them in this case, have not since been and are not now in any manner indebted to the said Defendants "The Mineral Point Rail Road Company" otherwise than as above stated.

Respondents further Answering say, that they had not at the time of the service of said Garnishu Process upon them, have not since had, and have not now any Goods, Chattels, Monies, Credits, Property or Effects in their possession, Custody, or Control belonging

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to said Defendantz The Mineral Point Rail Road Company, or in which the said Mineral Point Rail Road Company are now or have been since said service in any manner interested

And these Respondents further Answering say that the said Plaintiff ought not by reason of their Indebtedness above stated to have or recover a Judgment against them,

These Respondentz, because they say, that they are informed and believe and so Charge the fact to be, that the said "The Mineral Point Rail Road Company" on the first day of January A D 1856 by their Deed of that date duly Executed acknowledged, and delivered, granted bargained sold Transferred and Conveyed unto David R Martin and Lucien D Comau of the City of New York their Successors and assigns, the Rail Road of said Company then Constructed, and to be Constructed from the Village of Mineral Point in the State of Wisconsin to the Village of Warren in the State of Illinois, together with all and singular the Property real and personal, tolls, income Issues, Properties, Rights, Creditz, & franchises pertaining to said Rail Road, to have and to hold the same unto the said David R Martin

and Lucien J Coman, their successors and assigns upon the trusts in said Deed declared which said Deed was duly recorded in the ^{of the Counties of Iowa and Lafayette in the State of Wisconsin} ~~and in the Registry Office~~ ^{Recorders Office} in and for the County of Jo Davies in the State of Illinois, the same being the Counties through which said Rail Road was laid out and Constructed or in process of Construction.

And these Respondents further Answering say that they are informed and believe and so Charge the fact to be that said Mineral Point Rail Road Company afterwards and on the sixth day of June A D 1857 in pursuance of a Covenant of further Conveyance and assurance in the said Deed contained did by their Certain Other Deed in writing duly Executed acknowledged and delivered, grant, bargain, sell, transfer, release, quit Claim, Convey and Confirm unto the said David R Martin and Lucien J Coman the Trustes in said first Deed mentioned and to the Survivor of them his successor or successors in said trust, all and singular the Corporate Property, Toll, Income, issues, Profits, Rights, Credits, and franchises, in said former Deed mentioned or referred to, Also the Locomotives, Passenger Cars, and Freight Cars, in said second Deed mentioned

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and particularly all the property acquired by said Mineral Point Rail Road Company, subsequently to the date of said first mentioned Deed, to have and to hold the same unto the said David R Martin and Lucien D Comanz and to the survivors of them, his Successors & Successors in said Trust and assigns upon the Trusts declared in said first mentioned Deed, and Especially for the benefit and security of the holders of Certain Bonds in said first Deed described, that is to say, Six Hundred and forty (640) Bonds of the said The Mineral Point Rail Road Company Each for the sum of Five Hundred Dollars (\$500.) all bearing date the first Day of January A.D 1856. which said Bonds are as these Respondents are informed and believe not yet due, and are still outstanding in the hands of bona fide holders and wholly unpaid, which said last mentioned Deed was duly recorded in the County aforesaid and Copies of the said Deeds

hereto attached as a part of this answer, marked "Exhibits B" and "C" to which they refer for greater particularity.

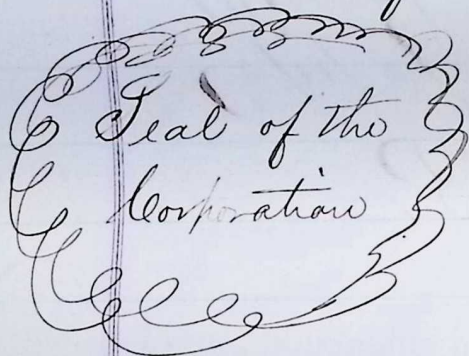
And these Respondents further Answering say that they had knowledge of the Execution of said Deeds before the service.

of proceeds out there in this case and that they are advised and verily believe that by the Deeds aforesaid all Indebtedness aforesaid accrued and to accrue from these Respondents to the said The Mineral Point Rail Road Company, and all Claims of the said The Mineral Point Rail Road Company for percentage or otherwise against these Respondents growing out of their Contract aforesaid with these Respondents and the said Illinois Central Rail Road Company and the performance of said Contract, were transferred and assigned by the said The Mineral Point Rail Road Company to the said David R Martin and Lucius D Cornman in Trust for the purposes in the said Deeds set forth, And these Respondents are informed and believe and so state the fact to be that the said David R Martin and Lucius D Cornman as Trustees as aforesaid Claim all and Every part of the Indebtedness of these Respondents aforesaid under and by virtue of said Deeds, and all Indebtedness of these Respondents accrued and to accrue under said Contract, And these Respondents respectfully submit to this Honorable Court that the said David R Martin and Lucien

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I Coman, and not the said "The Mineral Point Rail Road Company" are Entitled to have and receive the same, and that the said Plaintiff ought not to have or recover a judgment against these Respondents for the same or any part thereof, as the Garnishes of the said Defendant

And these Respondents having fully answered, pray that they may be hence dismissed with their reasonable Costs and Charges in this behalf most wrongfully sustained



Galena and Chicago Union
Rail Road Company
By W. M. Larrabee

Secretary—

State of Illinois }
County of Cook } ss

William M Larrabee being duly first duly sworn deposes and says that he is the Secretary of the Galena and Chicago Union Rail Road Company, the Respondents in the within and foregoing Answer named, and that he has Charge of the Books and papers of said Respondents, and is familiar with all their business transactions, that the foregoing answer

of the said Respondentz has been read to him and he knows the Contentz thereof, that the matters and things therein stated as of the knowledge of said Respondentz are true, and as to those matters and things stated upon information and belief, he believes them to be true

Subscribed and sworn to before me this 15 day of March A D 1859

Moses Heath
Notary Public



"Exhibit A"

Copy of Contract between the Mineral Point, Ill Central & I & C W R R Company

Articles of Agreement made and Entered into this tenth day of October A D 1853 by and between the Mineral Point Rail Road Company by Moses M Strong President of said Company party of the first part, and the Illinois Central Rail Road Company by William P Burrall President and the Galena and Chicago Union Rail Road Company by John B Turner President parties

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of the second part

The said parties ~~first~~ ^{first} Covenants and agree as follows

The said party of the first part in Consideration of the Covenants and agreements of the said parties of the second part hereafter Contained, Covenants and agrees that it will Construct and fully Equip with a sufficient amount of rolling stock to transact all the business that may be offered for transportation on it, a good substantial single track Rail Road from Mineral Point in Wisconsin to and intersecting the Illinois Central Rail Road at or near Warren Jo Davis County Illinois within two years from this date, said Road to be laid with "T" rail of improved pattern to be not less than fifty six pounds to the lineal yard and be Constructed in a substantial workmanlike manner, and the said party of the first part further Covenants and agrees that for the period of twenty years from the first day of January next, it will transport all the freight which shall pass in a southerly direction over the Mineral Point Rail Road or any part of it so far as it shall have the legal right to control the destination of such freight to the Illinois Central

Rail Road at or near Warren, and that it will during the said term of twenty years by giving through tickets to passengers, and by the Exercise of all other means which it legally can do, transport all passengers going Southwaly over the the Mineral Point Rail Road or any part of it to the Illinois Central Rail Road, and that it will at all times so regulate its tariff of Charges for freight and passengers as to throw all the business of the Mineral Point Road in both directions upon the roads of the parties of the second part, so far as the same may be practicably legally.

And the said party of the first part Covenantz and agrees, that it will not during the period of twenty years aforesaid, Enter into any Contract, agreement, or stipulation with any other Railroad Company in reference to the transportation of freight or passengers without the Consent of said parties of the second part.

The said parties of the second part Covenant and agree, to and with the said party of the first part that in Consideration of the Covenantz and agreements of the party of the first part herein Contained, they will during the term of twenty years from the first day of January

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Next, pay to the said party of the first part, in the manner hereinafter stipulated such sums as will in the manner hereinafter specified secure to the said party of the first part, a net annual ~~income~~ income equal to Eight per Centum per Annum, on the total gross Cost of their Rail Road and its Equipments including all incidental Expenses, Salaries, Commissions, interest and Contingencies, provided such gross Costs shall not Exceed the sum of Seven hundred Thousand Dollars, then Eight per Centum upon said sum of Seven hundred Thousand Dollars, such payment to be made semiannually at such times as the said parties shall make up their accounts.

That to determine the Amount to be paid by said parties of the second part, as aforesaid the net Earnings of the Mineral Point Railroad resulting from the business done Exclusively upon it shall be first ascertained, and to ascertain that all the incidental Expenses of operating the Road and the Expense of Keeping it in repair shall be deducted from its Annual gross receipts, and it is agreed that such incidental operating Expenses ^{and expenses} of repairs shall not in the whole Exceed fifty per Cent of the actual gross receipts, that in addition to the sum so received

by the said party of the first part, from the net Earnings of its road, the said parties of the second part shall semi Annually pay as aforesaid to the said party of the first part, such a proportion or percentage of the gross Amount received by said Companies respectively Comprising the said party of the second part, for the transportation of freights or passengers which shall pass from the Mineral Point Railroad over the Illinois Central Rail Road or over the Galena and Chicago Union Railroad, or over any part of said Roads or which shall pass from said Roads or Either of them, over the Mineral Point Rail road or any part of it as will when added to the net Earnings of the Mineral Point Rail Road to be ascertained as aforesaid amount to Eight per Cent per Annum on the aforesaid gross Cost of the said Mineral Point Rail Road which Cost shall not Exceed Seven Hundred Thousand Dollars as aforesaid. Provided however that this Contract shall in no Event involve the said parties of the second part in the payment of more than thirty per Centum on the ~~said~~ aforesaid receipts from the transportation of freight or passengers to or from the Mineral point Rail Road as aforesaid.

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It is further Covenanted and agreed, that the said parties of the second part shall not pay to the said party of the first ^{part} any proportion or per Centage of its receipts arising from the transportation of Freight or passengers passing over the Illinois Central Rail Road or the Galena and Chicago Union Railroad, to or from the Mineral Point Railroad, ^{which shall go to or come from any point on the Mineral Point Rail Road} within Eight miles of the Illinois Central Railroad

The said party of the first part further Covenants and agrees that it will at all times during the term of Twenty years aforesaid, keep and maintain as high a tariff of Charges for the transportation of freight and passengers as the average rates charged by the said parties of the second part, on the same freight and passengers

It is further mutually stipulated and agreed between the Contracting parties that either party shall be allowed to have freight transported in their own freight Cars on the road of the other party, and that such party shall be entitled to a reasonable Compensation for the use its Cars. Each party repairing all damages to Cars that occur on its own road

It is further stipulated and agreed by and between the said Contracting parties that

the stipulations herein contained providing for the payment of per centage on freight and passengers by the parties of the second part to the party of the first part shall only apply to One hundred and twenty miles of the road of the Illinois Central Rail Road Company from the point of Junction with the Illinois Central Railroad.

In Witness whereof This instrument is Executed in the names and behalf and under the seals of said several Companies by their respective Presidents who have been specially authorized thereto by their respective Boards of Directors

Seal

Seal

Seal

Signed Mineral Point Railroad Co

By Moses M Strong President

Signed Illinois Central RR Co

By W P Burrall President

Signed Galena & Chicago Union RR Co

By John B Turner President

"Exhibit B"

This Indenture made the first day of January in the year of our Lord one thousand Eight Hundred and fifty six between the

17.
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Mineral Point Rail Road Company), a Corporation duly Constituted by the Laws of the State of Wisconsin party of the first part, and D R Martin and L D Coman of the City of New York parties of the second part, Witnesseth that whereas the said Mineral Point Rail Road Company in performance of their Corporate powers are now Engaged in Constructing a Rail Road from the Village in Mineral Point in Iowa County in the State of Wisconsin, to the Village of Warren in the County of Jo Daviess in the State of Illinois, for that purpose in part have resolved to raise a sum of Money by loan for the purpose of purchasing Iron rails, and Machinery therefor, and of aiding in the Construction of said Rail Road, and putting the same into operation, and for the objects and purposes aforesaid and in order to secure the payment and satisfaction of the Money to be raised as aforesaid it is proposed and intended by the said party of the first part to Execute issue and deliver Six Hundred and forty Bonds, or writings obligatory, Each for the sum of Five Hundred dollars to be numbered respectively from one (1) to Six Hundred and forty (640) inclusive

which Bonds are of Even date herewith, and in the following form.

N^o

United States of America

State of Wisconsin \$500=

Mineral Point Rail Road Company

Convertible Mortgage Bonds secured on all their Road and property and by a special Annual income of \$56,000. guaranteed jointly by the Illinois Central and Galena and Chicago Union Rail Roads as per Articles of Agreement dated October 10th A D 1853, and March 5 A D 1855.

Know all men by these presents that the Mineral Point Rail Road Company are indebted to D R Martin and L. D. Coman of the City of New York or bearer in the sum of Five Hundred Dollars lawful Money of the United States of America which sum the said Company promise and agree to pay to D R Martin and L D Coman or bearer hereof on the first day of January in the year of our Lord one thousand Eight hundred and Eighty One at the Bank of the Manhattan Company in the City of New York with interest thereon at the rate of Eight per Centum per Annum

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Payable Semi Annually by the said Company
at the said Bank of Manhattan Company
on the first day of January and July in Each
Year on the presentation and surrender of
the annexed Coupons, as they severally become
due, and in the Case of the Non payment of
interest for any half year when demanded
as aforesaid and the same remaining in
arrear for sixty days thereafter, the principal
shall become due and payable on demand
from and after such default with interest
thereon accrued and in arrear, and the said
Rail Road Company also agree to transfer
to the holder hereof at any time within ten
years hereafter when the holder Elects to receive
the same on delivery of this obligation, and
the unpaid Coupons on interest Warrants annexed
to the trustee or treasurer of said Company five
Shares of One hundred dollars Each, in the Capital
Stock of said Company in Exchange for and
satisfaction of this obligation. This is one
of a series of Bonds of like tenor and date
Executed and issued in Conformity with
Resolutions passed by the Board of Directors
of the said Company on the fifth day of
September in the year of our Lord one thousand

Eight hundred and fifty five, authorizing Bonds to be issued amounting in the aggregate to three hundred and twenty thousand dollars and the holder hereof is entitled to the security derived from a Mortgage bearing date the first day of January one thousand Eight hundred and fifty six upon the Company's line of road from the Village of Mineral Point to the Illinois Central Rail Road Depot at Warren in the State of Illinois including Depot Grounds Depot rolling Stock and Machinery and all rights and franchises, privileges and appurtenances thereto belonging Executed and delivered to the said D R Martin & L D Coman in trust to secure the payment of the principal and interest on said Bonds and duly recorded in the several Counties through which said road passes. The holder hereof will also be entitled to the benefit of a sinking fund of five thousand four hundred dollars per Annum. said sinking fund to be set apart Annually from the guaranteed income by the said Company as specified and provided for in said Mortgage being sufficient amount to redeem the whole three hundred and twenty thousand Dollars secured by said Mortgage

within twenty five years from the date of said Bonds, and before the same fall due, this Bond shall not be deemed obligatory or valid until the proper Certificate known of the named Trustees or their Successors shall be duly signed by them. This Bond may pass by delivery or may be registered on the Books of the Company in the City of Milwaukee or New York at the Option of the holder after which no transfer shall be valid unless it be registered as aforesaid and a Certificate thereof Endorsed on the Bond by the Treasurer or other Officer of the Company, designated for that purpose. Provided however that it may be transferred on said Book to bearer, and thereafter pass by delivery.

In Witness Whereof the said Company have caused their Corporate Seal to be hereto affixed and their President to sign and their Secretary to countersign the same and have also caused the Coupons annexed to be signed by the Secretary this first day of January in the year of our Lord one thousand Eight Hundred and fifty six at their Office in the Town of Mineral Point Wisconsin

____ President
____ Secretary.

This is to Certify that the Mineral Point Rail Road Company have Executed to us a Deed of Trust or Mortgage Conveying the entire line of Road from Mineral Point Wisconsin to Warren in Illinois with all its appurtenances as specified in said instrument in trust for the benefit of the holders of their Bonds of similar tenor to the within to be issued to an amount not Exceeding three hundred and twenty thousand dollars. with Power to take possession of and use or sell the same for any part thereof after a default in paying the interest or principal of said Bonds or any payment to the sinking fund and that the within is one of several Bonds described in and secured by said Deed, and that we have caused the said Deed to be recorded in the several Counties through which the said Road passes.

} Trustees.

And whereas the said Company are of the Opinion that the said Bonds amounting to three hundred and twenty thousand dollars as aforesaid would be rendered more valuable and available by Creating an additional security for their ultimate payment and redemption

by means of a sinking fund to be Established for that purpose, by annually setting apart the sum of five thousand four hundred dollars the same being a part of the sum of fifty six thousand dollars guaranteed as an Annual income by the Galena and Chicago Union Railroad Company and the Illinois Central Railroad Company to the said Mineral Point Rail Road Company which sum of Five thousand four hundred dollars together with the accumulations of interest will form a Capital sufficient to pay and satisfy the principal and interest of the said Bonds amounting to three hundred and twenty thousand dollars aforesaid on or before the Maturity thereof, which said sum of five thousand four hundred dollars the said sinking fund above referred to was by resolution of the said Board of Directors irrevocably set apart and appropriated for the purpose and in the manner above specified

Now therefore this Indenture Witnesseth that the said Mineral Point Rail Road Company in Consideration of the premises and in order to secure the payment of the said Bonds and interest thereon accruing, and in Consideration

of one dollar paid to the said Company by the said party of the second part, ^{at} and before the Enacting and delivery of these presents the receipt whereof is hereby acknowledged have granted, bargained, sold, transferred, and conveyed, and by these presents do grant bargain sell, transfer, and Convey to the said parties of the first part their Successor or Successors in the trust hereby Created, all their said road from the Village of Mineral Point Wisconsin to the Village of Warren in the State of Illinois being thirty two and two thirds miles of road Constructed and to be Constructed together with all and singular the Rail ways Land procured or occupied for right of Way together with Bridges, fences, privileges and Real Estate owned by said Company for the purpose of said road or which may hereafter be acquired or owned by them, and all the Tolls, income, issues, and profits, to be had from the same and all Lands used for and occupied by Depots or Stations, with all buildings standing thereon or which shall be procured therefor together with all Locomotives, Engines, Tenders Passenger Cars, and Freight Cars Shops tools and Machinery now owned or hereafter

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to be acquired by said Company and in any way belonging or appertaining to said Rail Road now constructed and to be Constructed and including all its property real and personal pertaining to said Rail Road, and all its rights Credit and franchises thereunto ~~appertaining~~,

But nothing herein Contained shall be so Construed as to prevent the said party of the first part from selling hypothecating or otherwise disposing of County of Town bonds or other securities received in payment of stock or otherwise or of any lands or other property of said Company not necessary to be retained for the Roadway Depots and Stations, nor required for the Construction or convenient use of their Rail Road nor from Collecting Moneys due said Company on stock subscription or otherwise nor shall anything herein Contained be so Construed as to prevent the said party of the first part from Collecting and appropriating towards the Construction use and repair of their said Road

To Have and to Hold the said premises and Every part thereof with the appurtenances unto the said parties of the second part their Successors in said trust and assigns upon the

following Trusts: That is to say, In Case the said party of the first part shall fail to pay the principal or any part thereof or any of the interest on any of said bonds at any time when the same may become due and payable according to the tenor thereof when demanded or in Case the said Company shall for and during any one year until the said sum of three Hundred and twenty thousand Dollars together with the interest thereon shall be fully paid and satisfied neglect or fail to pay to the said sinking fund the said sum of Five thousand four hundred dollars, then after such default in the payment of any part of said principal or interest on any part of such sum to said sinking fund and the same remaining in arrear then upon request of the holder of such bond the said parties of the second part their successors in said trust or assigns may enter into and take possession of all or any part of said premises, and as the attorneys in fact or agents of the said party of the first part by themselves or Agents or substitutes have use and Employ the same making from time to time all needful repairs, alterations, and additions thereto and after deducting the

Expenses of such use, repairs, alterations and additions apply the proceeds thereof to the payment of the principal and interest of all said bonds remaining unpaid and to the supplying of any deficiency in the said Sinking fund according to the said resolution Creating and setting apart the same which may then exist, or the said parties of the second part their successors or assigns in said trust at their discretion may, or on the written request of the holders of at least one half of the said bonds then unpaid and unconverted into Stock, shall cause the said premises or as much thereof as shall be necessary to pay and discharge the principal and interest of all such of said bonds as may then be unpaid and unconverted as aforesaid to be sold at Public Auction in the City of New York giving at least forty days Notice of the time place and terms of such sale and of the specific property to be sold by publication thereof in two Newspapers published in said City of good Circulation therein, and by such other publication as may be required by law, and Execute to the purchaser or purchasers thereof a good and sufficient deed of Conveyance in fee simple for the same which shall be

bar against the party of the first part their
successors and assigns and all persons claiming
under them of all right interest claim in
or to said premises or any part thereof,

And the said Trustees after deducting from the
proceeds of said sale the Costs and Expenses thereof
and of managing such property apply so
much of the proceeds as may be necessary
to the payment of said principal and interest
due or unpaid on said bonds, and to the
supplying of any deficiency in said sinking
fund and shall restore the residue thereof
to the party of the first part.

It being hereby expressly
understood that in no case shall any claim
or advantage be taken of any valuation or
appraisement or extension laws by the said party
of the first part nor any injunction or stay
of proceedings or any process be applied for or
obtained by them to prevent such entry or sale
as aforesaid

And the said party of the
first part hereby covenant for the consideration
aforesaid to execute and deliver any further
reasonable and necessary conveyance of the
premises or any part thereof to the said parties
of the second part their successors in said trust

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and assigns for more fully carrying into Effect the objects hereof particularly for the Conveying of any property subsequently to the date hereof acquired by said party of the first part and Comprehended in the description contained in the premises.

And the said party of the first part hereby further Covenants as aforesaid that the Money borrowed for the purpose aforesaid upon the Security of said bonds shall be faithfully applied to the purpose of purchasing and the transportation of Iron rails and Machinery and for the Construction and Extension of said road and the Expenses attending such loan and purchase, and that said rail and Machinery so purchased shall be transported and used with due diligence in the Construction finishing and furnishing of said Railroad.

It is hereby mutually agreed and these presents are upon this Express Condition that on payment of principal and interest of said bonds or the Conversion thereof into Stock in manner aforesaid the Estate hereby granted to the said parties of the Second part shall be void and the right of the premises hereby Conveyed shall revert to and revert in the said party of the first part without any.

acknowledgment of Satisfaction Reconveyance re-entry or other act.

And it is also further mutually agreed, that the said parties of the second part their successors in said trust and assigns shall only be accountable for reasonable diligence in the management thereof and shall not be responsible for the acts of any Agent Employed by them when such Agent is selected with reasonable discretion, And that said parties of the second part their successors in said trust or assigns shall be entitled to receive proper Compensation for any labor or service performed by them in the discharge of their trust in case they shall be Compelled to take possession of said premises or any part or manage the same, And it is further

mutually agreed that in case of the death mental incapacity or resignation of both of the said Trustees, all their ^{Estate} right interest power, and Control in the premises shall be diverted cease and determine and the same shall from thenceforth for the purpose aforesaid be Vested in and all and singular the trusts and duties hereinbefore and Enumerated shall devolve upon such person as shall for that

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purpose be appointed by the Supreme Court of Wisconsin as herein after provided for, and in such case the said party of the first part shall or in default to take proceedings therefor for thirty days the holders of a majority of said Bonds may apply to the Supreme Court of the State of Wisconsin to appoint a Trustee being a resident of the City of New York to supply the place of the said parties of the second part and therefore such new Trustee shall become vested for the purposes aforesaid with all the rights and interests hereby conveyed to or vested in the said parties of the second part without any further Assurance or Conveyance of the same, but if the same shall be necessary both or Either of the parties hereto shall Execute any necessary release or Conveyance for that purpose

In Witness whereof the said party of the first part have Caused their Corporate seal to be hereto affixed, and there present to be subscribed by their President the day and year first above Written he being thereto specially authorized

Mineral Point Rail Road Company
By Perley Eaton President



Sealed and delivered in presence of }
Levi Sterling
George Henry

State of Wisconsin
County of Iowa

It is remembered that on this Eighteenth day of April in the year of our Lord One Thousand Eight Hundred and fifty six before me James Hutchinson Clerk of the Circuit Court in and for Iowa County Wisconsin, aforesaid duly authorized to take acknowledgments of Deeds, personally came Parley Eaton Esq. President of the Mineral Point Rail Road Company to me well known who being by me duly sworn did depose and say that he is President of the Mineral Point Rail Road Company, that he knows the Corporate Seal of said Company, that the Seal affixed to the foregoing Conveyance is the Corporate Seal of said Company. And the said Parley Eaton Esq. President did then acknowledge that he had voluntarily Executed the said Conveyance and affixed thereto the said Corporate Seal of said Company as and for the act and Deed of the said Company in pursuance of a special Authority contained in a resolution adopted by said Company.



In Witness Whereof I have hereunto set my hand & affixed the Seal of said Circuit Court this Eighteenth day of April A.D. 1856. James Hutchinson Clerk Circuit Court Iowa County, Wisconsin.

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State of Wisconsin
Iowa County

I Joseph Lean, Register of
Deeds of said County do hereby Certify that the
above and foregoing Written instrument was
received for Record on the Eighteenth day of
April A.D. 1856 at 2 P.M. and is recorded in
Vol 6 of Mortgages on pages 520. 521. 522 523. 524

525 526 & 527

Joseph Lean
Register of Deeds
Iowa County Wis.

"Exhibit C."

This Indenture made the sixth Day of June
in the year One Thousand Eight Hundred and
fifty seven Between the Mineral Point Rail
Road Company a Corporation created under and
by virtue of an Act of the Legislature of the
State of Wisconsin, of the first part and David
R Martin and Lucien D Comans of the City
of New York parties of the second part
Witnesseth Whereas by a certain Indenture of
Mortgage duly made, Executed and delivered
by said party of the first part hereto bearing
date the first day of January one Thousand

Eight hundred and fifty six recorded on the Eighteenth day of April A D 1856 in the Office of the Register of Deeds of Iowa County Wisconsin in Volume 6 of Mortgages on Pages 520 & 6 also on the twenty first day of April 1856 in the Register's Office Lafayette County in said State in Volumes 5 of Mortgages on page 223 & 6, and on the twenty fifth day of April A D 1856 in the office of the Clerk of the Circuit Court in and for Jo Daviess County in the State of Illinois in Book 3 of Mortgages pages 538 & C, the said party of the first part did for the purpose of securing the payment of the Bonds mentioned in said Indenture, grant, Bargain, sell transfer and Convey to the said parties of the second part their successor or successors in the trust thereby created the Railroad of said Company constructed and to be constructed from the Village of Mineral Point in said State of Wisconsin to the Village of Warren in said State of Illinois, together with all and singular the property real and personal, Tolls incomes, issues, profits, rights, Credits, and franchises pertaining to said Railroad in said indenture of Mortgage mentioned or referred to, it being however declared that nothing therein contained should be so constructed as to prevent said party of the first

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from selling hypothecating or otherwise disposing of County or Town Bonds or other securities received in payment of stock or otherwise on any Lands or other property of said Company not necessary to be retained for the road way Depot and Stations nor required for the Construction or Convenient use of their Rail Road nor from Collecting Money due said Company on stock Subscriptions or otherwise, nor to prevent the said party of the first part from Collecting and appropriating toward the Construction use and repairs of their said Road.

To Have and to Hold the said premises and Every part thereof with the appurtenances unto the said parties of the second part their Successors in said trusts and assigns upon the trusts in said Indenture of Mortgage declared as by reference thereto and to the aforesaid records thereof will more fully and at large appear and to which reference is here made for Certainty as to all the Contents and provisions of said Indenture, And Whereof the said party of the first part did by said indenture of Mortgage Covenant for the Consideration mentioned therein to execute and deliver any further reasonable and necessary Conveyance of the premises therein described or any

part thereof to the said parties of the second part
their Successors in said trust and Assignees for
more fully carrying into Effect the objects of said
Indenture particularly for the Conveying of any
property subsequently to the date thereof acquired
by the said party of the first part and Comprehended
in the description Contained in said premises

And Whereas since the Execution and delivery of
said indenture of Mortgage the said party of the
first part has been engaged in the Construction and
Equipment of said Railroad in erecting its building
and fixtures and supplying materials and machinery
for said Road and has purchased and now is the
owner of three Locomotives Called the John C. Fremont
the Mineral Point, ^{and the Warren} and also three Passenger Cars
and forty freight cars used upon said Rail Road

Now this Indenture that in Compliance
with said Covenant for further assurance and
in pursuance of a Resolution of the Board of
Directors of said party of the first part passed the
sixth day of June A.D. 1857. Authorizing the
Execution and delivery of these presents and
also in Consideration of the sum of one dollar
paid by said parties of the second to said party
of the first part before the sealing and delivery
thereof the receipt whereof is hereby acknowledged

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the said party of the first Part granted, bargained, sold, transferred, released, quit Claimed and Conveyed and by these presents Doth grant bargain sell transfer release quit Claim Convey and Confirm to said parties of the second part Trustees in said indenture of Mortgage and to the survivor of them his successor and successors in said trust, all and singular the Corporate property Tolls income issues profits rights Credits and franchises in said Indenture of Mortgage mentioned or referred to, Also the Locomotives, Passenger Cars and freight Cars herein above mentioned and particularly all the property acquired by said party of the first part subsequent to the date of said Indenture of Mortgage and Comprehended in the description contained therein

To Have and to Hold and all and singular the said premises and Every part thereof with the appurtenances unto said parties of the second part and to the survivor of them his successor and successors in said trust and assigns upon the trust Created and declared in and by said Indenture of Mortgage and Especially for the benefit and security of the Holders of the Bonds therein mentioned. And it is further Witnessed and declared by said parties to these presents that the

declaration in said Indenture of Mortgage quoted in the above recital does not Express their true intent and meaning, but that it was the intent and design of said parties in Executing said Indenture that said parties of the first part should not and it is hereby declared and agreed that said party of the first part shall not be permitted to sell hypothecate or dispose of any part of the property or Effect mentioned in said Indenture of Mortgage except upon the Condition that said Company shall diligently proceed to Collect and apply all means that may be acquired by such sale hypothecation or disposition to the Construction and Equipment or repair and improvement of its said Rail Road and provided also that no Default shall be made in the payment of the interest or principal of any of the bonds in said Indenture of Mortgage described and that said Indenture of Mortgage shall be so read and Constructed.

And it is further Witnessed declared and agreed by and between said parties hereto that nothing in said Indenture of Mortgage contained shall be so Constructed as to prevent said parties of the second part their successors in said trust or assigns from Entering into and taking possession

of said Mortgaged premises and the proceeds thereof immediately after said party of the first part shall fail to pay the principal or any part thereof or any of the interest or any of said bonds at any time when the same may become due and payable according to the tenor thereof when demanded, nor from selling said Mortgaged premises or so much thereof as shall be necessary to discharge the principal and interest of said Bonds in arrear whenever requested by the holder thereof as provided in said Indenture of Mortgage

And it is further mutually agreed that whenever said Mortgaged premises shall be sold for the payment of the principal or interest of said Bonds or of any part of either that such party of said premises as are or may be within the States of Wisconsin or Illinois shall be sold at such time and place and in such manner as shall be authorized by the laws of said States respectively anything in said Indenture of Mortgage contained to the contrary notwithstanding upon the sale of said premises or any part thereof pursuant to either of the trusts contained in said Indenture of Mortgage that said parties of the second part and the survivor of them his successor and successors in said Trusts and receiving the written request of the holders of a majority in amount of said unpaid

and unconverted Bonds are and Each of them is hereby fully authorized and Empowered to purchase said premises for the account of all the holders of said bonds then unpaid and unconverted into Stock for any price or sum at which the same may be struck off not Exceeding the full amount that may then be owing upon said unpaid and unconverted bonds with interest thereon, and the Costs and Expenses of the foreclosure of said Mortgage and the sale of said premises and to take a Conveyance thereof and hold the same upon such trusts for the benefit of all the holders of said unpaid and unconverted bonds as may be authorized by Law and it is hereby further declared that the relative interest of the several bond holders in said premises when purchased shall be in the proportion of the amount due or owing upon said bonds to Each holder thereof respectively and the said party of the first part doth Covenant and agree with said parties of the second part and the survivor of them his successor or successors in the trust for the Consideration Expressed herein and in said Indenture of Mortgage to Execute acknowledge and deliver all and Every such further deeds Conveyances and Assurances in the law for the further

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and more Effectual Conveyance and assuring all and singular the premises heretofore mentioned to said parties of the second part and the more perfectly ~~by~~ ^{is} to Carry into Effect the object of said Indenture of Mortgage and particularly for the Conveyance of any and all property that may be acquired by said party of the first part subsequent to the date thereof and Comprehended in the description of the premises Contained in said Indenture of Mortgage as by said parties of the second part or the Survivor of them his Successor or Successors or the Council of them or Either of them shall be reasonably desired advised or required

In Witness Whereof the said party of the first part hath caused these presents to be subscribed in its Corporate Name by the President and its Corporate Seal to be herewith affixed the day and year first above written and the said parties of second part hands and affixed their seals thereto

Sealed and delivered in the presence of

J. S. Crawford
M. Conner

ELB

Parley Eatow Pres

Mind Point RR Co.

attest W. T. Henry, Secy Mind Point
RR Co.

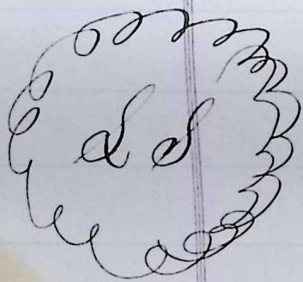
State of Wisconsin }
County of Iowa }

I Mark Corwin Clerk of the Circuit Court within and for the County of Iowa, do hereby Certify that on this day the sixth of June A D 1857 personally appeared before me Parley Eatow President of Mineral Point Railroad Company to me known to be the person who Executed the foregoing Deed or Instrument, and acknowledged that as such President he Executed said instrument for the uses and purposes therein mentioned, and I further Certify that the said Instrument is Executed in Conformity with the Laws of this State

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at my Office in the City of Mineral Point in the County aforesaid the day and year first herein written

M Corwin

Clerk



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Cook County Circuit Court
February Term AD 1860.

William Menzies

vs
Mineral Point Rail Road
Company

} Attachment.

The further and additional
Answer of the Galena and Chicago Union Rail Road
Company Garnisher of the said Defendant filed
herein by leave of Court.

And these Respondents for
a further and additional Answer in the above Cause
say, That they are informed and believe and charge
it to be true, that the said Defendant, the Mineral
Point Rail Road Company, has never at any time
paid the interest upon the Bonds secured or
intended to be by the trust Deeds in the former
Answer of these Respondents set forth, and that
at the time of the service of said Garnisher process
upon these Respondents in this Cause, a large amount
of said interest was in arrears and unpaid, and
has ^{ever} since so remained.

And these Respondents further
answering upon information and belief, state that
on or about the Eleventh day of January AD 1856
and prior to the actual delivery and sale of the said

Bonds aforesaid by the said Mineral Point Rail Road Company, the Board of Directors of said Company passed and caused to be Entered upon the Records of their proceedings a Resolution as follows to wit:

"Resolved that the income of \$56,000 guaranteed by the Galena & Chicago Rail Road Company and the Illinois Central Rail Road Company ~~to~~ and the same is hereby irrevocably pledged as follows viz= The sum of \$45,600 to the payment of the Interest on \$320,000 of the first Mortgage Bonds of \$150,000 of the second Mortgage Bonds held by the County of Iowa and \$100,000 of the second Mortgage Bonds given to Alvin Wilking, and the balance of \$10,400 to be applied as a sinking fund for the payment at maturity of the Bonds as follows viz \$5,400 to the first Mortgage Bonds and \$5,000 to the \$100,000 of second Mortgage Bonds above specified as given to Alvin Wilking"

And these Respondents are advised and so insist that by the said Resolution, and the Bonds and Deeds of Trust set forth and described in their former Answer herein, not only was the Interest upon said Bonds to be paid out of the indebtedness of these Respondents and the said The Illinois Central Rail Road Company under their Contract with said Defendants of the 10th day of October AD 1853 but the sum of \$5,400 per Annum was Expressly

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and irrevocably set apart by said Mineral Point Rail Road Company, as a sinking fund for the ultimate redemption and payment of the principal sum of \$320,000 being the principal of the Bonds aforesaid secured or intended to be secured by the said Deeds of Trust to Coman & Martin aforesaid

And these Respondents further Answering ~~any~~ upon information and belief state that the whole accumulated indebtedness of these Respondents, and the said Illinois Central Rail Road Company under their Contract of the 10th October A D 1856 aforesaid, was at the time of the service of the said Garnisher process in this case and at the time of the making of said former Answer largely less than the amount of money required for the purposes of said sinking fund, that at the date of said service the aggregate indebtedness of these Respondents and said Illinois Central Rail road Company was about \$115,000 whilst the principal of said sinking fund amounted to upwards of \$14,000

That at the date of the filing of said former Answer, said Indebtedness had not materially increased whilst said principal of said sinking fund had increased to upwards of \$16,000

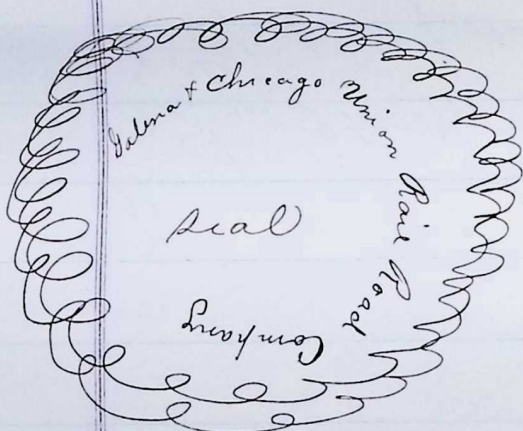
And these Respondents further say that they are informed and believe and charge it to be, true

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that the said "The Mineral Point Railroad Company" were at the service of said Garnisher process, and Ever since have been in default both in respect to said Sinking fund and the payment of Interest upon said bonds, that the only provision for said Sinking fund made by said Company is contained in the Resolution aforesaid and the Deeds of Trust referred to in the former answer of these Respondents. and that the Bonds aforesaid - amounting to the sum of \$20,000 secured by said Deeds of Trust are the same Bonds referred to in said Resolution as "the first Mortgage Bonds", and that the same show upon their face as set forth in the first of said Deeds of Trust that they are secured by said Deeds of Trust, and by ~~the~~^{said} Sinking fund.

And these Respondents further say that they are informed and believe and so charge it to be true, that in consequence of the Default of the said the Mineral Point Rail Road Company aforesaid in the payment of Interest &c to the said David R Martin and Lucien D Comau instituted proceedings against the said Company & others in the District Court of the United States for the District of Wisconsin on the Chancery side of said Court, for the foreclosure of the said Deeds of Trust according to the provisions thereof, and that such proceedings were had in said

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Court, that afterward and at the Special Term of said Court begun and held on the 1st Monday of April A D 1859 & wit on the 21st day of April aforesaid one George W Cobb was by the Order and Decree of said Court, appointed Receiver, under said Order and Decree of said Court, and on or about the 1st day of May A D 1859 took possession of the Road, property and Effects of said Company and has ever since had the control and been in possession of the same as such Receiver.



Galena and Chicago Union
Rail Road Company
By W. M. Larrabee
Secretary.

State of Illinois } ss.
County of Cook }

William M Larrabee being first duly sworn deposes and says that he is the Secretary of the Galena & Chicago Union Rail Road Company and has charge of the Books and papers of said Company. That the foregoing further and additional Answer of said Company as Garnished of the Mineral Point Rail Road Company has been read by him and he knows the Contents thereof, and that the same is true so far as

The statements thereof are made as of the knowledge of said Company, and so far as the same are made upon information and belief he believes them to be true.

Subscribed and sworn to } W. M. Larrabee
before me this 13 day of March

1861. Charles W. Holden

Notary Public



The Plaintiff further to sustain the issues on his part next introduced as a witness Wm M Larrabee who being duly sworn testified as follows

"I am Secretary of the Galena & Chicago Union Railroad Company. On May 1st 1859 there was to the Credit of the Mineral Point Railroad Company, on the Books of the Galena and Chicago Union Rail Road Company \$11,164¹⁰

This was the balance on hand as money balance liable to be paid to the order of the Mineral Point RR Co at any time"

Cross Examination

The Contract of the 10th of October 1853 between

117 the Mineral Point Rail Road Company of the one part, and the Galena & Chicago Union Rail Road Company, and the Illinois Central Rail Road Company of the other, set out in the Answer of the Garnishes being here shown to the witness and offered and read in Evidence, the witness in answer to Cross Interrogatories testified as follows:

That Contract of October 10. 1853 by Agreement of all the parties to it, went into operation about 1st of July 1857, And the whole Indebtedness of the Galena & Chicago Union Rail Road Company referred to by me accrued under the provisions of that Contract, There may have been some items of the account not exactly under the Contract, but such items were more than over balanced by Claims against the Mineral Point Rail Road Company, so that the whole Debt properly accrued under the Contract.

The Plaintiff here rested his case, and the Garnishes and the said Claimants for the purpose of sustaining the issues aforesaid on their parts respectively introduced as a witness George W Cobb who being first duly sworn testified as follows:

"I first became connected with the Mineral Point Rail Road Company

in September 1856. At that time the Company hired me to take Charge of some Grading on the road, the road was not Completed until July 1857. Luther Beecher was the principal Contractor with the Company to Construct the road and furnish the Rolling Stock. He had nothing to do with the grading, Mr Beecher was by his Contract to have Control of the Road until September 1857. in February 1857 Mr Beecher requested me to take the Charge of the Road under him, I did so until August or September 1857 when Mr Beecher came to me with a Mr Nesbit and told me to hold the road in spite of Every body. I was running the road during the Summer of 1857 merely as Agent of Mr Beecher. The Men were paid by Mr Beecher out of the Earnings of the road, I have been familiar with the road Ever since, The Mineral Point Rail Road Company since then has never had anything to do with the Road. It has never had possession of the Road. I have been running it myself under general Order of Beecher for Trustees. In February 1857 I was authorized and requested by the Trustees, Martin & Cornan to put in an interpleader for them for some property on the Road which had been levied on by an attachment issued out of the Circuit Court of

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Jo Daviess County Illinois, and to protect their interest. They sent me the Original Deed of Trust Executed to them by the Mineral Point Rail Road Company, and I have had it Ever since, The Original of "Exhibit B" attached to the answer of the Garnishes was here shown to the witness and identified by him as the Instrument or Deed of Trust sent to him by the Trustees Martin & Coman as above stated by him and said Original Instrument bearing date January 1st 1856 was thereupon Offered in Evidence and read to the Jury, and the witness proceeded as follows:

"I have a power of Attorney from the Trustees Martin & Coman but not dated so far back" = Said power of Attorney was here produced by the Witness ~~who~~ then Continued his testimony as follows:

"Prior to my Receivership I made my Monthly reports to Mr Beecher with the Expectation that he would lay them before the Trustees, The Money in the hands of the Galena and Chicago Union Rail Road Company was Earned whilst I was running the Road, The Mineral Point Rail Road Company never had anything to do with it, I held the road from August 1857 under the general Charge of Mr Beecher for Trustees, The Mineral Point Rail Road

Company made several attempts to take the possession of the Road from me but never got the possession I never reported to the Company at all" at the time September 1857 of giving me instructions Beecher was Vice Pres of the Mineral Point Rail Rd Co.

Cross Examination

I never requested the Trustees to have me appointed Receiver, or to take any proceedings in Wisconsin to recover possession of the Road, (I may have suggested the idea of foreclosing the Deeds of Trust for the purpose of closing out the matter) Mr Beecher is and for three years has been President of the Company, Parly Eaton was President of the Company prior to that time and Mr Beecher was Vice President, there was no change in the Books used by me from the time Beecher had possession of the Road, until I took possession of it, as Receiver, The business was done and all papers made out in the name of the Company, I transacted the business in the name of the Company until May 1859 when I took possession as Receiver, I have not the Contract between Beecher and the Company.

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Re Examination direct.

The Rail Road Business up to the Receivership was done in the name of the Company, The Power of Attorney I received by mail from the Trustees or their Attorneys in Wisconsin, I have corresponded with Mr Coman about the Rail Road Matter. I think I saw Mr Coman in New York in March 1859. The next week after the Power of Attorney was sent and had a Conversation with him, about the Power of Attorney. I had been previously in possession of the road for the Trustees, and in that Conversation he approved of my acts whilst in possession. I was in possession of the road when I was appointed Receiver, so that the possession was not in fact changed by the receivership. The Trustees through Mr Comans requested me to attend to their interest.

Re Cross Examination

The Matter has not been Entirely with Mr Beecher prior to the Receivership, I corresponded principally with Mr Beecher, I had but little Correspondence with the Trustees direct.

The Power of Attorney spoken of by witness was here offered and read in Evidence as follows:

Know All Men by these Presents, that we
D A Martin and L D Loman Trustees of the first
Mortgage Executed by the Mineral Point RR Co of the
State of Wisconsin, have made, Constituted, and appointed
and by these presents do make constitute and appoint
George W Cobb of Mineral Point Wisconsin our
agent and true and lawful attorney for us
and in our name place and stead, to protect and
preserve the property described in and ~~Covered~~
by said Mortgage from waste trespass or injury
and to take all lawful means to keep and hold
the same for the benefit of the Bonds secured
by said First Mortgage of the Mineral Point RR
Co. Provided that we shall incur no pecuniary
responsibility by any act of our said attorney
giving and granting unto our said attorney
full power and authority to do and perform all
and Every act and thing whatsoever requisite
and necessary to be done in and about the premises
as fully to all intents and purposes as we might
or could do if personally present, with full power
of Substitution and revocation, hereby ratifying
and Confirming all that he the said attorney
or his substitute shall lawfully do or cause
to be done by virtue hereof.

In Witness Whereof We have

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hereunto set our hands and seals the Eighteenth
day of March in the year One thousand Eight
Hundred and fifty nine
sealed & delivered in the presence of } D R Martin Seal
of J. P. Girard Foster } L D Coman Seal
A L Purves }

United States of America }
State of New York } ss.
City and County of New York }

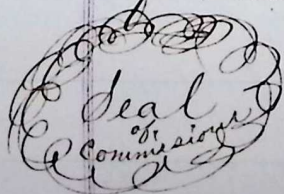
Be it known that on the
Eighteenth day of March One thousand Eight
Hundred and fifty nine before me
a Notary Public in and for the City and County of
New York and dwelling in said City, duly Commissioned
and sworn personally Came D R Martin and L D
Coman to me personally known to be the parties
described in and who Executed the foregoing
instrument and acknowledged the above Letter
of Attorney to be their act and Deed.

In testimony whereof I have hereunto
Subscribed my Name and affixed My Seal of
office the day and year last above written.

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State of New York }
 City & County of New York }

Be it remembered that on the nineteenth day of March in the year One thousand Eight hundred and fifty Nine, before the subscriber a Commissioner in and for the said State Appointed by the Governor of the State of Wisconsin to take the Acknowledgment and proof of the Execution of Deeds or other Conveyances or Leases, and any Contract Letter of Attorney or other Writing under Seal or not administer Oaths and take and Certify depositions to be used or recorded in the State of Wisconsin, appeared J P Grand Master with whom I am personally acquainted who being by me duly sworn deposes that he residing in the City of New York in the County and State aforesaid, that he is a subscribing Witness to the Execution of the foregoing Instrument of Writing wherein J R Martin & L D Coman Trustees Etc are parties of the first part and that he saw the said J R Martin & L D Coman whom he knew to be the identical persons described therein, Execute the same as such Trustees as aforesaid which is Satisfactory Evidence to me of the due Execution of said instrument



Given under my Hand & Official Seal
 at the City of New York aforesaid the day and
 Year last above Written Adrian Van Sinderen
 Commissioner for Wisconsin in
 New York

The Garnishes and Claimants further to sustain the issues on their parts respectively, then introduced as a witness Luther Beecher who being first duly sworn testified as follows.

The Contract for building the Mineral Point Rail Road was originally made with Alvan Wilkins. He failed and I took the Contract from him, and subsequently Contracted directly with the Company. I commenced on the Road about 1st June 1856. by bargaining for Iron in Philadelphia. I bought 1000 tons of Iron and shipped it to Chicago, and thence to Warren, I was Engaged in constructing the road until about the second of July 1857. about 1st June 1856 I had 50 or 60 men on the ground ready to lay track, I was there and set them to work. I commenced at Warren Illinois, the Road runs to Mineral Point Wisconsin, about one mile of it is in Illinois, the rest of it is in Wisconsin. I had the Control of the Road until it was finished, when it commenced running I still had Control of it, Mr Temple had Charge of the road and trains for me until February 1857 I then changed him and put in Mr Cobb who managed it for me until August 1857. I know Mr Coman and Mr Martin

the Trustees for the Bond Holders personally.

In August 1857 I held more than half of the first and second Mortgage Bonds of the Mineral Point Rail Road Company. and more than half of the stock of the Company. I took the first Mortgage Bonds amounting to \$20,000 of the Company in part payment for building the Road. The first Interest Coupons on the first Mortgage Bonds became due July 1st 1856 the second January 1st 1857. and the third July 1st 1857. None of which were paid. In consequence of their default in the payment of interest I communicated with the Trustees about taking possession of the Road. This was in the latter part of July 1857. and I then owned about \$205,000 of the 1st Mortgage Bonds, the rest were in the hands of parties to whom I had sold them, and who were uneasy on account of not getting their interest, I told the Trustees, that as I was the heaviest Bond holder, they had better wait until I went out and saw how the matter stood. I was then in New York, I went out and made an examination about the middle of August 1857. I went over the Road, looked over the Books and talked with the Directors of the Company. They seemed to have no interest in the management of the Road, said they had built the Road and somebody else must run it, Cobb

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was then in possession of the Road under me, I made Enquiries about his ability, and was satisfied with him, and then delivered the Road to him and directed him to hold it for the Trustees, against the Company and all the world. I learned also that suits had been commenced against the Company. I went back to New York and told the Trustees how matters stood - I explained to them what I had done, and recommended Mr Cobb as a suitable person to represent and act for them. They approved of what I had done, and said they would send out the papers to Mr Cobb. Both Mr Coman and Mr Martin approved of what I had done.

Mr Cobb continued to hold the Road (as Agent for the Trustees). He made his Reports to me as he had done before under me, and I placed those Reports before the Trustees, either orally or by showing the Reports almost Every month. Towards the last part of the time the Reports were made to the Attorneys of the Trustees, who Mr Coman said were paid for attending to the business, and he himself declined to have much to do with it personally, unless paid for it. Cobb continued in possession as Agent until the Spring of 1859 when he was appointed Receiver and took possession of the Road in that Capacity, prior to that time he had

reported to me and through me to the Trustees, he then reported to the Attorney of the Trustees directly. I have been familiar with the business of the Mineral Point Rail Road Company for five or six years, the Company as a Company has never had possession of the Road. The place of business of the Company was at Mineral Point Wisconsin. I think the Law so required, The Company ^{was} organized under a Law of the State of Wisconsin.

The Charter of the Company

was here offered in Evidence and the 1st and 2^d
And Section 5 of an Amendment thereto, approved March 7th 1853
Sections thereof read to the Jury as follows.

Section 1. That Francis Vivian, Parley Catow, Francis J. Dunn, Cyrus Woodman, John Bracken, A. W. Comfort, Henry Koop, and John Milton of the County of Iowa, Samuel Cole, Charles H. Lamar, John W. Blackstone N.P. Ladd, Edward H. Gratiot, Charles Dunn, James H. Knowlton and Joseph M. Brewster of the County of La Fayette, be and they are hereby appointed Commissioners, under the direction of a Majority of whom Subscriptions may be received to the Capital Stock of the Mineral Point Rail Road Company, hereby incorporated, and they may cause books to be opened at such times and places as they may direct, for the purpose of receiving subscriptions to the Capital Stock of said Company, first giving thirty days notice of the times and places of

taking such subscriptions, by publishing the same weekly, in a public News Paper printed in the County of Iowa.

Section 2. The Capital Stock of said Company shall be five Hundred Thousand dollars, in shares of one Hundred dollars each, and as soon as one Thousand shares of stock shall be subscribed, and five dollars on each share actually paid in, the subscribers of such stock with such other persons as shall associate with them for that purpose, their successors and assigns shall be and they are hereby declared and created a body Corporate and politic, by the name and style of the "Mineral Point Rail Road Company", with perpetual succession, and by that name shall have all the privileges, franchises and immunities incident to a Corporation, they shall be capable in law of purchasing, holding, selling, leasing, and conveying Estate either real personal or mixed as far as the same may be necessary for the purposes hereinafter mentioned and no further: and in their Corporate name may sue and be sued, may have a Common Seal which they may alter or renew at pleasure, and generally may do all and singular the matters and things which to them it shall lawfully appertain to do for the well being of said Corporation.

Section 5. The said Company is hereby authorized and fully Empowered in its Corporate Capacity to borrow any

Sums of Money from any person or persons, Corporation
 or body politic of any kind and for any rate of interest
 which may be agreed upon by and between said Company
 and any person or party of whom such money may be obtained
 any law on the subject of usury in this state, or any other
 state where such transactions may be had to the contrary
 notwithstanding. and to make Execute or deliver in
 such manner and form as they shall by resolution
 or by laws prescribe all necessary writings, Notes, Bonds,
 Mortgages, or other papers and securities in amount
 and kind as may be deemed Expedient by said Corporation
 in Consideration of any such loan or in the discharge
 of any liabilities that it may incur in the Construction
 repair Equipment or running of said road. and
 the powers of the said Corporation for the purposes
 aforesaid, and for all purposes necessary to
 carrying out the objects of said Company as
 specified in this act and the act of which
 this is Amendatory, are hereby ratified and Confirmed
 and the Contracts hereafter to be made, and official
 acts of said Company, and its proper Officers
 and agents, declared binding in law and Equity
 upon said Corporation and upon all other
 parties to such Contracts.

Crop Examination of Luther Becker.

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I have had Desk Room in different Offices in New York City since 1856. I did not raise money on the paper of the Mineral Point Rail Road Company after November 1857. I did not on or after November 1857 raise money on the paper of that Company. In the fall of 1857 I took to New York some paper signed by the Officers of the Mineral Point Rail Road Company to renew some old paper of the Company.

The Amount may have been \$6500 or \$70,000 some of it went to George Ackerman. I think he filled up the paper in his own hand writing at one time about \$8,000 and at another time \$25,000 or \$30,000. I cant now tell to whose order these Drafts were made. I have not seen them since 1857. I think I have Endorsed Drafts signed by Paily Catow. I know nothing of any Judgments or Drafts of the Company Endorsed by me. Originally I let Mr Ackerman have some such paper to be filled up by him. he said he wanted to use it. I let him have the paper above referred to to renew the old paper with which he had taken and used

I did not borrow a dollar of Mr Ackerman to use on the Mineral Point Rail road after August 1857. I always supposed there was about \$30,000 of the paper in his hands until from accurate information I am led to suppose there was more of it. My Contract

with the Mineral Point Rail Road Company is not with me I think it is in Detroit.

The first I knew of the proceedings in Wisconsin under which Mr Cobb was appointed Receiver was by Letter from the Trustees, stating that they had been called upon to Commence the proceedings, by the Holders of the first Mortgage Bonds of the Company to the amount of \$165,000 and that Messrs Foster & Thompson of New York had been designated as Attorneys. Messrs Foster & Thompson prepared the papers and sent them to Attorneys at Janesville Wisconsin, I was informed and always supposed that a majority of the Bonds were represented in these proceedings.

By my Original Contract I was to have possession of the Road until 1st September 1857. I did not surrender the road to the Company at that time, for the reason that I had delivered it over to the Trustees previously. From February 1857 until August 1857 Mr Cobb reported to me as my Agent, but the Expenses were larger than the Earnings of the Road. I think he continued to send me monthly Statements until May 1859. and he continued to send me a synopsis of his Reports down to the present time. The Company never did run the Cars.

In September 1856 I think there was about a mile of the road in use, and the Cars of the Illinois Central

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Company ran over it to Carry Snow. In November 1856 about Eight miles of the road was done, and freight was Carried over it so far as any was offered. do not know whether anything was paid. In June 1857 both freight & passengers were Carried on the road

I suppose they were Charged for, but do not know the fact of my own knowledge. My directions were to run the road and Collect reasonable pay.

Re-direct Examination

No part of the Sinking fund was Ever paid in by the Company. The Trustees did not make any settlement of the Money in the hands of the Carnishers for the reason that the Companies were understood to be short of funds. They did not know either the Amount in the hands of the Companies as no statement has Ever been made out by them, And it was understood and supposed that the Amount accrued was not sufficient to pay one set of Coupons. It was understood generally that no money had accrued until 1858 and it was spoken about very soon after the default in the payment of the Interest due in July 1858. Some conversation was also had about it after the Default in January 1858. I think Mr Coman talked of coming out in 1858, but it was ascertained that the money accumulated was not enough to pay one set of Coupons. He said he must

be paid for coming out and upon learning the facts he did not come, but left it with the Attorneys to arrange. The Garnish suit in Chicago and some proceedings in Wisconsin by a Mr Keef who was a creditor of the Company, hastened the commencement of the foreclosure proceedings.

The Garnish and Claimants by their Counsel next offered in evidence an Act of the Legislature of the State of Wisconsin, Entitled "An Act Concerning Rail Roads Approved October 10. 1856 and published November 12 1856 and read therefrom to the Jury Sections 1. 2 3 & 4 as follows.

"An Act Concerning Rail Roads."

The People of the State of Wisconsin represented in Senate and Assembly, do Enact as follows.

Section 1. Any rail road Company may borrow such sum or sums of money, at such rates of interest and upon such terms, as said Company or its board of directors shall authorize and agree upon and may deem necessary or expedient, and may execute one or more trust deeds, or mortgages, or both, as occasion may require, or any rail road or rail roads constructed in or in process of construction by said Company, for the amount or amounts borrowed or owing by such Company, upon such terms and in such manner

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as such Company or its board of directors shall deem
Expedient, and such Company may make such pro-
-visions in such trust deed or Mortgage for pledging
or transferring their railroad track, right of way,
depot grounds, rights, privileges, franchises, immunities,
Machine Houses, Rolling Stock, furniture, tools,
implements, appendages and appurtenances
belonging to or used in Connection with such rail
road or rail roads, in any manner whatever as
security, for any Bonds, debts, or sums of money that
may be secured by such trust deed or Mortgage, as they
shall think proper, and in case of any sale of any
rail road or rail roads or any part thereof Con-
-structed or in process of Construction by any rail road
Company, or by virtue of any trust deed or on foreclosure
of any Mortgage thereupon the party or parties acquiring
title under any such sale, and their associates, successors
or assigns shall have and, acquire thereby, and shall
Exercise and Enjoy thereafter all and the same rights
privileges, grants, franchises, immunities and advantages
in and by said Mortgage or trust deed Enumerated and
Conveyed, which belonged to and were Enjoyed by the
Company making such deed or Mortgage or Contracting
such debt, so far as the same relate and appertain
to that portion of said road or the line thereof
Mentioned and described in and Conveyed by said Mortgage

or trust deed, and no further, as fully and absolutely in all respects as the Corporators, Share Holders, Officers and Agents of such Company might or could have done, therefore had not such sale or purchase taken place such purchaser or purchasers, their Associates Successors or assignors may proceed to organize anew and Elect directors distribute and dispose of stock, take the same or another name, and may conduct their business generally under and in the manner provided in the Charter of such rail road Company, with such variations in manner and form of Organization as their altered Circumstances and better Convenience may seem to require: Provided However That no greater or enlarged powers shall be Exercised by the New Organization, than are Conferred by the Charter of such Company.

Section 2. All rolling stock of any rail road Company used and Employed in Connection with its rail road shall be, and the same are hereby declared to be fixtures, and all such property, and all additional right of Way, depots grounds, and other real property acquired subsequently to the Execution of any such Trust deed or Mortgage which may be described or provided for therein, shall be subject to the same lien as is Created by such trust deed or Mortgage, upon the property therein described, to which such Company had title at the time of its Execution Every such Mortgage or trust deed, upon any rail road

in this State, and upon any part thereof, and Every discharge or Satisfaction thereof, may be recorded in the Office of the Secretary of State, in a proper book kept for that purpose, and the Certificate of such recording Endorsed on such Mortgage or trust deed, by the Secretary of State shall be Evidence thereof, and the said Mortgage or trust deed so recorded, shall have the same Effect as if recorded in the Several Counties through which said road may be built, and the record of such trust deed or Mortgage so made as above provided, shall be Evidence and Notice of the lien hereby Created upon all such subsequently acquired property, to all persons interested to the same Extent and with the same Effect as the same is now by law made, Notice of the time of such trust deed or Mortgage upon any property to which such rail road had title at the time of its Execution.

Section 3.

It shall and may be lawful for any rail road Company Annually, or oftener, as its board of directors shall deem Expedient to set apart and appropriate a sum of Money not Exceeding fifty per Cent of its net Earnings or resources in any one year after paying the Current Expenses of their road, and the interest and its outstanding indebtedness, in Order to sink, redeem, pay off, Cancel or discharge the indebtedness of said Company incurred in the Construction and Equipment of its road, and said

sums so set apart shall be annually applied to the payment and discharge of such debts, of said Company as shall be due and to the purchase and redemption of the outstanding Evidences of indebtedness of said Company upon the best and most favourable terms to be held or cancelled by said Company as the board of directors thereof shall deem most for the interest of said Company.

Section 4.

That all Mortgages or trust deeds heretofore Executed by Any railroad Company, are hereby declared to be included within, and subject to the provisions of this act as fully and Effectually as if its provisions had been incorporated in its Charter, prior to and at the time of the Execution of such Mortgages or trust deeds. Provided However That such Railroad Company shall first accept of the provisions of this Act by a resolution of its board of directors and shall Cause a Copy of thereof, under the Certificate of its Secretary, with the Corporate Seal thereof attached thereto, to be filed in the Office of the Secretary of State, And Provided, further That this Section shall not be construed in any wise to affect any liens acquired by any person or persons, Corporation or body politic, upon such subsequently acquired property, at any time after the Execution of such Mortgage, and prior to the filing of the acceptance of the provisions of this act, as above provided in the office

of the Secretary of State.

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The Exhibits and Claimants next offered in Evidence and read to the Jury, an Exemplification of a Resolution of the Board of Directors of the Mineral Point Rail Road Company as Certified by the Secretary of said Company and filed in the Office of the Secretary of State of the State of Wisconsin, said Exemplification being duly Certified by the Secretary of State of the State of Wisconsin under the great Seal of said State, as follows:

"At a Meeting of the Board of Directors of the Mineral Point Rail Road Company duly convened at Mineral Point, in the State of Wisconsin on the 6th day of June One thousand Eight hundred and fifty seven, at which meeting were present Parley Eaton President, John Bracken Harry Koop, Francis Vivian, George W. Cobb, and James Noble Directors, Constituting a majority of all the directors of said Company, the following resolutions were Unanimously adopted.

Resolved That the said Mineral Point Rail Road Company does by this resolution of its Board of Directors, accept of the provisions of an Act of the Legislature of said State Wisconsin Entitled "An Act Concerning Rail Roads approved October 10. 1856

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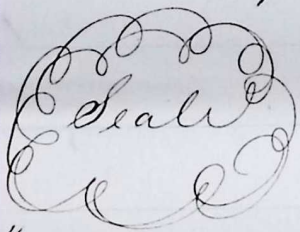
and published on the 12th day of November 1856

Also Resolved That a Copy of the above resolution under the Certificate of the Secretary of said Company, with its Corporate Seal thereto attached, be filed in the Office of the Secretary of State of said State of Wisconsin.

State of Wisconsin
County of Iowa

I William T. Henry Secretary of the Mineral Point Rail Road Company, do hereby Certify that the within are true and correct Copies of resolutions of the Board of Directors of said Company, passed at a special meeting of said Board, held at their Office in Mineral Point on the 6th day of June 1857 as the same still appears of record in my Office.

In Witness whereof I have hereunto signed my name & affixed the Corporate Seal of said Company at their Office in Mineral Point Wis this 6th day of June A.D. 1857



William T. Henry Secretary
Mineral Point Railroad Company.

(Endorsed) Certified Copy of the Resolution passed by the Board of Directors of the Mineral Point Rail Road Company. June 6. 1857. Secretary's Office June 8th 1857. Recd for record and recorded in Book of R.R. Mortgage in page 211. at 8²⁰ A.M.

71.
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State of Wisconsin }
Secretary's Office } ss.

The Secretary of State of the State of Wisconsin, hereby Certifies that the foregoing Certificate of the Secretary of the Mineral Point R.R.C. has been Compared with the Original instrument with its Endorsements as filed June 8th 1857 on file in this Office and that the same is a true and Correct Copy thereof and of the whole of such original and that the same appears recorded in Book of R.R. Mortgages on Page 211.



In Witness Whereof I have hereunto set my hand affixed the Great Seal of the State at the Capitol in Madison this 5th day of April A.D. 1860

Edward Riley
Asst Secretary of State

Said Garnish and Claimants next offered in Evidence and read to the Jury the Original Deed of further assurance set out in the Answer of the Garnish and a Copy of which is attached to said Answer as "Exhibit C" Executed by the Mineral Point R.R.C. to the Claimants Martin & Coman and bearing date June 6th 1857.

The Garnish & Claimants here rested, and the Plaintiff thereupon introduced and read to the Jury the transcript of two Judgments recovered in the Supreme Court of New York against the Mineral Point Rail Road Company, one in favour of William Menzies and the other in favour of George Ackerman as follows

The People of the State of New York

By the Grace of God Free and Independent.

To all whom these presents shall Come or may Concern
Greeting,

 Know ye That we having inspected the records and files in the Office of the Clerk of the City and County of New York and Clerk of the Supreme Court of said State ^{for said County} do find a Certain Judgment Roll on file there remaining, which is in the words and figures following to wit

N. Y. Supreme Court.

William Menzies

agst

Mineral Point Rail
Road Company

} of Service of Summons

City and County }
of New York } ss

I Certify that on the 8th day of May 1858. at the City and County of New York I served the Summons hereto annexed on L Beecher Vice President of the Mineral Point Rail Road Company, the defendant in this Cause by delivering a Copy of said Summons to and leaving the same with said Beecher Vice President of said Defendantz personally

This 11.06

J C Willit
Sheriff

NY Supreme Court
City and County of New York
William Menzies

against

The Mineral Point Rail
Road Company

Summons for Money demand
on Contract

To the Defendantz, You are hereby summoned and required to answer the Complaint in this action which will be filed in the Office of the Clerk of the City and County of New York at the City Hall in said City and to serve a Copy of your answer to the said Complaint on the Subscribers at their Office 213 Nassau Street in the City of New York within twenty days

after the service of this Summons on you Exclusive
of the day of such service, and if you fail to
Answer the said Complaint within the time
aforesaid, the Plaintiff in this Action will take
Judgment against you for the sum of Seven
Thousand five Hundred dollars, with interest from
the fifth day of May One thousand Eight Hundred
and fifty Eight besides the Costs of this Action

Dated N.Y. May 7. 1858

Flanagan & Cummings
Plffs Attys.

N.Y. Supreme Court

William Menzies

ag't

Mineral Point Rail

Road Company

The above named Plaintiff
by Flanagan & Cummings his Attorneys Complains
against the above named Defendants and alleges
That heretofore to wit, on or about the 2^d day of
November 1857 at Mineral Point in the State of
Wisconsin the said defendants a foreign Corporation
incorporated and Created by an act of the Legislature
of the State of Wisconsin passed April 17th 1852
made their Certain Bill of Exchange in writing

That

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bearing date said day and then and there directed
the said Bill of Exchange to Francis Vivian, the
Treasurer of said defendant by which said Bill
of Exchange, the said defendant by their president
requested the said Francis Vivian Treasurer of said
defendant, six months after the date thereof, to pay
to the Order of L Beecher the Vice President of said
defendant the sum of Twenty five hundred dollars
at the Office of said Company No 22 William Street
in the City of New York for Value received, and then
and there delivered the said Bill of Exchange to the
said L Beecher Vice President as aforesaid
who Endorsed and delivered the same to one
George Ackerman, who subsequently delivered the
same to the plaintiff who is the owner and
holder thereof. That after the making
thereof and on or about said day the said Bill of
Exchange was duly presented to the said Francis
Vivian Treasurer aforesaid for acceptance and
said Francis Vivian by Endorsements in Writing on the face
of such bills as such Treasurer then and there
accepted the same.

Second- That Wherefore to wit, on or about
the ^{said} 2^d day of November 1857 at Mineral Point
in the State of Wisconsin, the said defendant a foreign
Corporation incorporated and Created by an Act of

the Legislature of the State of Wisconsin passed April 17 1852 made their Certain other Bill of Exchange in writing bearing date said day and then and there directed said Bill of Exchange to Francis Vivian the Treasurer of said defendant by which said last mentioned Bill of Exchange the said defendant by their President requested the said Francis Vivian Treasurer as aforesaid six Months after the date thereof to pay to the Order of L Beecher the Vice President of said Defendant the sum of Five Thousand dollars at the Office of said Company N^o 22 William Street in the City of New York for value received and then and there delivered the said Bill of Exchange to the said Beecher Vice President as aforesaid who Endorsed and delivered the same to one George McKerman who subsequently delivered the same to the Plaintiff who is the owner and holder thereof.

That after the making of said Bill of Exchange and on or about said day the same was duly presented to the said Francis Vivian Treasurer as aforesaid for acceptance and said Francis Vivian by Endorsement in writing on the face thereof as such Treasurer then and there accepted the same.

That said Bills of Exchange are now due and payable, and that said defendant

147 have not yet paid the same or either of them, or any part thereof but remain and are indebted to the plaintiff in the whole amount thereof with interest from the maturity of the same.

Wherefore Plaintiff claims judgment against said defendants for the sum of Seven thousand five hundred dollars with interest thereon from the 5th day of May 1857. besides his Costs in this Action

Thosagan & Cummings
Att. Pleff.

City & County of New York ss.

William Menzies Plaintiff within named being duly sworn says that he has read the foregoing Complaint, that he knows the contents thereof, and that the same is true of his own knowledge.

Sworn before me this 27th day
of May 1858

Myer Masten

Com of Deeds

N Y Supreme Court.

William Menzies

agent
Mineral Point Rail
Road Company
City & County of New York.

Henry R Cummings being sworn

says that he is one of the firm of Flanagan & Cummings Attorneys for the Plaintiff herein, that no notice of appearance, answer or demurrer ~~has~~ ^{therein} by or on behalf of said defendant^s has been served upon said Attorneys.

Deponent further says that the charges for disbursements in the annexed bill have been actually and necessarily paid and incurred Excepting prospective charges
 Sworn before me this } Henry R Cummings
 29 day of May 1858 }
 Horatio P Carr }
 Com. of Duct }

New York Supreme Court

William Menzies

ag't.

Mineral Point Rail
Road Company

leasts by Statute

Allowance by reason of Attachment

Oath to Compt. 12 1/2 Afft for attcht 12 1/2

Sheriffs fees Servg Compt.

aff now recpt of answer

clks fees Entering Judgment

Transpt & filing

Execution (2 Counties)

Satisfaction -

Piffs Costs.

10.00

60.00

25

1 06

13

1 00

12

1 38

13

Adjusted at

May 29. 1858.

\$74.07
R B Connolly clerk

49

Amount Claimed with int
leastz —

\$ 7535.00
74 07
\$ 7609 07

Supreme Court
William Menzies

agpt

Mineral Point Rail
Road Company

The summons having been
duly served on the Defendant on the 8th day of
May 1858, and no notice of Appearance Answer or
demurer herein having been served upon the
Plaintiffs Attorneys in this action.

Now on motion
of Flannigan & Cummings Attorneys for Plaintiff
it is ordered and adjudged that the Plaintiff recover
against the said Defendant the sum of Seven
Thousand five hundred and thirty five dollars,
together with the sum of Seventy four dollars
and seven Cents Cost, amounting in all to the
sum of Seven Thousand Six hundred and nine
dollars and seven Cents.

"Endorsed Filed May 29 1858
at 10 o'clock AM"

all of which we have caused by these presents.

to be Exemplified, and the Seal of the Supreme Court
to be hereunto affixed

Witness Now Henry E Davies Justice
at the City of New York this 6th day of September AD
1858 and of our Independence the Eighty second
Richard B Connolly Clerk

State of New York }
City & County of New York } ss

I Henry E Davies presiding
Justice of the First Judicial District of the Supreme
Court of the State of New York, do hereby Certify that
Richard B Connolly whose name is subscribed to the
preceding Exemplification, is Clerk of the City and County
of New York, and Clerk of the Supreme Court of said
State for said County, and as such has the Custody of
the Records and Files of said Supreme Court in said
County, that the seal hereby affixed is the proper seal
of said Supreme Court for said County, and that the
Attestation of the above is in due form

In witness Whereof I have hereunto subscribed
my name this 6th day of September AD 1858

Henry E Davies
Presiding Justice

151 The foregoing is all the Evidence introduced on the trial of said Issues, and thereupon the Counsel for the Garnisher and Claimants asked the Court to instruct the Jury as follows.

1st That if the Jury believe from the Evidence that the funds in question alleged to be in the hands of the Garnisher, The Galena and Chicago Union Rail Road Company, accumulated under and arose out of the Contract made by and between the Mineral Point Rail Road Company of the one part and the Galena and Chicago Union Rail Road Company and the Illinois Central Rail Road Company parties of the other part bearing date the 10th day of October 1853, and given in Evidence, and if the Jury also believe from the Evidence that the Mineral Point Rail Road Company made default in the payment of interest provided to be paid in and by the deeds of trust to Coman and Martin set out in the Answer of the Garnisher and given in Evidence or made default in the sinking fund also provided for in said trust deeds, and that such default occurred prior to September 1857, and that the said Trustees Martin and Coman by reason of such default took possession of the road and property of said Mineral Point Rail Road Company under said deeds and continued such possession during all the time when

Refused

the funds in question were accumulating, then the Jury will find the right to said money in the said Martin & Coman, and that there is nothing due from the said Garnishu to the Mineral Point Rail Road Company.

2^d If the Jury believe from the Evidence that the money in controversy accrued under the Contract between the Mineral Pt RR Co and the Galena & C W. R. R. Co & the Ills Central RR Co whilst the Mineral Pt Rail Road was in the possession of and operated by Martin & Coman or their Agents in pursuance of the power conferred on them by the Deeds offered in Evidence, then said Money belongs to the said Martin & Coman and the Jury must find the issue on the Interpleader for them.

3^d If the Jury believe from the Evidence that Martin & Coman took possession of the Mineral Pt RR in July or August 1857 in pursuance of the Deeds of Trust offered in Evidence and on account of default in the payment of the Interest on the Bonds secured by said Deeds, then whilst they so remained in possession and use of said Road, the Earnings thereof belonged to said Martin & Coman to be applied by them in pursuance of said Deeds.

Refused

Refused.

(153)

Refused

4th If the Jury believe from the Evidence that the funds Garnished and in question are a part of the \$50,000 guaranteed fund mentioned in the Deed of Trust given in Evidence, then the Jury are instructed that such Deed of Trust is Effectual in law to transfer the right to said fund to Martin and Coman the grantees in said Deed.

Refused -

5th It was not necessary that the Garnisher should be notified of the assignment of the money in its hands before the service of the process upon it, in order to make such assignment Effectual against the Plaintiff

Given -

6th The Plaintiff by his Garnisher proceedings only acquires the rights of the defendant the Mineral Pt RR Co in or upon the money or property in the hands or possession of the Garnisher, and if the Jury believe from the Evidence that the money in controversy had been transferred by the Mineral Pt RR Co so as to vest in the Claimants Martin & Coman the Equitable right to it as against the Mineral Pt RR Co before the service of process in this case, then they must find for the Claimants upon the Interpleader and in favour of the Garnisher

7th An absolute assignment of money in the hands of third persons is an authority to the assignee to receive the money so assigned.

Interpleader Instructions.

8th It was not necessary for the Claimants in their interpleader to set out the title by which they claimed the money in controversy, and having claimed the money generally, they may establish their right to it, by any competent testimony showing such right.

9th The Jury are instructed that no written authority was needed to constitute Mr. Cobb the Agent of Martin & Co. man, and if the Jury believe from the Evidence that Luther Beecher having possession of the Mineral Pt R.R. as Contractor in July or August 1857 and at the same time being a holder of the Bonds of the Mineral Pt R.R. Co. secured by the Deed in Evidence, delivered said Road to Mr. Cobb for the Trustees in said Deed and the said Trustees upon being advised thereof immediately ~~ratified~~ ratified and approved of said Beecher's acts in the premises, then the appointment of said Cobb so made and ratified, was Equivalent to an actual original appointment by said Trustees.

10th

The Deed of Trust offered in Evidence
Conveyed to the Trustees the Contract with the
I & C RR Co. and Illinois C R R Co. offered in
Evidence, and all indebtedness of said Companies under
it in trust for the purposes specified in said Deed

Given

11th

The word "premises" as used in the
Clause of the Deed of Jan'y 1st 1856 Conferring the
power to take possession and sell upon the Trustees,
included all the property described in the granting Clause
of the Deed, and does not mean simply the Rail Road
and Rolling Stock of the Company.

Given.

The Court gave to the Jury the 6th 7th 8th 9th
10th & 11th Instructions so asked for as aforesaid, but
refused to give the 1st 2^d 3^d 4th & 5th of said
Instructions, and to the refusal of the Court to give
the said first, second, third, fourth, and fifth
Instructions and Each of them, the said Garnishu and
the said Claimants and Each of them separately, then
and there Excepted

The^{then} Court of its own Motion
instructed the Jury as follows.

By the Court

1st The Jury are instructed by the Court that
assuming ^{that} by the terms of the Trust deeds in Evidence

the income derivable under the Contract with the
 Salena & Illinois Central Rail Roads, passed to the
 Trustees Martin & Coman, yet it nevertheless passed
^{subject} to the right on the part of the Mineral Pt Rail
 Road Company to collect, receive and dispose
 of any monies, due or to grow due under said
 Contract, And the Court instructs the Jury
 as Matter of law that an Assignment of a debt
 or Chose in Action or other property, with a reservation
 to the party making the assignment to collect
 receive or sell the same, is a fraud in law
 and that nothing passes by it as against attaching
 Creditors, unless actual possession of the debt is
 obtained ^{by the assignee under his deed} or notice to the debtor that the right of
 the assignor to Control the debt has Ceased by Virtue
 of the deed before the service of the process upon
 the Garnisher

2d - And therefore if the Jury find from the
 Evidence there was a default but that no possession
 was taken under the deed by the Trustees under the
 deed or the debt in any wise reduced the possession
 by them till after the service of the Garnisher process
 in this Cause, then they will find that the property
 in the said debt was subject to the process and that
 the Trustees acquired no rights by the deed as against
 attaching Creditors of the Mineral Pt Rail Road Company.

3^d

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Given

And the Court further instructs the Jury that if they find from the Evidence that the Trustees actually took possession under the trust deed before the service of process in this case upon the Garnisher, but that no notice was given to the Galena Rail Road of such possession, and that by reason of default in the payment of ^{the} interest or principal of the Bonds secured by the Trust deed the said Mineral & Rail Road Company had ceased to have any right to Control or Collect any Moneys due to it, then the Jury will find that the said debt was subject to the Plaintiffs Claim in the hands of the Galena Rail Road, and that the Trustees have no right to the Claim as against them.

And to the giving of said Instructions and each of them, the said Garnisher and the said Claimants and each of ^{them} separately then and there Excepted.

The Jury thereupon retired to Consider of their Verdict, and afterwards returned into Court for further Instructions, and were ^{then} further instructed by the Court as follows.

Instruction By the Court

Under the third of the instructions entitled "by the

Review

Court" the Jury must find that actual Notice was given by the Trustees of their possession and of their rights under the deed, not in writing merely but, notice by an Agent would be sufficient, mere possession of the Road unaccompanied by any other act to show notice, would not be sufficient.

To the giving of which Instruction by the Court, the said, Garnishes and Claimants and Each of them separately, then and there Excepted,

And the Jury having again retired to Consider of their Verdict, shortly afterwards returned into Court with the following Verdict - to wit:

Verdict. —

We the Jury find that the Garnishes have in their hands the sum of \$11,164.⁰⁰ and that the same was the property of the Mineral Point Rail Road Company at the time of the service of the Garnishue process in this suit, and subject to said process, that the Amount of the Plaintiffs debt at this time is \$8,929.26 and we further find that the said Interpleaders have no right to said Money as against the Plaintiffs

Charles Santos
Foreman

And upon the Announcement of said Verdict the said Garnishes and the said Claimant separately

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by their Counsel moved the ^{Court} to set aside said Verdict of the jury and to grant a new trial upon the said issues, and afterwards to wit at the February Term 1861 of said Court filed their motion in said Cause as ^{in writing} follows

Cook County Circuit Court
William Menzies

vs
Galena & Chicago Union RR Co.
Garnish of Mineral Point RR Co
& David R Martin and
Lucien D Coman
Claimants

And now Comes the said Garnish Defendant and the said Martin & Coman Claimants by Scats McAllister & Jewett their Attorneys respectively and severally move the Court to set aside the Verdict of the jury and grant a new trial in said Cause for the reasons following to wit:

- 1st Said Verdict is Contrary to the facts in Evidence in said Cause.
- 2^d Said Verdict is Contrary to ^{the} Law of said Cause
- 3^d Said Verdict is Contrary to the law and the Evidence
- 4th The Court refused proper Instructions asked for

with them, to wit Scats McAllister & Jewett

on the part of said Garnisher & Claimants respectively
5th The Court of its own Motion gave improper
Instructions to the Jury.

Scates, McAlister, & Jewett
Atty for Garnisher & Claimants

Which Motion afterward coming on to be heard,
~~Motion~~^{was} overruled by the Court, and to the decision
of the Court in overruling said Motion the said
Garnisher and the said Claimants separately by
their Counsel then and there Excepted, and
Judgment was thereupon rendered in said Cause
upon the Verdict of the Jury aforesaid, and thereupon the
said Garnisher and the said Claimants by their Counsel
respectively prayed an appeal to the Supreme Court, which
by Consent of the said Plaintiff by his attorneys given
in Open Court, was allowed without the rendering or
filing of any Appeal Bond, the said Bonds being
Expressly waived by the said Plaintiff

And forasmuch as the
proceedings upon the trial of said issues, and
the rulings and decisions of the Court and
Exceptions thereto aforesaid, do not appear of
record in said Cause the said Garnisher &
the said Claimants have prepared and tendered
to the Court this Bill of Exceptions, and

prayed that the same may be signed and sealed
 by the Court and made a part of said Record
 which is accordingly done this 28th day
 of February AD 1861.

George Manierre (Seal)
 Judge of 7th Judicial
 Circuit Illinois

State of Illinois
 County of Cook

I, William L. Church, Clerk of the
 Circuit Court of Cook County, in the State aforesaid, do
 hereby certify the above and foregoing to be true, perfect and
 complete copies of the original with Interrogatories to Garneshee,
 answers of Garneshee, ^{of Claimants,} Interpleaders, Replications to answers,
 and Interpleaders, Orders of record and Bill of exceptions,
 in a certain cause lately pending in said Court, wherein
 William Menzies was Plaintiff and The Galena & Chicago Union
 Rail Road Company as garneshee of The Mineral Point Rail
 Road Co, and David R. Martin & Lucien D. Comant, Claimants, &c
 were Defendants,

In witness whereof I have hereunto set my
 hand, and affixed the seal of our said Court at
 Chicago, this 4th day of April AD 1861.

W. L. Church
 Clerk

Fees for Record \$36.⁵⁰
 Paid by Defts atty
 Mr. L. C. M.

State of Illinois ss. And now comes the said Galena & Chicago Union
Railroad Company, by Scates, McAllister & Jewett its attorneys,
& say that in the Record & proceedings, & in the rendition of judg-
ment there is manifest error in this to wit

- 1 The Court erred in refusing the 1st, 2nd, 3rd, 4th & 5th instructions
asked by the said Company, & each of them.
- 2 The Court erred in giving to the jury the instructions numbered
1st, 2nd & 3rd ~~4th~~ "by the Court".
- 3 The Court erred in giving his 4th & last instruction to the ^{Jury}
- 4 The Court erred in overruling the motions of said Galena
& Chicago Union Railroad Company, to set aside the verdict
of the jury & for a new trial
- 5 The Court erred in rendering judgment ^{Company} against said

Wherefore for the errors aforesaid & others apparent
upon the face of the Record it prays that the
judgment be reversed, annulled & for nothing est-
eamed, & it be restored to its rights so wrongfully
taken from it & for its reasonable costs

Scates McAllister & Jewett
Counsel for said Railroad Co.

And the said David R. Martin & Lucien D. Coman by Scates McAllister & Jewett their Counsel Come away that in the record & proceedings and in the rendition of judgment aforesaid there is manifest error - in this namely:

1st The Court erred in giving the first second, third, fourth & fifth instructions and each of them as asked for on behalf of said Claimants

2 The Court erred in giving the first second, third & fourth & last instructions voluntarily given by the Court of its own motion

3 The Court erred in overruling the motion of the said Claimants, Martin & Coman, to set aside the verdict & for a new trial

4. The Court erred in rendering judgment against the Claimants, Martin & Coman, and in favor of the said Plaintiffs below

Wherefore for the errors aforesaid, & others in the record apparent, they pray that the same may be reversed, annulled & for nothing esteemed, and they restored to all things, together with their costs Scates McAllister & Jewett of Counsel for Claimants

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The Galena & Chicago
Union Rail Road Company
vs

Menzies

^{vs}
G. & C. U. R. R. Co. &c.

William Menzies

Record

Filed April 17, 1861
L. Leland
Clerk