At this meeting thus held, as absolutely required by the charter, and under the notice above quoted, regularly and legally given, it appears that a large majority of the stock was represented by proxies. These proxies as shown by the agreement of Counsel, marked "F. P. No 3" were somewhat variant in form. Some of them authorized the party "to vote at the next election of Directors of Complainant, according to the number of votes the principal would be entitled to if then personally present" others "to vote at the next election of June 1st" of Complainant. others "to vote at an annual election of Directors" of Complainant to be held June 1st", and still others "to vote at any election of President and Directors". The same agreement also shows that these forms of proxies were the same as those used in the previous Stockholders meetings of 1854, 1855, and 1856, and the proof shows that at these meetings other matters of business, besides the mere election of President and directors, were always transacted, and it no where appears that any such matters were ever called in question.

The sale to Sey was ordered at the meeting of 1855, and the report of the President to the meeting of 1856, communicating the fact of the sale, was approved, printed, and a copy sent to each stockholder, who therefore must have had notice of the powers exercised under the proxies thus given. But I regard the proxies as all substantially the same, and the plain import of them is, that the agent appointed shall represent the principal at the meeting to be held on that day for the election of President and Directors. At the time the principals gave their proxies they are to be presumed to have known, and were bound to know that a report upon the affairs of the Company would then be made, as required by its charter, which would necessarily be before the meeting for its action in accordance with the former precedents and customs of the Company, as communicated to them in previous years, and in addition, the notice itself of the meeting — with reference to which they may be presumed to have given their proxies — expressly stated that it was for the election of a President and Directors, and "for the transaction of any other business"

And again, even if the parties giving these proxies had privately and expressly instructed the persons to whom they were given to vote and act in a particular way, such secret instructions would not invalidate any acts or votes, though given in direct opposition to them.

1 Parsons on Contracts, 37
Story on Agency, Sec. 73.

The proxies therefore authorized the persons to whom they were given to represent the principals, at the particular meeting, held in pursuance of the Charter of the Company, and of the notice given, and the persons so appointed were necessarily authorized to vote upon all questions coming up before the meeting and no secret or private instructions could at all effect the validity of acts carried by such votes.

Again, it is urged in opposition to this ratification or

conformation, that it cannot be assumed valid or legal, unless it received the approval of every individual Stockholder of the Company, and, in support of that view, I have been referred to 2 Johns. Ch. 264, and 8 Vesey, 337. The cases referred to apply only in cases of certain quasi trusts such as creditors, where there is no joint interest between the parties, and where everyone is bound solely by reason of his own acts.

But surely such a principle cannot be invoked in the case of a corporation, in which, by its very charter, a majority is authorized to bind the whole.

See Charter of Complainant.
Angel & Ames on Corporations Sec. 497.

I have not deemed it necessary to examine in detail the proof in reference to inadequacy of consideration. The proof is not sufficient to show any such gross inadequacy. The evidence shows that previous to the sale to Sherman & Dean the property had been in the market for some months, and although strenuous efforts were made to effect a sale to others, they all resulted in a total failure.

Some contrariety exists in the testimony as to the quantity of "Big Vein" coal contained in the land conveyed by the deed. It appears that a plat of the land, showing its location and outlines, was made by the Engineer of the Complainant before the property was offered for sale.

This plat has not been produced, although notices were given by the "Defendants" Counsel for its production. Another map is, however, made and exhibited, marked "D. D. Brown," but the deed is evidently improperly located upon it, and I cannot therefore regard the same as correctly showing the quantity of coal.

5 H & J. 155 and 235 — 3 Gill & J. 142
4 Maryland, 166 — 6 Gill, 121.

The bill of Complaint itself alleges the quantity of "Big Vein" to be at least six hundred acres, and, in this respect, it alone corresponds with the testimony of Robbins, who, as engineer of the Complainant, made the original survey and plat of the land sold.

Entertaining these views upon the whole case, as now presented in the record, I shall of course pass a decree, dissolving the Injunction and dismissing the Bill.

Thomas Perry

Decree

The Cumberland Coal & Iron Company vs. The Hoffman Steam Coal Company of Allegany County and others	In the Circuit Court for Allegany County as a Court of Equity

This cause standing ready