or falsity of the same; that he was entirely satisfied in the examination with the said sale and conveyance to said Sherman and Dean, and with the said contract, and that the same was correct and fair, and while he concedes, that the plaintiff had no claim on said Sherman and Dean, to change and modify said agreement, yet he suggested modifications in the two particulars referred to, if said Sherman and Dean had no objections, and thereupon said Sherman consented to make such modifications. Deponent says, that at such meeting the said stockholders passed a preamble and resolution, of which the following is a copy, to wit: 'Stockholders' meeting, held June 1st, 1857. The deed for coal lands sold by direction of this Company and which was sold to A. M. Sherman and William B. Dean; also the articles 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 said A. M. Sherman for himself and said Dean, their heirs and assigns, freely and fully to release this Company from any and all the obligations hereafter to construct any railroads or ledges to or on the lands sold to said Sherman and Dean; also in like manner to release this company from damage arising from 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 had 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 legally and fully perfecting such release'; which said resolution is recorded on the plaintiff's book of minutes, but is entirely ignored and suppressed by complainant".

Answer: It is

133d Cross Int. Did you make another affidavit in the same suit, on the 20th of December, 1858?

Answer. I did

134th Cross Int. In that other affidavit, did you also set out an account of the proceedings at the stockholders meeting June 1st 1857, in respect to the deed and transportation contract with Sherman and Dean, and if so, in the following words: "Deponent further says, that he was present and presided at said meeting of stockholders, held June 1st 1857; that he had no consultation at any time with said defendant Sherman, in regard to bringing before said meeting the subject of said sale and transportation contract, and did not contemplate the same. on the contrary he regarded it as having been definitely settled, approved of, and ratified by the stockholders; but the subject arose upon the suggestion of Seth Grosvenor, made at said meeting, and in no other manner; that thereupon the whole subject of said sale, and transportation contract was freely discussed, their effect, operation, and interpretation considered, and the said sale and contract were fully and satisfactorily explained; and said Grosvenor in terms expressed himself, entirely satisfied therewith, nor was there any dissenting voice thereto; that said Grosvenor

observed, that while the stockholders had no claim, and could not claim it as a right, that Sherman and Dean should modify said contract, yet he would request, a modification of certain particulars, if Judge Sherman had no objection; and Judge Sherman did at once assent thereto, and thereupon Dr. Beadle, one the stockholders present, turning to Judge Sherman for his approval, moved the resolution passed at the said meeting"?

(The counsel for the defendant objects to this inquiry, unless the affidavit referred to, or a certified copy thereof be produced, shown to the witness, and marked by the commissioner as an exhibit; and he further adds that such affidavit being produced, and the other matters therein contained, connected with the subject of the question, being before the commissioner and court, the defendants counsel makes no objection to the reading of such affidavit, or to the said question)

Answer. I did

135th Cross Int. Now sir, having stated what you testified to, in respect to the proceedings on this subject of the stockholders' meeting, June 1st, 1857, do you mean to say that you have a distinct recollection that any resolution in respect to the Deed and Contract with Sherman & Dean was voted upon and adopted at that meeting, other than the resolution which is recorded in the minutes, and adopted in your affidavit of December 17th, 1858, and referred to in your affidavit of the 20th of December, 1858?

Answer. I do so mean to say.

136th Cross Int. Why did you not mention that resolution in either of those two former affidavits in which you gave an account of the proceedings of that meeting upon this subject?

Answer. I did not furnish it. I never was called on before. I never was before interrogated on this subject by the defendants, nor do those affidavits whilst correct as far as they go, give the facts in the order and connection in which they occurred at the meeting.

137th Cross Int. Did you not understand at the time you made those two affidavits, that they contained the material fact in regard to the proceedings about which you gave your evidence?

Answer. I did not. I asked no question; I was not informed whether they contained part or the whole; but I do not hesitate to say, that so far as I have read them, they are not in the order in which they occurred.

138th Cross-Int. Are they true as to what they do state?

Answer. I can not answer that question in the affirmative. As to the order in which they are presented, they convey a false impression, from the fact of its appearing that the alterations suggested in regard to the contract, appear to be blended with the discussion and adoption of the whole, while the fact was, that the suggestion with regard to the alterations or modifications of the contract, were just before the adjournment of the meeting, and subsequent to the ratification of the deed and contract.

139th Cross-Int. Are the statements in respect to which you have been interrogated, contained in those affidavits, true, except in respect to the order, as you have explained as to that order?

Answer. I believe they are substantially so.