defendants Dean and Sherman, all referring to said release; and to said resolution, is studiously avoided and the same are suppressed.

And this deponent further says that at a meeting of the plaintiffs' Board of Directors held in or about the latter part of May 1858, at which according to deponents recollection and belief Samuel S. Silden, and David Palmer were present as Directors allusion was made to the inadequacy of price stipulated in said contract (to be paid for the transportation of coal and this deponent then having in his possession and under his control the said contract) and being able to carry out his proposition, did then propose and freely offer to said Board to correct and modify said terms to such price as should be deemed reasonable and proper by said board, but that the said Samuel S. Silden and the other members of said Board who suggested such subject disregarded and did not accept such offer.

Deponent further says that said Saml. S. Silden was elected a director of plaintiffs on or about the 9th day of February 1858, and the said David Palmer was elected a director on or about the 13th day of April 1858 and said Palmer and Silden on being so elected, entered respectively upon a full examination of the books and condition of the Plaintiffs and diligently continued said examination during all the time from time said election respectively to the first day of May, 1858.

That a committee of stockholders was appointed of which Robt. P. Getty (afterwards President) was chairman and David Palmer (afterwards Vice President) was secretary for the purpose of examining into the condition of said Company and the causes of its embarrassment, that on or about the first day of May 1858 the said committee made a report; dated May 1, 1858, signed Robert P. Getty chairman, David Palmer secretary, of committee of Stockholders and which said Report this deponent believes was drawn by said Silden, and which the plaintiffs caused to be printed, in which said Report said committee gave and set forth truly the cause of the plaintiffs embarrassments and failure in the following words, to wit.

Causes of the Company's Embarrassments

It is not our purpose to advert to errors of the original plan or early management of the Company further than is necessary to illustrate its present condition and policy.

It commenced business under its present corporate organization at a time when the opening of the Chesapeake and Ohio Canal to Cumberland and the adapting and equipping of the Baltimore and Ohio Rail Road for the carrying of coal, attracted to this region the excited speculation which prevailed in 1852-3. It shared in the over sanguine anticipations which expected to realize in one year the natural growth of many, counted on the immediate use of its coal by Locomotives which now, after the lapse of five years has just practically begun and relied on the competitive power in the general market which its measures for cheapening transportation failed to secure. (demonstrated as to its quantity which its then existing arrangements for mining would enable it to annually produce and made costly by enormous sums of proportion to its actual productive)

It adopted an expensive organization in this city, costing it annually about as much as it expended for the same purpose by the Delaware and Hudson and Pennsylvania Companies, which have been each doing three times the business and in addition a system of sale Agency which those Companies have not thought necessary and could not have afforded without a sacrifice of twenty per cent of their entire net profits. It misjudged also as to the natural, cheapest and on the whole, most reliable, channel of transportation and looking mainly to the Baltimore and Ohio Rail Road advanced to it $15,000 to enable it to buy cars, invested some $120,000 in barges to run in connection with it and got up and expensive system of inland transportation. It began its business on that Rail road under a contract to carry coal for five years at $1.75 from Cumberland to Baltimore; but before a year had elapsed on the first of November eighteen hundred and fifty three, the charge was raised to $2 3/100 under the allegations that the conditions of the contract had not been fulfilled and again on the 1st of October 1856, the charge was advanced to $2.75-100 and not relaxed until the 1st of March 1858, when it was restored to $2.25. Meantime the Company had been doing less than one half of its business by the Chesapeake and Ohio Canal; and doing that profitably notwithstanding the canal had the imperfections incident to a new work and was subject to defects in the construction of a small portion of it growing out of the financial embarrassments amid which it had been completed. While the last advance of railroad charges in October 1856 was burning all upon to the canal. And the Company was forced to look to an increase of that part of its business as succession of ice freshets commencing in February 1857 carried away the two defective dams, by means of which the portion of the canal alluded to was fed and rendered the navigation unavailable for half of the season, it was under these adverse circumstances, both as to the rail road and the canal, that the business of 1857 commenced. The expenditures for construction continued; the Company became embarrassed; yielding to the blast of the financial revulsion; went to protest and executed a deed of trust to secure its creditors.

This deponent further says that he never made, or directed to be made, any entries in the plaintiffs