respondent, in behalf of himself and said Dean, to the complainant, on or about the day of the maturity thereof. This respondent further says, that at the time of the payment of each of said notes, respectively, an acknowledgement by the complainant, of such payment, was written across the face thereof, and signed by the Secretary of the complainant, and the said notes, thus paid and cancelled, were respectively delivered up and surrendered to this respondent; which said notes, so paid, endorsed and cancelled, are now in the possession of this respondent, ready to be produced as this Honorable Court shall direct.

This respondent further answering, avers, that each of said notes were, respectively, fully paid before they were so endorsed and delivered up to this respondent. And this respondent denies that said notes, or either of them, or any part thereof, could have been properly charged in account against this respondent at the maturity thereof.

This respondent further answering, denies that said notes, or either of them, or any part thereof, was paid with the money of the complainant; but on the contrary, he avers that each of said notes, respectively, were paid to the extent of five-eighth part thereof, respectively, out of the moneys of this respondent; and that the remaining three-eighth parts thereof were paid with money furnished to this respondent by and on the behalf of said Dean, at or before the time the same was so paid by this respondent to the complainant.

This respondent further answering, says, that the consideration for said sale and purchase and contracts, in addition to said $25,000 in cash as paid, as aforesaid, was the agreement of this respondent and his co-defendant, Dean, to assume the payment of 112 of the complainant's Bonds, of $1000 each, and to pay the same on the first day of January, 1864, and in the meantime to pay interest thereon, from and after the first day of July, 1856, on the first days of January and July, of each year, at the rate of six per cent. per annum; the payment of which said Bonds had been previously extended by the holder or holders thereof, by a covenant between them and the complainant, from the first day of January, 1856, to the first day of January, 1864; it being understood that the payment of said interest on said Bonds should be made to the complainant; to the end that the endorsements of the payment of interest on said Bonds might be made in the peculiar form which the complainant had adopted, which said assumption is set forth in the said Deed and also in the second and third Deeds, intended (as well as each in itself, to be a full and complete conveyance) as a further acknowledgment and ratification of said conveyance hereinafter mentioned, marked Exhibit A.

This respondent says, that the said 112 Bonds were part and parcel of the $467,000 of the Bonds of the complainant remaining unpaid; the whole of which issue of Bonds, including said 112 Bonds, were secured by a Mortgage upon the whole of the coal lands of the complainant, including that portion so sold and conveyed by said complainant to this respondent and his co-defendant, Dean; that the said conveyance to this respondent and said Dean was subject to said Mortgage, in common with the rest of the coal lands of the complainant; and the said 112 Bonds, by virtue of said Mortgage, are still a lien on said lands so sold and conveyed by complainant to this respondent and said Dean; without the payment and discharge of which, the said

lands cannot be freed from said lien; a copy of which said Mortgage Deed is hereto annexed, marked Exhibit No. 6.

This respondent further answering states and avers, that he and his co-defendant, Dean, did assume the payment of said bonds and interest thereon, as by them so as aforesaid covenanted, and did, in pursuance thereof, pay unto the complainant, the interest on said 112 bonds, at the rate aforesaid, on the first day of January next, after the execution of said Deed, being the first day of January, 1857, being the first instalment of interest so agreed to be paid by this respondent and his co-defendant, Dean, and on the first day of July, 1857; and on the first day of January, 1858, to wit, the sum of three thousand three hundred and sixty dollars ($3,360) on each of those occasions, by check payable to the order of the complainant, which were accepted and received by said complainant, and were duly paid on the presentation thereof; and the said complainant gave to this respondent a receipt for the payment of said interest so due and payable, and so paid on the said first day of January, 1858, of which the following is a copy:

New York, January 2nd, 1858.

"Received from A. M. Sherman, Esq. his check for thirty-three hun-
"dred and sixty dollars, being six months' interest on 112 bonds of the
"Company, of $1,000, in accordance with contract between said Company
"and A. M. Sherman and N. B. Dean.
"$3,360.

"Cumberland Coal and Iron Company
"Edward F. Loomis
"Secretary."

This respondent further says, that in fulfillment of the contract of this respondent and his co-defendant Dean, in that behalf, he caused to be tendered to the said complainant, at its office in the City of New York, on the first day of July, 1858, and on the first day of January, 1859, the interest, at said rate, on said one hundred and twelve bonds, which became due and payable on the said several days respectively, to wit, the sum of $3,360 on the first day of July, 1858, and $3,360 on the first day of January, 1859, which said sum, on each of said occasions, was so caused to be tendered in gold to the complainant; but the said complainant refused to receive the same; and this said respondent says, that he has so paid to the complainant, for interest on said one hundred and twelve bonds as aforesaid, the sum of $10,080, which was accepted and received by the said complainant, and in addition thereto, has so tendered to the complainant in gold, for such interest, the sum of $6,720, making in all the sum of $16,800, so paid and tendered as aforesaid; and this respondent and said Dean stand ready to pay the interest and principal of said bonds, pursuant to said agreement, when and as they shall severally mature.

This respondent further answering, says, that after the said sale by the complainant to this respondent and his said co-defendant, Dean, had been consummated, by and with the consent of the Directors and the complainants Stockholders, and at their desire and request, and after the same had