"in accordance with and by virtue of the authority given to the president "and secretary, per resolution, &c., passed at meeting of board held July "11th last, when upon motion of F. Bloodgood, the following preamble and "resolution were adopted:

"On hearing a statement made by A.M. Sherman in regard to his purchase "of the bonds of the company, and his negotiations and sale of the same, "by which it appears that he would sustain a loss or deficiency of twenty "per cent. or thereabouts, on the 467 bonds by him purchased, and it ap-"pearing that the same had been legally and advantageously defened "for the term of eight years from the 1st day of January next, therefore-

"Resolved, That this company do indemnify said Sherman for "such loss or deficiency, and that the president and secretary be, and they are "hereby authorized to audit and settle said indemnity."

That on the 28th of Sept., 1855, an account was opened upon the books of the plaintiff, which was designated as "A.M. Sherman Loan Acct."; that the debits to the said Sherman, in the said account, were for cash advanced to the said Sherman, except in two instances, in one of which his note to the plaintiff was charged over to him, and in the other of which its notes loaned to him were charged: that a very large balance against the said Sherman appeared in the said account from September, 1855, to March, 1858, when it was nominally closed in the manner hereinafter stated.

That the said balance appearing in the said account was, at all times during the process of extending the said bonds, largely in excess of any amount of moneys which was actually invested, at such times, in that operation.

That the said apparent balance, on the 21st of April, was $220,114.90.

That on said day the said balance was diminished by an entry by direction of the said Sherman of a credit to himself, which was as follows:

"April 21. By Reserved Stock Ac., for this "amount in cash paid A.M. Sherman, July "12, 1856, and charged in error to him instead "of former ac., now charged to reserved stock "ac., per order of Pres't., April 20th, 1857. $10.000.00"

That the said $10.000 was paid on the 12th July, 1856, by the Company to John Thompson, on the order and for the account of the said Sherman; and the receipt of the said Sherman, to the Company given therefor, and filed among the vouchers of the Company; that the said moneys were applied to the individual use of the said Sherman; that the said use was as a deposit, advance or payment, on account of certain specu-lations in stock in which the said Sherman was engaged; that no part of the said moneys was ever applied to any use of the said Com-pany; that the expenditure thereof was never accounted for to the Company; that no voucher for it as an expenditure for the Company was ever produced; that no entry of it, as such, was ever made in the appropriate account of the company; that, in order to enable the books of the plaintiff to balance, the said Sherman, in collusion, with the said Mehaffey, directed a debit

to be made in an account of the company known as the "Reserved Stock Ac-count", but that the said entry did not belong in the said account, and that the said Sherman took away from the files of the company the receipt which he had given for the said payment.

That on the 30th April, 1857, the said Sherman reported that he had sold 354 of the said 467 bonds, at a loss of 20 per cent., or $70,800, which was au-dited and settled, and credited to him in the said account by an entry as follows:

"April 30. By profit and loss ac. for 20% loss on purchase of 467 bonds of the company of $1000 each, and sale of only 354 of said bonds at an ave-age of 80% (or 800 each), viz., 20% on $354.000. $70.800"

That, after the said credit, the apparent balance remained $138.314.90, besides the $10.000 improperly credited, making $148.314.90: that the bonds then unsold by him were 113 in number, one of which had been given to Lowell Holbrook as a commission for services in the extension of the said bonds, - leaving 112, or the exact number which the said Sherman & Dean had eight days before assumed to pay as a part consideration for the lands purchased by them; that, if the whole 113 bonds had on that day been credited to the said Sherman at par, a balance against him would still have appeared in the said account of $35.314.90, besides interest.

That the apparent balance on the 30th September, 1857, when the plaintiff executed its deed of trust for the benefit of creditors, remained the same as on the 21st of April, 1857, except that on the 2d July a credit was en-tered of $3,250, as the proceeds of five bonds sold at sixty per cent.

That the said apparent balance of $138,314.90 existing on the 21st of April, 1857, and remaining the same (except as to the entry last aforesaid) on the 30th September, 1857, was subsequently disposed of by a series of credits entered by direction of the said Sherman and the said Mehaffey, and which are classified as follows:

First Class. — Cash paid or loans settled as proceeds of bonds sold.

1857.				
July 2d.	"By cash recd. of Lostheal & Co.,"	5 bonds at 65		$3.250
Dec. 31.	— By loan ac. for amt. received by A. M. Sherman for sale of 32 bonds of the Co. for $1000 each to Miss Ann Sanish in Aug. & Sept. last, at 60 p.c. or $600 each	32	" 60	19.200
Dec. 31.	— By loan ac. for amt. transferred from former to latter ac., being cash advanced to Company Aug. 4. 1857, by G.M. Peck or J. Sloan	7	" "	4.000
1858.				
March 1.	— By loan ac. for amounts transferred from former to latter ac., being cash advanced to Co. by Lostheal & Co. Sept. 5. 1857.	4	" "	2.000