except to said testimony as follows. viz:

1st. — To the testimony of Henry M. Benedict, as respects the contents of the proxy given by him or his firm to vote at the annual election in June, 1857, and as to the powers thereby conferred, upon the ground that said proxy is shown to be in writing, and its loss is not proved, or its absence satisfactorily accounted for.

2nd. — To the testimony of R. H. Phipps testifying to the result of the examination of the record of proceedings of the stockholders of complainant at their meeting held in June 1856 and 1857, upon the ground that said record must be produced and it must speak for itself as the best evidence.

3rd. — To the testimony of said Phipps, giving a copy of the entry of proceedings at the meeting of stockholders of complainant held June 1st. 1857, said entry being shown to be in writing, which of course is the best evidence.

4th. — To the whole testimony of said Phipps, in relation to the proxies and the contents thereof, and the powers thereby given, voted on at the annual meeting in June 1857, and to Exhibit "D" filed in connection therewith, upon the ground that said proxies themselves must be produced or their absence or loss accounted for or proved; and especially because it is proved that said original proxies are now in possession of complainant, and they do not produce the same.

5th. — To the testimony of said Phipps in relation to the proceedings of the stockholders' meeting held June 1st, 1857, and to the copy of the entry of said proceedings given by said Phipps in his testimony, and to the proof of said proof relative to the original draft of said proceedings and the contents thereof, upon the ground that the record of said proceedings as well as the said original draft should be produced, they being the best evidence.

6th. — Also, the entire testimony of said Phipps upon his examination in chief, upon the ground that said testimony was read by him to the said John Bissell from a manuscript held by him in his hands at the time, and that the suggestion and arrangement of the facts sworn to by said witness were not made by witness.

7th. To the entire testimony of David Palmer, upon the ground that he is a stockholder in complainant; and was so at the time he testified.

8th. — To such parts of the testimony of said Palmer, as details and gives the conversations had by him, and the information derived by him from other parties in reference to Wm. B. Dean, his means and occupation, &c., and in reference to Wm. Pettit.

9th. — To the testimony of said Palmer giving the declarations and conversations of A. Mehaffey, at the meeting of Directors held 21st May, 1856.

10th. — To the entire testimony of James M. Fuller, upon the ground that he is interested in the event of this suit.

11th. — To the testimony of said Fuller stating the power conferred by the proxy given by him as therein stated, upon the ground that said proxy was in writing and not produced, or its non-production accounted for.

12th. — To the entire testimony of John Riley, upon the ground that he is interested in this suit as a stockholder of complainant.

13th. — To the testimony of said Riley, giving the conversations with and the declarations of A. Mehaffey.

14th. — To the entire testimony of said Riley upon the ground that the same was read by him from a manuscript held in his hand at the time, prepared by

the counsel of complainant.

15th. — The defendants except specially to the statements of Benedict; James M. Fuller and Wm. Seymour, Jr.; respectively, as relate to what they were respectively aware of or not aware of, or had heard or were informed as to the business which was to be transacted at the meeting of stockholders in June, 1857, because whatever their knowledge or ignorance might be, is wholly immaterial; there being no production by them of the regular notice to the stockholders published in the newspapers.

16th. — And also, to their statements that they were not aware of the affairs of Sherman, which have since been alleged to be fraudulent; because they do not state what these affairs are.

17th. — To so much testimony of R. H. Phipps as states the purpose for which the meeting of stockholders of 1st June 1857, was called, because he does not state or show, or produce the original call made for the same, and no evidence to show why it was not produced.

18th. — Also, to all the testimony of said R. H. Phipps, because the Commissioner put a question to him.

19th. — Also, to the testimony of David Palmer, as relates to his duties of classifying the expenditures of the complainant, and all that follows, giving results as to costs of transportation and cost of shipment, because he merely gives the results, and does not state the data or grounds upon which such results are obtained, and thus affording no means of testing the accuracy of his mere calculations.

20th. — To the testimony of James M. Fuller, stating what the party who got his proxy asked, because it is a conversation between third parties.

21st. — And also, to so much of his testimony stating his knowledge or ignorance as to what was to be done at the stockholders' meeting in June 1857, because it is immaterial and inadmissable as he does not show what knowledge he ought to have had. And as to his power of attorney, because the same is not produced, or its non-production accounted for.

Thomas Devecmon
G. A. Pearre,
Solicitors for Defendants

Afterwards, to wit: on the eighth day of April, in the year last aforesaid, the complainant by its solicitors aforesaid, file in Court here its petition, in the words and letter following, to wit:

The Cumberland Coal and Iron Company. against Allen M. Sherman William B. Dean and the Hoffman Steam Coal Company of Allegany County.	In the Circuit Court for Allegany County, As a Court of Equity No. 1286. Equity.

To the Honorable Thomas Perry, Judge of the Circuit Court for Allegany County as a Court of Equity

The petition of the Cumberland Coal and Iron Company, complainant in this cause, respectfully show that the answers of all the defendants in this cause