the said stockholders had no just claim, and could not honorably insist upon it as a right; yet he would suggest, if this respondent and said Dean had no objection, a modification of said terms of sale in certain particulars, to wit: first, that this respondent should release the said complainant from building any further said roads or sidings on the said lands so sold; and secondly, that they should release the Company from damages for non-performance of its contract to convey coal and freight when such non-performance should be caused by certain causes not within its control, as is more particularly stated in the resolution and release hereinafter set forth; and this respondent, then, at said meeting, freely consented to said modification; and thereupon Dr. E. L. Beadle, one of the complainant's stockholders, though not a Director, proposed and offered to said meeting the following preamble and resolution:

"The Deed for coal lands sold by direction of this Company, and which "was made to A. M. Sherman and William B. Dean, also the article of agreement "made by this Company with said parties, for the transportation and delivery of "coal and other freight, having been called for and read, some remarks were made "as to the effect of, or the interpretation to be given to, some of the conditions in each "of the aforenamed instruments, when a proposition was made by A. M. Sherman, "for himself and said Dean, their heirs and assigns, freely and fully to release this "Company from any and all obligations hereafter to construct any rail roads or si-"dings to or on the lands sold to said Sherman and Dean; also in like manner to "release this Company from damages arising from a failure on the part of the Company "to furnish the means for transporting and delivering coal and other freight, when "such failure shall arise from earthquakes, floods, public enemies, or elements over "which the Company has no control, until sufficient time to repair such interruption "shall have elapsed: whereupon it was, on motion of E. L. Beadle,

"Resolved, That the Board of Directors be instructed to take from said Sherman "and Dean, in regard to both the instruments above referred to, and that said "Sherman be requested to prepare and execute an Instrument, in writing, legally "and fully perfecting such release."

"Which said resolution is duly recorded in the complainant's book of minutes"

This respondent says that, pursuant to said resolution, and in compliance therewith, this respondent and his said co-defendant, Dean, did execute a release, on or about the 13th day of said June, 1857 and delivered the same to the complainant as a part of said contract, and as modifying the same in all the particulars desired by said stockholders, at said meeting as aforesaid; which said resolution was duly accepted and adopted by the complainant's Board of Directors, pursuant to the power and instruction so conferred upon said Board by said meeting of stockholders, as aforesaid, in the said resolution adopted by them; which said release is in the words and figures following:

"This Indenture of Release, made with the Cumberland Coal and Iron Company "of the one part, and Allen M. Sherman and William B. Dean, of the other part, "witnesseth: That whereas, said Company heretofore, to wit, on the 22nd day of "April A. D. 1856, by their certain Indenture, did sell and convey certain mining "lands, situate, lying and being in Allegany County, in the State of Maryland, "to said Allen M. Sherman and William B. Dean, their heirs and assigns, in "fee; which said Indenture, or Deed of Conveyance, among other things, contains "a covenant, whereby said Company were bound to construct a certain east road on

"the lands therein and thereby conveyed, and also "to construct and finish such "practicable and convenient branches and sidings to said road as may be necessary "or convenient for the mining and business of the said Sherman and Dean, "and their heirs and assigns, upon the lands thereby granted."

"And whereas, said Cumberland Coal and Iron Company, by a "certain other Instrument in Writing, bearing even date with said Deed of Con-"veyance, did among other things, covenant and agree to and with said "Sherman and Dean, their heirs and assigns, that they, the said Company "would received and take all the coal and other freight which might be mined "or produced upon or from said lands, at the mines, dump-houses and depots "which may be constructed thereon, and to transport, convey and deliver the "same at the City of Cumberland, in manner therein particularly specified, "for and during the full term of twenty years, from the first day of May "A. D. 1856, and did therein and thereby expressly covenant and bind themselves "to the exact and faithful performance of the terms and conditions of said con-"tract, and every part thereof under certain fixed and stipulated forfeitures "for delinquencies or failures in such performance.

"And whereas, said Company have now constructed and built a "rail road and siding therefrom to the opening now made on said lands

"Now, therefore, this Indenture of agreement further witnesseth: "That said Sherman and Dean, for themselves, their heirs and assigns, "for and in consideration of one dollar to them in hand paid, have re-"leased, and by these presents do release said Company from all and every "obligation by reason of the conditions or covenants in said Deed of Conveyance "as hereinbefore set forth, that is to say, from all obligations hereafter to construct "and build any branch or siding on the said lands for the convenience of said "Sherman and Dean, their heirs and assigns.

"And said Sherman and said Dean, for themselves, their heirs "and assigns, in further consideration of the above payment, do also fully re-"lease said Company from damage or forfeiture arising from a failure on "the part of said Company to furnish the means of transporting and de-"livering coal and other freights, according to the terms and stipulations of "said contract or agreement in writing, when such failure shall arise from "Earthquakes, floods, public enemies, or elements over which said Company "has no control, until sufficient time to repair such interruption shall have "elapsed."

In testimony whereof, we have hereunto set our hands and seals, this 13th day of June, 1857.

A. M. Sherman [L.S.]
William B. Dean [L.S.]

In presence of
Edward A. Stansbury
Acknowledged June 13th 1857, before
E. A. Stansbury,
Commissioner of Deeds.

This respondent says, that at a meeting of the complainant's Board of Directors, held on the 9th day of June, 1857, this respondent, after preparing the