still is an employee of the Company.

12th. — To the testimony of said Kelly, so far as it relates to offers made, and conversations had with A. Mehaffey in reference to prices offered by him for transportation on road of complainant, and to all declarations and conversations with said Mehaffey on said subject.

13th. — To the testimony of R. H. Phipps, wherein he sets and exhibits what purports to be a copy of A. Mehaffey's report, upon the ground that a copy is not admissible, unless the original is produced, or its absence accounted for, and also upon the ground that said copy even is not returned.

14th. — To the testimony of said Phipps, setting out a copy of the proceedings of the stockholders, upon the ground that the record itself of said proceedings is the best evidence, and also the testimony of said Phipps as to action taken at the stockholders' meeting of said Company upon the same ground, that such action is necessarily a matter of record.

15th. — To so much of the testimony of C. Baker as relates to a contract and conveyance from the complainant to Sherman and Dean, when he refers to no contract or conveyance whatever, which is shown by him, or produced by him and filed, and therefore the Court cannot know what instrument or instruments the witness is speaking of.

16th. — Also to that part of the testimony of said Baker, in which he says, that he supposed "the object of the sale would be to put the Company in funds, and there would be a reasonable profit in the transportation" because his suppositions are not evidence, and besides he does not produce or specify what contract he refers to.

17th. — To the testimony of R. P. Kelly, where he states he was informed that Mehaffey, the late President of the Company, and Mr. Wm. Schley, thought that an amicable arrangement would be effected with Mr. Sherman, in respect to the lands and transportation contract which had been made to him and Wm. B. Dean, because it is not of his own knowledge, but upon information.

18th. — Also as to what was suggested as to the mode of communicating with Mr. Sherman, because suggestions of others are not evidence.

19th. — Also as to what the witness was anxious to do in the way of getting a cancellation of the contract and conveyance spoken of by him, as the witnesses emotions are not evidence.

20th. — Also as to what Mr. Tilden was requested to do in communicating with Mr. Schley, because such evidence does not state by whom such request was made, or that it was made by any proper authority.

21st. — Also as to what witness was informed by Mr. Tilden, as to what Mr. Schley said he would do, because it is hearsay, and besides what Mr. Schley said was not evidence against these defendants, not even against said Sherman.

22nd. — Also as to the continuation of the correspondence between Mr. Schley and Mr. Tilden, and letters written between them, because it is shown that such correspondence was by letters, and the same are not produced, or their non-production accounted for.

23rd. — Also as to all the acts and opinions and grounds of action of the witness, as to which Sherman had nothing to do, or the other defendants.

24th. — Also as to his belief as to the reasons why he could not meet Sherman at his office, as it is merely opinion and belief.

25th. — As to all conversations between the witness and Sherman; as such conversations were made after the Deed and contract attacked in this case, and they cannot be evidence against the other defendants, to destroy their title.

26th. — Also as to the causes for delay in instituting legal proceedings against Sherman, to get back the property, because these are only the opinions or mental emotions of the witness, or the statement by his inference of what operated upon the Board of Directors, and caused such delay, and because, further, that even if the testimony were unobjectional for these reasons, the same would not be a good cause for delay.

27th. — Also as to the reasons why the Directors allowed Mehaffey to make a report in June, 1858, because it states matter which he could only know by what others said.

28th. — Also as to his statements and opinions as to the reasonableness or unreasonableness of said contract for transportation contract, because the whole is based upon statements furnished by Henderson, and statements are not produced and shown, and if they had been, there being no evidence of their correctness, would not be admissible, because not sworn to or proved correct.

29th. — Also, as to the conversation stated by witness to have taken place between Mehaffey and the Board, or some of them, as to the prices in the contract made with Sherman and Dean, because neither Sherman alone or the defendants, or either of them, are responsible for Mehaffey's declarations.

George A. Pearre
Thomas Devecmon,
Solicitors for Respondents.

The defendants in the above cause object to the reading of the testimony filed in the above case by complainant on the 11th of April, 1859, upon the hearing of the motion for a dissolution of the Injunction heretofore granted in the case, for the following reasons, viz:

1st. — That under the order of the Court, setting down this motion to dissolve for hearing, the testimony authorized to be taken was expressly directed to be returned on or before the day fixed for hearing of said motion; whereas the same was taken after the argument upon the hearing of said motion had been commenced, and was not returned on or before said day, but was only returned and filed in said Court and offered to be read after the argument of said motion on the part of the defendants had been concluded.

2nd. — Upon the ground that the whole testimony taken under the notice given to defendants in said case, for testimony to be taken before John Bissell, should be taken and returned altogether and should not be returned piecemeal.

Now testimony taken by said John Bissell, was taken, and the same was returned and filed in this Court, in this case, upon the 7th April, 1859. The defendants therefore insist that after returning said testimony no further testimony could rightfully be taken under said notice.

The aforegoing objection applies to the whole testimony, en masse, now excepted to.

In addition, in case this objection should be overruled, the defendants then