

New Jersey Court of Errors and Appeals.

THOMAS E. ALLEN

vs.

DANIEL TYLER.

} *On writ of error to the Supreme Court.*

[Filed November 23, 1865.]

The writ of error brings into this court the order for the arrest of the plaintiff in error, at the suit of the defendant in error, made by Hon. Peter Vredenburgh, one of the justices of the Supreme Court, bearing date November 22d, 1866, and the proceedings afterwards had thereon, as follows:

New Jersey, Mercer county, ss.—Be it remembered, that on this twenty-second day of November, A. D. 1865, Daniel Tyler, having made application to the subscriber, one of the justices of the Supreme Court of said state, to make an order for the issuing of a writ of *capias ad respondendum* in 10 an action of trespass on the case, on promises in favor of said Daniel Tyler, and against Thomas E. Allen, of the county of Morris, and having made proof, by his own oath, that it is a debt amounting to the sum of thirty thousand eight hundred and seventy-two dollars and fifty-five cents, due to him from said Allen, specifying also the nature and particulars of said debt, and having also, by the affidavits of himself and of Robert B. Campbell and Theodore Little, hereto annexed, established to my satisfaction that the said Thomas E. Allen fraudulently contracted said debt, I do 20 hereby direct and order that, on filing said affidavits and said order in the office of the clerk of the Supreme Court, a *capias ad respondendum* do issue from the said Supreme Court in favor of said Daniel Tyler, and against said Thomas E.

Allen, in a plea of trespass on the case, on promises for the sum of thirty thousand eight hundred and seventy-two dollars and fifty-five cents.

Witness my hand, this 22d November, A. D. 1865.

P. VREDENBURGH.

New Jersey, Mercer county, *ss.*—*Theodore Little*, of full age, being duly sworn according to law, on his oath saith—that for some time past he has been acting as attorney for Daniel Tyler, in attempting to collect from Thomas E. Allen, 10 of the county of Morris, the debt mentioned in the annexed affidavit of said Daniel Tyler; that he has had several interviews with said Allen in reference to said matter, and that in all said interviews this deponent based the claim of said Tyler against said Allen on the ground that the proceeds of the sale of the said mortgaged premises, referred to in the affidavit of said Tyler, and mentioned in the assignment of said mortgages, also referred to in said Tyler's affidavits, which assignments then were and now are in this deponent's possession, had been received by said Allen, or paid out by 20 the solicitor of the Morris County Bank, under and by virtue of said Allen's order, and said Allen never denied that to be the fact; and in one of said interviews, this deponent asked said Allen whether he had received said proceeds of sale, which had been assigned to said Robert B. Campbell for the use of said Tyler, by consent of said Campbell, said Allen admitted expressly that he had received said money from the solicitor, Samuel S. Halsey, and that he had received it without the knowledge or consent of said Campbell, but said Allen did not state the precise amount he had received. 30 And this deponent further saith, that as attorney for said Tyler he called on Samuel S. Halsey, solicitor of the Morris County Bank, to ascertain what disposition had been made of said proceeds of sale, in order to obtain payment of said debt, if possible, out of the same, and was informed by said solicitor that all of said proceeds of sale were paid out by him on the order of said Thomas E. Allen, as president of the Morris County Bank, except thirty-five thousand dollars, which amount he paid directly to said Allen.

THEO. LITTLE.

Sworn and subscribed, this 23d day of November, A. D. 1865, before me.

BARKER GUMMERE, *M. C.*

New Jersey, ——— county, ss.—*Daniel Tyler*, of said state, being duly sworn according to law, on his oath saith—that in the month of January last application was made to him by one James Monroe, of the city of New York, through Robert B. Campbell, esq., counsellor at law of said city, for a loan of thirty thousand dollars, and proposed to secure said loan by placing in the hands of said Robert B. Campbell, a mortgage given, as he said, by one Theodore T. Wood to the Morris County Bank, for the sum of ninety-seven thousand dollars, and also a lease of what is known as the Hibernia Mine, in the county of Morris, made by said Theodore T. Wood to the Trenton Iron Company, and assigned by said Wood to the Morris County Bank as collateral security, as this deponent understood, of the same money mentioned in and secured by the said mortgage; that at that time said Monroe contemplated, as he said, procuring title in himself to the said Hibernia Mine, and offered to this deponent, as an inducement to make said loan, the privilege of taking in payment thereof, one-fourth interest in the aforesaid lease and one-fourth interest in the fee of the said Hibernia Mine, within six months after making said loan, if the said Monroe should, within that time, procure the title thereto; and also further offered, in addition to said one-fourth interest in said mine and lease, to transfer to this deponent three hundred shares of the stock of the Morris County Bank, or in case this deponent preferred, he offered to repay to this deponent twenty-five thousand dollars of said loan in cash, with interest, at six per cent. per annum, and transfer to him for the remainder, three hundred shares of the capital stock of the said Morris County Bank, which said bank was then in a state of suspension, and said Monroe was then, as this deponent understood, endeavoring with others to resuscitate the same.

This deponent further saith, that in answer to said application and proposition of said James Monroe, he offered to deliver to said Robert B. Campbell, for the use of said Mon-

roe, twenty-five thousand dollars of the five-twenty year bonds of the United States, with the unpaid coupons attached, which were then selling in the market at considerably above par, upon the terms proposed by said Monroe, as herein before set forth; that said offer was accepted by said Monroe and the bonds were accordingly delivered by this deponent to said Robert B. Campbell, and by him were delivered to said James Monroe, on or about the fourteenth day of February last; that at the time of the delivery of said

10 bonds to said Monroe, he, said James Monroe, by a written agreement, agreed to repay said twenty-five thousand dollars, with interest, on the first day of August, eighteen hundred and sixty-five, and also by a deed of assignment, duly executed under his hand and seal, and dated on the eleventh of February last, assigned to said Robert B. Campbell "two certain indentures of mortgage, both made by Theodore T. Wood and his wife to the Morris County Bank, one thereof bearing date the sixth day of June, one thousand eight hundred and fifty-six, and recorded in the office of the clerk of

20 Morris county, on the fifth day of October, one thousand eight hundred and fifty-seven, in Book C 2 of Mortgages, at page 541, and was to secure the sum of one hundred thousand dollars; and the other thereof, bearing date the eighth day of October, one thousand eight hundred and fifty-seven, and recorded in the office of the said clerk on the twelfth day of said October, in Book C 2 of Mortgages, at page 557, and made to secure the sum of seventy-five thousand dollars, together with the bonds or obligations therein described, and the money due and to grow due thereon, with the interest;

30 and also a certain mining lease, made and entered into by and between the said Theodore T. Wood and the Trenton Iron Company, bearing date the first day of April, one thousand eight hundred and sixty-one;" and the said Monroe also, by said deed of assignment, constituted and appointed said Robert B. Campbell his attorney, to collect and receive payment of the money due on said bonds and mortgages, and said Monroe at the same time delivered to said Robert B. Campbell a deed of assignment, purporting to have been executed by the Morris County Bank, under its

40 corporate seal, and by their president, Thomas E. Allen, as-

signing the above mentioned bonds and mortgages to him, the said James Monroe, to secure to him, said Monroe, the payment of the sum of fifty thousand dollars, on the eleventh day of June, eighteen hundred and sixty-five, with interest, which said several deeds of assignment are now in possession of this deponent.

And this deponent further saith, that said Robert B. Campbell had no interest personally in the bonds and mortgages so assigned to him, but held them merely in trust for this deponent and to secure to this deponent the repayment 10 of said loan, or the fulfilment of said agreement by said James Monroe, that at the time said assignment to said Robert B. Campbell was made it was well understood by him and also by this deponent, that said mortgages were in process of foreclosure in the name of the Morris County Bank, in the Court of Chancery of this state, and that said original bonds and mortgages were in the hands of Samuel S. Halsey, esquire, solicitor of the Morris County Bank; that when said loan was made and the said assignments were received, this deponent instructed said Robert B. Campbell to take all 20 necessary steps to make said assignments available to secure said loan to this deponent, and this deponent supposed he had notified the solicitor of said bank of said assignment; that said Robert B. Campbell went to the county of Morris, at different times, to look after said securities, and saw and conversed with said solicitor in reference to the sale of said mortgaged premises under the decree of foreclosure, as he informs this deponent, and as this deponent verily believes; and he informs this deponent that he fully supposed said solicitor understood and knew of the making of said assign- 30 ment, and that the proceeds of the sale, to an amount sufficient to repay the loan of this deponent, were to be paid over to him, said Campbell, for the use of this deponent; but whether said solicitor knew of said assignment, and of the interest of this deponent in said mortgages or not, this deponent has been informed by both said Campbell and Monroe, that Thomas E. Allen, who was then acting as president of the said The Morris County Bank, did know of said loan by this deponent to said Monroe, and the terms thereof, as herein before stated; was present when the bonds of this de- 40

ponent were paid by said Campbell to said Monroe, and when the assignments of the said Wood mortgages, made by him, said Allen, as President of the Morris County Bank, to said Monroe, and by said Monroe to said Campbell, were, in pursuance of the terms of the loan, handed over by said Monroe to said Campbell, for the use and security of this deponent, and fully assented to the right of said Monroe to dispose of said bonds and mortgages by such assignment.

And this deponent further saith, that on or about the sev-
 10 enteenth day of April, eighteen hundred and sixty-five, said James Monroe applied to this deponent for, and obtained from him, a further loan of four thousand and five hundred dollars, for which amount he gave to this deponent his promissory note, dated April seventeenth, eighteen hundred and sixty-five, in the city of New York, and payable sixty days after date, with interest, at No. 76 South street, New York city, and as security for the payment thereof, delivered to said Robert B. Campbell, for this deponent, a certificate for
 20 one hundred shares of Morris County Bank stock, and also agreed that said mortgages assigned to said Campbell, as herein before stated, should also be held as security for said last mentioned loan, and directed said Campbell, in writing, to pay the same out of the proceeds of said mortgages.

And this deponent further saith, that such proceedings were had in the said suit for the foreclosure of said Wood mortgages, that a decree of foreclosure was duly made in the Court of Chancery, and a writ of *feri facias* was issued upon said decree, directed to Van Cleve Dalrymple, esquire, a master of said court, directing him to make sale of said mort-
 30 gaged premises; that having advertised said premises, he sold the same in the month of June last, as this deponent is informed, for upwards of eighty-five thousand dollars; and this deponent further saith, that said Rob't B. Campbell having confidence in the honesty of said Thomas E. Allen (who was, however, a stranger to this deponent), instead of requiring the said master to pay the proceeds of said sale into the Court of Chancery, so that this deponent, or said Campbell, could secure, through the order of said court, payment of said
 40 loan out of said proceeds, permitted said master to pay said proceeds of sale to the solicitor of the Morris County Bank, supposing said Allen would at once direct said solicitor to

pay to said Campbell or to this deponent the amount due to him upon the said loan to said Monroe: that said master did accordingly pay over to Samuel S. Halsey, solicitor of the Morris County Bank, out of said proceeds of sale, the sum of eighty-four thousand and nine hundred dollars, or thereabouts; that soon after the said Robert B. Campbell learned that said proceeds of the sale had been paid to said solicitor, he, in behalf of this deponent, caused inquiry to be made of said solicitor as to the amount received by him, and the disposition thereof, in order that he might obtain payment of 10 the amount due this deponent, and then, to the surprise and greatly to the wrong of this deponent, he found that all of the said proceeds of said sale received by said solicitor, due to the complainants in said suit, except thirty-five thousand dollars, as stated by said solicitor, had been paid out by him on the order of said Thomas E. Allen, as president of the Morris County Bank, and that the balance of thirty-five thousand dollars was paid by said solicitor to said Thomas E. Allen, personally; and said Allen, when applied to by the counsel of this deponent, admitted said proceeds of sale had been 20 partly paid out by his order in payment of the debts of the Morris County Bank, and partly received by him, personally, from the said solicitor; and this deponent further saith, that as soon as he discovered that said money had been so improperly taken by said Allen, he, by his counsel, demanded payment of his debt due from said James Monroe from said Allen, but said Allen denied his liability to pay to this deponent the money received from the said Samuel S. Halsey, as herein before stated, and never has paid any part thereof.

This deponent further saith, that said Monroe was an en- 30 tire stranger to him when said loan was made, and it was made enirely on the faith of the said securities to be assigned to said Robert B. Campbell; that so far as he can learn, said Monroe is a man of little if any responsibility, and unless this deponent can collect said debt from said Allen, he is in great danger of losing it. And this deponent further saith, that he had no acquaintance with said Thomas E. Allen—he supposed he was a man of property; but since this difficulty has occurred, he has caused an examination of the records of the county of Morris to be made, and finds 40

that, so far as appears by said record, said Allen is not the owner of said real estate in said county, excepting a house and lot in the village of Madison, the title to which, so far as shown by said records, is in said Allen; but deponent has been informed and believes, that said house and lot was conveyed away by said Allen some time ago, but that the purchaser thereof has neglected to have his deed therefor placed on the said records; and this deponent does not know that said Allen owns any visible property, out of which the de-
 10 mand of this deponent could be made. And this deponent further saith, that said Allen, when he took said money from said Halsey, well knew, as this deponent has good reason to believe, that said Monroe was of doubtful responsibility, and also well knew that this deponent fully expected to receive payment of his said loans out of said money; that he took said money, knowing that it belonged to this deponent, and without any pretence or shadow of right to it, and by con-
 20 cealing from said Halsey the fact of the assignment of said mortgages to said Campbell, and the interest of this deponent in said proceeds, and refusing to pay over the same to this deponent when requested by him, this deponent claims that the conduct of said Allen indicates a deliberate intention to defraud this deponent. And this deponent further saith, that the amount due to him from said Monroe, on said loan herein before mentioned, and which he is entitled to be paid out of the proceeds of the sale of said mortgaged pre-
 30 mises, is thirty thousand eight hundred and seventy-two dollars and fifty-five cents, which amount he claims said Allen is legally bound to pay to him.

DAN'L TYLER.

Sworn and subscribed, this 20th day of November, A. D. 1865, before me.

ARCH'D K. BROWN, M. C.

State of New Jersey, county of ———, ss.—*Robert B. Campbell*, of the city of New York, counsellor at law, being duly sworn according to law, on his oath saith—that he has read the annexed affidavit of Daniel Tyler, and knows the contents thereof, and that the matters therein set forth, in relation to this deponent, and his action in the matters

therein referred to, are true; that in or about the month of January, eighteen hundred and sixty-five, James Monroe applied to this deponent to procure for him thirty thousand dollars, or thereabouts, offering to secure the same by an assignment of the mortgages mentioned in the said annexed affidavit of Daniel Tyler; that at the time of such application, the said Monroe, and also Thomas E. Allen, the then president of the Morris County Bank, represented to this deponent that the said Monroe was the owner of eleven hundred and seventy shares of the capital stock of the said 10 bank, and also that he owned claims against the said bank amounting to the sum of thirty-six thousand dollars, and both the said Monroe and the said Allen represented that the said money was wanted, and would be used for the purpose of paying off debts and demands due by the said bank to its several creditors; that thereupon the said Tyler agreed to let the said Monroe, on the first day of February, eighteen hundred and sixty-five, have twenty-five thousand dollars in United States five-twenty year bonds, their worth considerably above par, and the said Monroe agreed to pay him 20 therefor, on the first day of August, eighteen hundred and sixty-five, the sum of twenty-five thousand dollars, with interest thereon at the rate of six per cent. per annum, and to deliver to him certain shares of the capital stock of said bank; that subsequently thereto, the said Allen stated that a greater sum of money would be needed to pay off the indebtedness of the bank, and that the further sum of twenty thousand dollars or thereabouts would pay off such indebtedness, and enable the bank to recommence its business; thereupon the said Monroe directed this deponent to make 30 application to the said Tyler for the advance of a further sum of money, to be secured by the same mortgages; that thereupon the said Tyler advanced to him the further amount of eighteen thousand dollars, in such United States five-twenty year bonds, and the said Monroe promised to pay him therefor the sum of twenty thousand dollars, on the eighth day of August, eighteen hundred and sixty-five, and to deliver to him certain shares of the capital stock of said bank, and said Allen and Monroe gave to the said Daniel Tyler their promissory note for said twenty thousand dol- 40

lars; that thereupon the said Allen, as president of the said bank, executed and delivered to the said Monroe an assignment of the said mortgages, as collateral security for the sum of fifty thousand dollars, and the said Monroe assigned the same to this deponent, to be held for the security and benefit of the said Tyler, to the extent of his indebtedness to him.

That this deponent delivered the said bonds to the said Monroe in the presence of the said Thomas E. Allen, 10 and that all such bonds were immediately and in the presence of this deponent delivered to the said Thomas E. Allen; that the assignment of the said mortgages by the said bank to the said James Monroe was delivered to this deponent at the same time as the assignment thereof by said Monroe to this deponent; that said Allen was well aware of the assignment of the said mortgages to this deponent for the protection of the said Tyler, and of the agreements between the said Monroe and the said Tyler; that the said United States five-twenty year bonds were taken and sold 20 by the said Allen, and that this deponent has been informed by the said Allen that they were sold for ten per cent. above par, that is to say, for the sum of forty-seven thousand three hundred dollars.

That subsequently thereto and on or about the seventeenth day of April, eighteen hundred and sixty-five, the said James Monroe borrowed from the said Tyler the further sum of four thousand five hundred dollars, and gave his note for the same to the said Daniel Tyler, dated New York, April 17, 1865, and payable sixty days after date with 30 interest, and agreed that the said assignment of mortgages should be held and bound as collateral security for the repayment thereof, and that no part of the same has been repaid, and that after the said loans had become due the said Monroe, in the presence and hearing of the said Allen and of this deponent, stated that the same had been applied to the purchase of United States bonds for the purpose of enabling the said bank to become a National Bank, which was not denied by said Allen.

That this deponent attended at the time and place at 40 which the sale under the mortgages was advertised to take

place, when the sale was adjourned to the twentieth day of June, at which time also this deponent attended, and property was sold under the said mortgages amounting to over eighty thousand dollars, and this deponent was told that the money would not be paid over for thirty days; and that subsequently said Allen procured portions of the money proceeding from such sale, to be paid to other parties, and received the remainder himself, without the knowledge or authority of this deponent; that when the payment of the sum of twenty thousand dollars became due the said sum 10 was paid to this deponent by said Allen; that this deponent has demanded of the said Allen the amount due to the said Tyler, and as security for which this deponent held the assignments of the said mortgages, but the said Allen has positively refused to refund the same or any part thereof.

ROB'T B. CAMPBELL.

Sworn and subscribed at Jersey City, N. J., this 20th day of November, A. D. 1865, before me.

ARCH'D K. BROWN, *M. C.*

A true copy.

CHAS. P. SMITH, *Cl'k.*

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New Jersey Supreme Court.

Thomas E. Allen

ads.

Daniel Tyler.

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} *In case.*
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This action being founded upon contract, and having been commenced by writ of *capias ad respondendum*, upon which the defendant was arrested on the 27th day of November last past, and it appearing that two days' notice, in writing, has been given to the attorney of the plaintiff of the applica- 30 tion for this order, and the order hereinafter made being now, on this twenty-first day of December, 1865, applied for by Vanatta & DeMott, attorneys of the defendant—It is ordered, that testimony, in writing, by and before Alfred Mills, esq., a Supreme Court Commissioner, may be taken

concerning the truth of the affidavits and proofs upon which the order for said writ was made, and said writ issued according to the statute in such case made and provided.

Dated December 21st, 1865.

DAN'L HAINES, J.

Testimony on part of Defendant.

NEW JERSEY SUPREME COURT.

	Daniel Tyler	}	<i>In case.</i>
	vs.		
10	Thomas E. Allen.		

[Filed March 7, 1866.]

Examination of witnesses, &c., on behalf of the defendant in the above stated cause, taken at my office in Morristown, New Jersey, on Tuesday, the second day of January, A. D. 1866, in pursuance of an order made by Hon. Daniel Haines in the said cause.

The defendant, and his counsel, Jacob Vanatta, esq., appear, and also the plaintiff, and his counsel, Theodore Little, esq.

20 Notice of the examination admitted by Mr. Little.

ALFRED MILLS, S. C. C.

Thomas E. Allen, the defendant above named, a witness produced on part of the defendant, being duly sworn, on his oath says—I am the defendant in this cause.

Quest. Did you receive from Samuel S. Halsey the proceeds of the sale of the Hibernia mines, sold under the foreclosure proceedings of the Morris County Bank against Theodore T. Wood and others—and if so, how much did you receive of him—and if you received it at different times, 30 state how much you received at each time, and when?

Ans. I don't exactly recollect the account—it was something like eighty thousand dollars; I received it at different

times; I have not here a statement of the times nor of the amount at each time.

Quest. State, as nearly as you can, when you received the first, and when you received the last?

Ans. I have no statement of those things here, when I received the first or the last.

Quest. Do you know Robert B. Campbell, of the city of New York?

Ans. Yes, sir.

Quest. Did he or not know that you were about to receive 10 that money of Mr. Halsey?

Ans. He did.

Quest. Did he assent or dissent to your receiving it?

Ans. He assented.

Quest. If you have any evidence of his assent, what is it?

Ans. It is a letter.

Quest. If you have that letter, produce it. [Here witness produces a paper, dated New York, Aug. 22, 1865, to Thomas E. Allen, purporting to be signed by Robert B. Campbell, which paper writing I have marked *Exhibit 1* 20 on part of the defendant.]

Witness says that is the letter; it is in the handwriting of Robert B. Campbell.

Quest. Did you ever see him write?

Ans. Yes, sir.

Quest. How did you receive that letter?

Ans. I received it by mail, at the Morristown post-office.

Quest. Before the commencement of this suit, did you have any conversation with Mr. Little about the claim of Mr. Tyler?

Ans. I did.

Quest. Did you, at any time, tell Mr. Little that you had received that money of Mr. Halsey without the knowledge or consent of Robert B. Campbell?

Ans. I think not.

Quest. Did you have that letter (*Exhibit 1*) in your possession prior to your having any conversation with Mr. Little on the subject of General Tyler's claim?

Ans. I did.

Quest. Did you ever have any negotiations with Daniel 40 Tyler in respect to a loan?

Ans. I did not.

Quest. Have you read the affidavits in this case?

Ans. Yes, sir.

Quest. When and with whom did the negotiations referred to in these affidavits first commence?

Ans. I think it was the last of January, or in the month of January, 1865, with James Monroe.

Quest. Did you know he represented Mr. Tyler, or was in any way connected with him at that time?

10 *Ans.* I did not.

Quest. Did you know anything of Mr. Tyler at that time—did you know there was such a man alive?

Ans. I did not.

Quest. Was your application to Monroe, or did Monroe apply to you in reference to this loan—at the outset, I mean?

Ans. Mr. Monroe made the offer to make the loan, first here, at the meeting of the stockholders of the Morris County Bank.

20 *Quest.* Had you any acquaintance with Mr. Monroe prior to his meeting with the stockholders at that time?

Ans. Yes.

Quest. How long had you known him prior to that?

Ans. I should think it was about a year that he had been figuring in stock here—Morris County Bank stock.

Quest. What amount did he propose to loan to the Morris County Bank? [Mr. Little objects to this question, and to all conversations between witness and Mr. Monroe, in the absence of the plaintiff or his agent.]

30 *Ans.* He agreed to loan the bank seventy-five thousand dollars.

Quest. Was his proposition to make the loan himself, or to procure the loan from somebody else?

Ans. At first his proposition was to loan it himself.

Quest. In your subsequent dealings with Monroe, in respect to that loan, were you acting on behalf of yourself, or on behalf of the bank? [Objected to by Mr. Little.]

Ans. On behalf of the bank.

Quest. When and how did the proposed loan get reduced,
40 below seventy-five thousand dollars?

Ans. It was reduced by the promise of having it from other sources—the balance; this was about the middle of February, when we agreed to receive this and the balance from other sources.

Quest. What other sources?

Ans. Numerous sources, that Mr. Monroe spoke of.

Quest. When did you first know that there was any connection between Monroe and Daniel Tyler in this transaction?

Ans. I think it was in February, 1865.

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Quest. What time in February, 1865?

Ans. I should think the fore part of it.

Quest. Where and how did you learn that there was any communication between Monroe and Tyler?

Ans. I believe I got it from Mr. Monroe first; General Tyler was usually called Col. Tyler by Mr. Monroe to me, until about the middle of February.

Quest. Was your negotiation with Monroe, or was he an agent employed by you to negotiate with somebody else?
[Objected to by Mr. Little.]

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Ans. I should answer that by saying neither; Mr. Monroe had so much stock in the Morris County Bank that he considered himself as acting for himself—for his own interests.

Quest. How much money did you get at the time the bond and mortgages mentioned in these affidavits were assigned by you?

Ans. Thirty-five thousand dollars.

Quest. Whom did you assign the bonds and mortgages to?

Ans. To James Monroe, I think.

Quest. How much were you to get for that assignment?
[Objected to by Mr. Little.]

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Ans. Fifty thousand dollars.

Quest. What was the consideration expressed in the assignment from you to Monroe?
[Objected to by Mr. Little.]

Ans. Fifty thousand dollars.

Quest. When and where was that assignment made?

Ans. On the 11th February, 1865, in New York, in Mr. Norton's office, 16 Wall street.

Quest. Who were present at that time?

Ans. Mr. Monroe and Mr. Norton, and, I think, Mr. 40

Campbell—at any rate Mr. Campbell drew the assignment; Mr. Campbell's office is at 16 Wall street, on the same floor with Mr. Norton's; there are three rooms as you go in the door that is numbered room 12, and Mr. Campbell is in one of those rooms; Mr. Campbell had one, and Mr. Norton the other; there is one large entrance room, and two back of it; the sign says Mr. Norton and Mr. Campbell are in partnership, and I so understood them to say.

Quest. Was General Tyler there that day?

10 *Ans.* I did not see him.

Quest. Had you ever seen him up to that time?

Ans. No, sir; nor for some time after.

Quest. Who furnished the funds that were furnished there as the consideration of your making that assignment? in what shape were they furnished, and what was the amount of them?

Ans. Robert B. Campbell furnished them; furnished the package which contained forty-three thousand dollars in 5-20 bonds.

20 *Quest.* Was that all that he furnished?

Ans. It was all I ever knew of; since this suit was commenced I have heard of others, but did not hear of it before.

Quest. What was done with the 5-20 bonds? [Objected to.]

Ans. They were sold in Wall street the same day—right off.

Quest. Who sold them?

Ans. I sold them; they produced forty-seven thousand three hundred dollars.

30 *Quest.* Of which you got how much? [Objected to.]

Ans. Thirty-five thousand dollars.

Quest. Who got the rest? [Objected to.]

Ans. Mr. Monroe.

Quest. Did you ever get any of that \$12,300? [Objected to.]

Ans. No, sir.

Quest. What did you do with the \$35,000? [Objected to.]

Ans. I deposited the \$35,000 in the Merchants Exchange Bank, and then paid the debts of the Morris County Bank 40 with it, so far as it went.

Quest. At the time you got those 5-20 bonds in Mr. Norton's office, did you give any other security for them than the assignment of those bonds and mortgages—and if so, what?

Ans. Mr. Monroe and myself gave our note for \$20,000, dated 8th February, 1865; I gave no other security.

Quest. Did you, after that time, get any more money or securities of Daniel Tyler, directly or indirectly?

Ans. No, sir.

Quest. Did you ever authorize James Monroe to get for 10 you, or on your account, or for the Morris County Bank, or on its account, any more moneys or securities from Daniel Tyler or Robert B. Campbell? [Objected to.]

Ans. I did not.

Quest. What was the day in February when you got those 5-20 bonds of which you have spoken?

Ans. On the 14th February, I think.

Quest. Have you ever repaid any of the money got on that occasion—and if so, when, to whom, and how much?

Ans. On the 28th July, 1865, I paid \$5000, to the order of 20 E. P. Norton, which Mr. Campbell admitted that he received; on the 8th August, 1865, I paid twenty thousand dollars to Mr. Campbell—that was for the note that Mr. Monroe and I signed; I took up the note the same day.

Quest. Why was a note for \$20,000 given, and no note given for the balance of the money you got on the same occasion?

Ans. The only answer I could give to that was what Mr. Monroe told me. [Objected to.] Mr. Monroe said that Mr. Campbell wanted a note, because it was more business like 30—that's the answer he made me; I made no objections to it.

Quest. When and where was it he said that? [Objected to.]

Ans. It was in Mr. Norton's office, the day the note was signed.

Quest. Was Mr. Campbell present at the time?

Ans. Yes, sir.

Quest. Who asked for, or proposed the making of the \$20,000 note?

Ans. I do not remember anything about the note until it was drawn and presented, and I was asked to sign it, as a 40

part of this loan ; I never knew that this loan was made in two parcels until this suit was commenced.

Quest. Who presented the note, and asked that it be signed ?

Ans. I am under the impression that Mr. Campbell did.

Quest. After you had paid the \$20,000 that you have spoken of, did you offer to pay any more on the loan, and if so, to whom ?

Ans. I offered to pay the balance of the \$35,000 to Mr. 10 Campbell, with the interest.

Quest. When did you make that offer ?

Ans. Well, I should think it was in the month of September, 1865, at Mr. Campbell's house.

Adjourned for dinner, until 2 P. M.

After dinner, parties and counsel appeared.

Quest. Before going to Mr. Campbell's house on that occasion, did you receive any letter from him ?

Ans. I did.

Here witness being shown a letter, dated August 30th, 20 1865—

Quest. Is that the letter you just referred to ?

Ans. It is.

Quest. In whose handwriting is that ?

Ans. Mr. Campbell's—and it is signed by him ; I received this letter from the post-office at Morristown ; this letter I have marked *Exhibit 2* on part of the defendant.

Quest. How long after you got that letter was it that you called on Mr. Campbell ?

Ans. A very few days.

30 *Quest.* Where did you see him next after getting that letter ?

Ans. I saw him at his house—I can't tell the street now—it was on the occasion I have already referred to as being at his house.

Quest. On that occasion state what you offered to Mr. Campbell, and what he said in reply to your offer ? [Objected to by Mr. Little.]

Ans. I offered to pay to Mr. Campbell the balance of the \$35,000 I had received ; Mr. Campbell declined, first on the ground that I was bound for the whole amount, \$50,000, and

he refused to credit the \$5000 that I gave to Mr. Norton—the check.

Quest. Did he say anything at that time about a loan of \$4500 made to Monroe? [Objected to by Mr. Little.]

Ans. No, sir; I never heard of the \$4500 until this suit was commenced.

Quest. What, if any reason, did he give for treating the loan as a loan for \$50,000? did he pretend that you had received that amount of money, or did he put it on any other ground? [Objected to by Mr. Little.] 10

Ans. I don't have it in my mind that anything was said about that, only that the assignment was for \$50,000; we talked over almost everything about it; I don't bring to my mind on that subject exactly.

Quest. At this interview at the house, what, if anything, did he say about the \$5000 check that you had left with Norton? [Objected to.]

Ans. I think it was prior to that when I saw Mr. Campbell at his office, and he spoke about the check; at this interview at the house, I do not remember that anything was said about 20 the check.

Quest. At any other time, did he tell you whether that check came to his hands—and if so, what disposition he made of it? [Objected to.]

Ans. I asked him if he had received the check; he said he had received Mr. Monroe's check instead of it—I believe for ten days.

Quest. From whom or in what way had he received Monroe's check in place of it?

Ans. He said Monroe wanted to use the money, and he 30 took and drew his own check in place of it; I understood that Campbell received Monroe's check from Monroe—Mr. Campbell told me so.

Quest. When and where was it that he told you this?

Ans. It was in the month of August last, at his office, 16 Wall street.

Quest. When you saw Mr. Campbell at his house in the early part of September, did you not inform him of your having got the money from Mr. Halsey, and of what you had done with it, or some part of it? 40

Ans. Yes, I did.

[Here paper is handed to witness.]

Quest. In whose handwriting is it?

Ans. It is in Mr. Campbell's handwriting; I received that, in due course of mail, at the Morristown post-office.

[This letter, dated September 6th, 1865, to Thomas E. Allen, I have here marked *Exhibit 3* on the part of the defendant.]

Quest. At that interview at Mr. Campbell's house, already
10 alluded to, what objections, if any, did you make to him
against being held accountable for the \$12,300 which Mon-
roe had kept out of the \$47,300? [Objected to.]

Ans. I contended to him, as I did to everybody else, that I was bound for only \$35,000; I supposed that I was bound for what money I received on the mortgage; the assignment was for \$50,000, and I received \$35,000, and I did not suppose I was bound for more than the \$35,000.

Quest. For what purpose did Monroe retain the \$12,300,
20 as he alleged to you at the time? [Objected to by Mr. Lit-
tle.]

Ans. The only reason he gave was, that he wanted to keep his bank account large, so that he could get discounts.

Quest. Was he at that time engaged in efforts to reorganize and start anew the Morris County Bank?

Ans. Yes; that appeared to be his determination.

Quest. How long did Monroe continue to pursue, or apparently to pursue that purpose of reorganizing the bank?

Ans. Up to this time, so far as I know.

Quest. Was Mr. Campbell concerned with Mr. Monroe in
30 the reorganization of the bank? [Objected to.]

Ans. Yes, sir.

[Here Mr. Vanatta hands witness a letter.]

Quest. Please look at this letter, and say when you received it, if you did receive it?

Ans. I did receive it in due course of mail, a day or two after its date; it is in Mr. Campbell's handwriting.

This letter, dated New York, April 21st, 1865, is from Rob't B. Campbell to Thos. E. Allen, and I have marked it *Exhibit 4* on part of the defendant.

40 *Quest.* Whereabouts in New York did Monroe transact his business, so far as you saw?

Ans. In Mr. Norton's office, 16 Wall street.

Quest. What did you say the sign at the door of that place was?

Ans. It was Campbell, Norton & Jackson; they were the names on the door.

Quest. Do you know whether Daniel Tyler held, or claimed to hold any stock of the Morris County Bank in the summer or spring of 1865? [Objected to by Mr. Little.]

Ans. Some time through the summer Mr. Campbell left at the bank certificates for 450 shares of stock, to be transferred to Daniel Tyler; they are of the par value of \$50 per share. 10

Quest. From whom and how did Tyler get that stock—tell us all you know about it that you learned from him or Mr. Campbell? [Mr. Little objects to testimony of what witness learned from Mr. Campbell.]

Ans. He received it from Mr. Monroe, as I was informed by Mr. Monroe and Mr. Campbell both, as a bonus on this loan. [What Monroe said objected to by Little.]

Quest. Do you know whether Munroe used that \$12,300, 20 or any part of it, to buy that bank stock which he let Mr. Tyler have, and if so state what you know about that? [Objected to.]

Ans. I do not, except what Monroe told me.

Quest. At or before you got the 5-20 bonds, did you know anything of anything having been said to Mr. Tyler about his having an interest in the mine, or in the lease of the mine?

Ans. I did not.

Quest. Did you authorize Monroe to make any such offer to Mr. Tyler, or anybody else? 30

Ans. I think not.

Quest. Did you know, at the time you got, or before you got those 5-20 bonds, of any agreement to transfer, or offer to transfer to Tyler 300 shares of the stock of the Morris County Bank?

Ans. I don't think I heard anything about the transferring the stock until after the money was loaned.

Quest. When, where, and from whom did you first learn of the transfer, or agreement to transfer stock of the Morris County Bank to Tyler? 40

Ans. At 16 Wall street, New York, from Mr. Monroe and Mr. Norton both.

Quest. How long was that after you had got the 5-20 bonds?

Ans. A few days—within a week.

Quest. Did you assent or dissent to it at that time?

Ans. I dissented.

Quest. What did you say?

Ans. I objected to giving a bonus, if it was going to bind me or the bank.

10 *Quest.* At the time you left that \$5000 with Mr. Norton, did you or not understand that he was a partner of Mr. Campbell?

Ans. Yes, sir.

Quest. Would you have left it with him if you had not supposed he was a partner?

Ans. No, I should not.

Quest. Where was Mr. Campbell at that time?

20 *Ans.* I do not know; I drew that check in Fulton street, and delivered it to Mr. Monroe; I had seen Mr. Norton, and agreed with him to give the check to his order, and did so.

Quest. Had he asked it of you?

Ans. He said that the party that had loaned the money was very anxious for it, and that might satisfy him for a few days.

Quest. I have understood you to say already that you know nothing about the loan of \$4500 to Monroe in April, 1865, had no part of it, and no connection with it—am I correct?

Ans. I had no knowledge of it until after this suit commenced; I had neither the whole of it nor any share of it.

30 *Quest.* Were you ever requested by Campbell or Tyler to inform Mr. Halsey of the assignment you had made of these bonds and mortgages?

Ans. Not to my recollection.

Quest. Did Mr. Halsey ever ask you whether any assignment had been made—that is, prior to the money being paid over? [Objected to.]

Ans. No—I think not.

Quest. Did you ever tell Daniel Tyler or Robert B. Campbell that Monroe held claims against the Morris County

Bank to the amount of \$36,000, or did you ever say so in the presence of either one of them?

Ans. No, sir—nor no other amount: he never did own a dollar's worth of Morris County Bank indebtedness to my knowledge.

Quest. Did Campbell or Tyler ever say anything to you about Monroe's holding indebtedness against the Morris County Bank—and if so, when was it, and where was it?

Ans. I saw Mr. Tyler at Mr. Campbell's office, in, I think, the month of August, 1865; Mr. Tyler, I think, asked the 10 question, how much indebtedness Monroe held, and I answered him not a dollar's worth to my knowledge; Mr. Campbell was present on the same occasion; I wouldn't be certain which asked the question—I think it was Mr. Tyler.

Quest. Had there been anything said about Monroe's holding indebtedness prior to that time, by them to you, or by either of them?

Ans. Not to my knowledge.

Quest. At the time you got the 5-20 bonds, or before that, did you say anything to Mr. Campbell as to how much stock 20 of the Morris County Bank Mr. Monroe held?

Ans. I think I might have said something about that—I am not sure.

Quest. Did you ever hear Monroe tell Mr. Campbell that he (Monroe) had bought 5-20 bonds with the \$4500 which he had got of Campbell from Mr. Tyler, or otherwise?

Ans. I think not: I don't think I ever heard about his buying 5-20 bonds.

Here witness, being shown by Mr. Vanatta an assignment purporting to be made by the witness, as president of the 30 Morris County Bank, to James Monroe, dated 11th February, 1865, which is here produced by attorney of the plaintiff, on notice to him given by attorney of defendant.

Quest. Is that the assignment to Monroe of which you have spoken?

Ans. Yes, sir.

This assignment I here mark *Exhibit 5* on part of the defendant.

Quest. Were you present when an assignment of any of

the bonds and mortgages named in this assignment was made by Monroe to Campbell?

Ans. No, sir, I think not.

Quest. Did you ever see any assignment of those bonds and mortgages from Monroe to Campbell?

Ans. No—I have not.

Cross-examination, conducted by Mr. Little—I am sixty years old, will be sixty-one next February; I have lived in the county of Morris twelve years next March—prior to that
10 I lived in New York.

Quest. What was your business in New York?

Ans. I was a merchant.

Quest. How long was you a merchant in New York?

Ans. About thirty years.

Quest. Were you prosperous or otherwise in New York?

Ans. Both ways—prosperous in the end.

Quest. What has been your business since you have been in the county of Morris?

Ans. Farming principally, within a mile of New Vernon,
20 Morris county.

Quest. On a farm owned by yourself?

Ans. No, sir—not at present.

Quest. Did you ever own it?

Ans. No, sir; my son (John H. Allen) bought it when my father-in-law died, and it stands in his name yet; that was in February, twelve years ago next February.

Quest. Have you been paying him rent since you have been there? [Objected to by Mr. Vanatta.]

Ans. Yes, sir.

30 *Quest.* How much per year? [Objected to.]

Ans. Somewhere about \$250, I think.

Quest. Don't you know what the rent is?

Ans. I pay him the interest on \$4800.

Quest. Do you own any real estate in this county?

Ans. Yes, sir, I do; I own a lot here in Morristown, and
a lot near Dover; the other piece is not in this county.

Quest. Is that all?

Ans. Yes—all the real estate.

Quest. What lot in Morristown do you own?

Ans. One in Morris street—it is vacant.

Quest. What is its value?

Ans. I ask \$1000.

Quest. When did you buy it?

Ans. I think it was June last.

Quest. What did it sell for at public sale?

Ans. I paid \$410, besides the expenses of the deed and stamp.

Quest. Is the deed made to you and recorded?

Ans. Yes, sir.

10

Quest. Where is the other lot?

Ans. About two miles from Dover; it is called the Cummins McCarty mill-seat; I paid at the sale \$53 (fifty-three dollars) for it—they valued it at \$400 when it was taxed.

Quest. Does anybody hold the title to any real estate in trust for you? [Objected to by Mr. Vanatta.]

Ans. Nothing, except it's the farm where I live.

Quest. Is that held in trust for you?

Ans. I intended to own it; I was executor, and couldn't buy it, and my son bought it; and holds the title for it. 20

Quest. Did you pay the purchase money for that farm, or any part of it, at any time?

Ans. The property sold in the neighborhood of seven thousand dollars, and I paid all but \$4800, which is still due—I speak from memory.

Quest. How long have you been connected with the Morris County Bank?

Ans. Since May, 1862, I think—I then became president; I was a director for a couple of years before that.

Quest. When did you first become acquainted with James 30 Monroe, and where?

Ans. It must have been in the summer of 1863—in New York.

Quest. When did he become connected with the bank as a stockholder?

Ans. I think the first stock he bought was in April, 1864—or I bought it for him.

Quest. Did you or not buy all the stock of which he subsequently became the owner?

Ans. Yes—I believe I did.

40

Quest. And of how many shares did he ultimately become the owner?

Ans. I think it was something like thirteen hundred shares.

Quest. Into how many shares was the capital stock divided?

Ans. I think the books called for 1810.

Quest. Is any of it held by the bank?

Ans. There is at present; seventy shares were taken by the bank for a debt before this loan was made.

10 *Quest.* How much do you hold?

Ans. I think 469 shares stand in my name.

Quest. When did the bank suspend business?

Ans. In September, 1861, I think.

Quest. Has it or not been in a state of suspension ever since?

Ans. Yes—it hasn't done any legal business—any banking business.

Quest. Were your relations with Mr. Monroe, previous to this loan of money, of a friendly or a business character?

20 *Ans.* Of a business character.

Quest. What was that business?

Ans. I didn't do anything for him in particular, except buy this stock for him when he furnished the money.

Quest. Do you recollect who introduced him to you?

Ans. A man named James Johnes, of New York city.

Quest. How much of that stock of Monroe's was bought prior to making this loan of General Tyler?

Ans. I should say about 700 shares, from the best of my recollection.

30 *Quest.* When and through whom did you first become acquainted with Robert B. Campbell?

Ans. Through Mr. Monroe or Mr. Norton, or both.

Quest. How long before that had you known Eli P. Norton?

Ans. Not a great while—I couldn't say certainly; Mr. Monroe introduced me to him.

Quest. Do you know that Eli P. Norton was a partner, after January, 1865, with Mr. Campbell?

Ans. No, I know nothing about it, except what I see and heard.

40 *Quest.* Did you learn that he was a partner of Mr. Camp-

bell, after that time, from either Mr. Campbell or Mr. Norton?

Ans. I heard he was before that, and I have heard nothing to the contrary since.

Quest. Last question repeated.

Ans. I heard nothing either way.

Quest. Before this loan was made, did you ever make a statement to Mr. Campbell, or in his presence, of the number of shares then owned by James Monroe of the stock of the Morris County Bank?

Ans. I do not remember. 10

Quest. Will you say that you did not make such statement to Mr. Campbell before the loan?

Ans. I should say I don't remember it.

Quest. Were you ever in Mr. Campbell's office prior to the first loan that was made of General Tyler, and prior to the application for the loan, or at the time of such application?

Ans. I don't remember being in his office before, and I don't know what you mean by the first loan.

Quest. You say you were in his office about the 14th February—were you ever there prior to that time? 20

Ans. I was not in his office on the 14th February, nor do I think I was in his office prior to that; the transaction was in Norton's office.

Quest. Were you ever, prior to the time you say the bonds were paid over at No. 16 Wall street, in either the office of Mr. Norton or Mr. Campbell, in reference to an application to Mr. Campbell or Mr. Tyler, or to anybody else, for a loan of money, either to James Monroe or yourself?

Ans. I was; I was there, and that came up.

Quest. When was that, and who were present? 30

Ans. I couldn't say—it was in the fore part of the winter; Monroe and Norton, one or both, were present; I speak now of one particular time.

Quest. Was Mr. Campbell present?

Ans. I think not; he might have come in.

Quest. To whom was the application for the loan that you talked of there to be made at that time?

Ans. At the time I allude to, Mr. Monroe said he had made application to Mr. Campbell in writing to get him some money; that he received an answer which was favor- 40

able; that he did not have the answer with him, but was sure of the loan in a few days.

Quest. A loan for how much was that?

Ans. Fifty thousand dollars was what he talked of.

Quest. Did you know Mr. Campbell at that time?

Ans. I had seen him—yes, sir.

Quest. Did you know him?

Ans. Only by sight.

Quest. About what time in the winter was that?

10 *Ans.* It might have been in December, 1864, or January, 1865—can't tell exactly.

Quest. How long after that was it that you were introduced to Mr. Campbell by Mr. Monroe?

Ans. I don't remember.

Quest. You said you were introduced to Mr. Campbell by Monroe; tell me when that was, where it was, and on what occasion?

Ans. I don't remember when it was—it was at 16 Wall street, and on no particular occasion that I know of.

20 *Quest.* At the time of this interview in Norton's office, that you have just spoken of, did you, or Monroe in your presence, make any statement in writing of the amount of the capital stock of the bank, its assets, its liabilities?

Ans. Not to my remembrance; it has been made a great many times.

Quest. Were you ever present at 16 Wall street, in Mr. Campbell's office, or in Mr. Norton's, when a conversation was had in your presence and hearing between Mr. Campbell and Mr. Monroe in reference to applying to Mr. Campbell for a loan to James Monroe or yourself?

30 *Ans.* I don't remember; I know there was a conversation between Mr. Monroe and Mr. Campbell—it might have been in my presence—I could'nt tell anything about it.

Quest. Were you present at Mr. Campbell's office before the bonds were delivered, when a conversation was had in your presence and hearing between Monroe and Mr. Campbell in reference to an application to General Tyler, or, as you understood it, to Colonel Taylor, for a loan to Mr. Monroe?

40 *Ans.* I could not say.

Quest. When did you first know that there was any connection between Monroe and General Tyler in reference to this loan ?

Ans. I don't think I knew anything about Mr. Tyler, or a person called Colonel Taylor, until just a few days before the loan, Mr. Campbell's name was always used in reference to that loan, nobody else's.

Quest. When did you first hear of an application by Monroe to Mr. Campbell for a loan ?

Ans. It was either December, 1864, or forepart of January, 10 1865.

Quest. Were you at that time in Mr. Campbell's office, when the application was made to Mr. Campbell for the loan ?

Ans. I think not—we were in Mr. Norton's office, maybe.

Quest. At any time when an application was made to Mr. Campbell for a loan, or to procure a loan for Monroe, was there or not a statement of the assets and liabilities of the bank made by you or Monroe, or by Mr. Campbell at his dictation ?

20

Ans. I presume there was, but I have no recollection about it; I will answer here that I never made a statement of the assets of the bank in my life.

Quest. Why then do you say that you presume such statement was made by Mr. Monroe or Mr. Campbell in your presence ?

Ans. I presume he had a statement from somebody.

Quest. Did you see any such statement made by yourself, or Monroe, or Mr. Campbell, in your presence ?

Ans. No, sir.

30

Quest. Look at that paper, and see if any part of it is in your figures or writing ? [Here Mr. Little presents paper to witness.]

Ans. The figures 833 at the top,
317 Wood, and
20 Jones

1170 are in my handwriting, also the figures and words, "first 6000 in Wells' are in my handwriting.

40

Quest. Can you tell where, or when, or for what purpose, that part of the paper which is your handwriting was put there ?

Ans. No, sir, I cannot ; I don't think that they were put there for any purpose in particular.

This paper is offered in evidence by Mr. Little, and marked *Exhibit 1*, on part of the plaintiff.

Quest. Was Monroe at that time a Director of the bank ?

Ans. No, sir.

10 *Quest.* You said that Monroe once offered to lend the bank \$75,000 ; by whom was the sum reduced to \$50,000 ?

Ans. It never has been reduced, only it didn't come.

Quest. How was proposed loan to be secured to him ?

Ans. By the assignment of the mortgages and lease, and I was to hold the balance of his stock till he should do it.

Quest. Did the board agree to accept his proposed loan of \$75,000, and to assign these securities to him ?

Ans. Yes, sir.

20 *Quest.* If the amount of the loan was never reduced to \$50,000 by any action of the board of directors, how came you, as president of the board, to assign these securities to James Monroe, to secure a loan of \$50,000 ?

Ans. I did it because I considered it for the interest of the bank ; we were sued, and judgments were about being recovered against us, and I held the balance of the stock and his promises for the balance.

Quest. Do you mean to say that you assigned these securities to James Monroe without any authority from the directors ?

30 *Ans.* Yes, I do, for the \$50,000 ; and I say, at the same time, all the parties knew it—knew that I assigned them for \$50,000, without the consent of the board.

Quest. How did they know it ?

Ans. The paper shows for itself.

Quest. You acknowledged there that you did it by the authority of the bank—what did you mean by that ?

Ans. I have no answer to it.

40 *Quest.* You say that the condition of the assignment is, that if the bank shall pay to James Monroe \$50,000 on the 11th June then next, the assignment should be void—did the bank owe him that money then or not ?

Ans. No, sir.

Quest. Did they owe him any part of it at the time the assignment was executed and delivered to him ?

Ans. No, sir.

Quest. What was done with the assignment after you executed it ?

Ans. It was delivered to Mr. Monroe.

Quest. Where ?

Ans. 16 Wall street, New York.

Quest. Was it in your possession after it was executed and 10 acknowledged, until delivered to Mr. Monroe ?

Ans. Yes.

Quest. At what time was it delivered to Mr. Monroe ?

Ans. On the 14th February, I think.

Quest. On the same day the bonds were received from Mr. Campbell ?

Ans. Yes, sir—that's my impression of it now.

Quest. Who were present when it was delivered it to him ?

Ans. I don't remember anybody—Mr. Norton might have been there—I don't remember—I think it was delivered to 20 Mr. Monroe in Mr. Norton's office, and Mr. Monroe took it into another room to Mr. Campbell.

Quest. Was General Tyler there that day ?

Ans. No, sir—at least I did not see him ; I never saw General Tyler till after we paid the \$20,000 note.

Quest. Did you know for what purpose Mr. Monroe took that assignment to Mr. Campbell at that time ?

Ans. He said Mr. Campbell was his attorney, and he took it there to see if it was correct.

Quest. He brought it back there after he got Mr. Camp- 30 bell's opinion ?

Ans. Yes, sir, I believe he did ; Mr. Campbell brought the package of 5-20 bonds into Mr. Norton's office, and took the papers (the assignment from me to Monroe, and I suppose the assignment from Monroe to Campbell), said the papers were all right he believed, and went back into his office ; the 5-20 bonds were in a package ; I took them to a broker's, and sold them—Monroe gave them to me.

Quest. What broker sold the bonds ?

Ans. I don't remember his name; Fisk & Hatch were the names of the brokers; I sold the 5-20 bonds to them for \$47,300, and received their check to my order upon, I think, the Bank of the Commonwealth; the check was certified; Mr. Monroe took it; the teller gave it to him after it was certified—I was there with him; I endorsed the check; I made that endorsement at the office at Fisk & Hatch's; my endorsement was a general endorsement, just my own name; I think I handed the check to Monroe at
10 Fisk & Hatch's office, or on the way to the bank, and he handed it to the teller; after the check was certified, Monroe took it, and deposited it in the Bank of New York; I received \$35,000, viz: \$30,000 in a check on the Bank of New York, and \$5000 in money—this was right away—on the same day; the \$30,000 check I received from Monroe was payable to my order, individually; I deposited this last named check in the Merchants' Exchange Bank to my own credit; I kept my general account there previously; it passed to my general account, I suppose.

20 *Quest.* What, if anything, did you receive for that \$12,300 that Monroe didn't pay to you?

Ans. He gave me his check for \$3000, and a memorandum check for \$12,000, making up the sum of \$50,000 named in the assignment to him.

Quest. To whom were those two checks (the (\$3000 and \$12,000) payable?

Ans. To me.

Quest. What has become of them?

Ans. I have them home—both of them.

30 *Quest.* At that time, I suppose, you had great confidence in Mr. Monroe—had you not?

Ans. I had.

Quest. How did you pay for the stock that you subsequently bought for Monroe?

Ans. I paid for part of it out of that \$35,000.

Quest. How much of the stock did you pay for out of the \$35,000?

Ans. It might have been \$2000 or \$3000.

40 *Quest.* Was all the stock that you bought after that time paid for out of that money?

Ans. No, sir.

Quest. Did you or not understand that all of that \$35,000, though deposited in your name, belonged to the Morris County Bank?

Ans. Yes, sir—and so applied it.

Quest. How did it come, then, that you used the money belonging to the Morris County Bank to buy stock of the bank for James Monroe?

Ans. I borrowed it of that fund upon his request, and afterwards repaid it. 10

Quest. You knew, I suppose, or didn't you, at the time these 5-20 bonds were received from Mr. Campbell, that they were received from Mr. Tyler?

Ans. Yes, I did that day.

Quest. He was a stranger to you at that time?

Ans. I never had seen him.

Quest. You knew, I suppose, that those assignments were delivered to Mr. Campbell, as the agent of Mr. Tyler, to secure that loan?

Ans. Yes, I knew that they were delivered to Mr. Campbell to secure the \$50,000 loan (or the money furnished by the bonds). 20

Here the examination was adjourned, by consent, until Monday morning next, at half past ten o'clock, at same place.

ALFRED MILLS, *S. C. C.*

Monday morning, January 8th, 1866, parties and counsel appear.

Cross-examination of *Thomas E. Allen*, resumed by Mr. Little. 30

Samuel S. Halsey was the solicitor of the Morris County Bank in the foreclosure of those mortgages.

I do not know whether or not the whole of the money raised by the sale of the mortgaged premises was paid by the master, Mr. Dalriddle, to Mr. Halsey—I presume it was; it was all paid over to me by Mr. Halsey, less the expenses; that sale was some time in June, 1865—I received some of the money in the fore part of July; I cannot tell when I re-

ceived the last payment from Mr. Halsey; I think I received some twenty-five or thirty thousand dollars before I received that letter from Mr. Campbell (*Exhibit 1* on part of defendant); I don't know of any particular authority by which I received that money—it was paid on the debts of the bank, by Mr. Halsey's checks generally; Mr. Halsey did not, to my knowledge, know that the mortgage had been assigned by the bank at that time.

Quest. Why did you not tell him?

10 *Ans.* I don't know that I can answer that, except that it didn't concern him, as I knowed of.

Quest. Didn't you know that that assignment affected your right to receive the money?

Ans. No, sir.

Quest. Do you mean to say that you thought you had the same right to receive the money after the assignment as you had before it?

Ans. I did, with the exception of what was borrowed on it.

Quest. With the exception of how much?

20 *Ans.* Thirty-five thousand dollars; I paid the twenty thousand dollar note on the 8th of August, I think.

Quest. Was that a part of the \$35,000 you speak of?

Ans. Yes, sir.

Quest. Yours, with the exception of \$35,000—whose did you consider the \$35,000?

Ans. Mr. Campbell's; I borrowed it of Mr. Monroe, but Mr. Campbell gave it to me.

Quest. Do you mean to say that when you received that \$35,000 from Mr. Halsey, you received it as money belonging to Mr. Campbell or General Tyler?

30 *Ans.* I received it as money belonging to the Morris County Bank, and receipted for it as such.

Quest. Have you not just said that you considered it as the property of Mr. Campbell or General Tyler when in Mr. Halsey's hands?

Ans. No, sir—I did not intend to say so.

Quest. Did you receive it from Mr. Halsey under the authority of Mr. Campbell's letter then, of August 22d, 1865?

Ans. What I received after that date, I presume I did.

40 *Quest.* Why did you need the letter of Mr. Campbell if

the money didn't belong to him or to General Tyler, but belonged to the Morris County Bank?

Ans. I did not ask for the letter.

Quest. Did you regard the letter as of any consequence to you, or as conferring any right upon you that you didn't have before?

Ans. I regarded the letter as authority to receive the money.

Quest. Did you show the letter to Mr. Halsey as your authority? 10

Ans. No, sir.

Quest. Why not?

Ans. I had no occasion.

Quest. How could you draw Mr. Campbell's money without showing that authority?

Ans. I can answer that by saying, that I borrowed the money, and drew the money to pay it back again; I borrowed the money of James Monroe.

Quest. How could you draw Mr. Campbell's money from Mr. Halsey's hands without showing your authority, which 20 you had in your pocket, you say?

Ans. I did not draw it from Mr. Halsey as Mr. Campbell's money—I drew it as money which I had borrowed, and calculated to return.

Quest. Didn't you know, at that time, that Mr. Campbell or General Tyler relied upon that money for the repayment of the \$47,300 which they had furnished Mr. Monroe in bonds in February?

Ans. I knew they relied on the \$20,000 which they got.

Quest. Last question repeated. 30

Ans. Nothing over the \$35,000.

Quest. What other security had they on which they relied, as you supposed, for the payment of the other part?

Ans. I don't know, only from hearsay.

Quest. Do you mean to say, or to be understood, that when you received that money from Mr. Halsey you did not suppose that Mr. Campbell and General Tyler relied upon it for the repayment of anything more than \$35,000?

Ans. I supposed that was all they would ever get out of it; Mr. Campbell claimed \$50,000 in his letters; I have always 40

supposed that if we borrowed \$35,000, we were bound to pay it back with interest, and nothing more.

Quest. Last question repeated.

Ans. I suppose they did.

Quest. Had you not yourself consented to their holding the assignment of those mortgages to secure the whole loan?

Ans. Not to my remembrance.

Letter presented to witness by Mr. Little.

Quest. Is that your signature to that letter?

10 *Ans.* That's my signature.

Quest. To what does that letter refer?

Ans. It refers to the loan.

This letter is here marked by the commissioner *Exhibit A* on part of the plaintiff.

Here Mr. Little shows another letter to witness.

Quest. Is that the letter to which it refers?

Ans. I never saw this before, to my knowledge.

Quest. Whose writing is that?

Ans. I should say it was Mr. Campbell's.

20 This letter is here marked *Exhibit B* on part of the plaintiff. Another letter is here shown to witness by Mr. Little.

Quest. In whose handwriting is that?

Ans. In my handwriting.

This letter is here marked by commissioner *Exhibit C* on part of the plaintiff.

30 *Quest.* You have said you didn't consider that you were bound to pay any more than \$35,000, which was all the money you received; it was no part of your object, was it, in drawing all the money from Mr. Halsey's hands, to prevent Mr. Campbell or General Tyler from receiving more than that sum without your consent?

Ans. No, sir; I drew the money to pay the debts of the bank—the bank required the money to pay its debts; the \$35,000 was ready any time; that I called a debt.

Quest. Did you, or not, mean to prevent them from getting the other \$12,300 out of that money?

Ans. I didn't intend they should have any more than we owed them.

Quest. Last question repeated.

40 *Ans.* I answer that just as I said before, I did not intend to pay any more than we had borrowed.

Quest. And you did not admit that the debt was more than \$35,000?

Ans. No, sir; I always considered it a debt of \$35,000.

Quest. Did you, after the letter of August 22d was received by you, meet General Tyler at Mr. Campbell's office, in New York?

Ans. I met Mr. Tyler there once—I couldn't say whether it was before or after.

Quest. Was Mr. Campbell present?

Ans. Yes, sir.

10

Quest. Was there any conversation there about your having received the money from Mr. Halsey?

Ans. I do not remember.

Quest. Try and remember?

Ans. I do not remember what he said there; I do not remember meeting him there more than once—it might have been twice possibly; I met him there twice—once when James Monroe was present, and once when Mr. Monroe wasn't there.

Quest. Was not one of those times before, and one after 20 the date of that August letter?

Ans. I couldn't say when it was—I have no recollections about the time.

Quest. At the time you met him there with James Monroe, was anything said about the \$4500 note?

Ans. Not in my hearing.

Quest. Were you not asked, why you did not pay that, instead of the \$20,000 note?

Ans. I never heard about the \$4500 note—never knew anything about it.

30

Quest. At the second interview with General Tyler, was there any conversation about Mr. Campbell's letter of August 22d?

Ans. No, sir; not to my knowledge.

Quest. Did you not at that time say, in the presence and hearing of both Mr. Campbell and General Tyler, that you had received that money from Mr. Halsey before Mr. Campbell's letter was received, and that you didn't receive the money under that letter?

Ans. No, sir; I did not, and I didn't hear anything about 40 the letter.

Quest. Did you ever have any conversation with me before the commencement of this suit about your having taken that money out of Mr. Halsey's hands?

Quest. I had a conversation, in the first National Bank, with Mr. Little before he commenced this suit, about this loan; I don't know that there was anything in particular said about the money in Mr. Halsey's hands.

Quest. Did you not have a conversation with me, in my back-office, before this suit was commenced?

10 *Ans.* I think not; there was one at Mr. Little's house, and one at the bank.

Quest. Did you tell me that you received the money from Mr. Halsey under the authority of Mr. Campbell's letter, or by his request or consent?

Ans. The letter was not named, to my knowledge.

Quest. Last question repeated.

Ans. I don't think there was anything said about that.

Quest. You mean to say that nothing was said upon the impropriety of your drawing the money from Mr. Halsey's
20 hands?

Ans. No, I do not.

Quest. Did I not, in one conversation with you, say to you that I had in my possession a copy of a letter addressed to you by Mr. Campbell, authorizing you to receive the money, and pay it over to him, and ask you why you had not done it, or anything to that effect?

Ans. Not to my remembrance; you spoke of the letter you just showed me (marked *Exhibit A* on part of plaintiff).

30 *Quest.* You have no recollection of any conversation with me on the subject of drawing the money?

Ans. Yes, I have.

Quest. Tell us what it was?

Ans. Mr. Little said I hadn't the right to draw the money from Halsey; my answer was, that I had a right to draw it so long as I paid what we had borrowed, \$35,000; he then asked me if Mr. Campbell had knowledge of my drawing the money; I answered him I presumed he had; that's about all I remember of that part of it.

40 *Quest.* Were you and Monroe, after February, 1865, in partnership in the purchase of stock of the Morris County Bank? [Objected to by Mr. Vanatta.]

Ans. There was some arrangement made or talked of; I couldn't tell when it was; I couldn't tell whether it was on the 13th February, 1865.

Quest. Was it not put in writing on the same day that assignment to James Monroe by the Morris County Bank was made?

Ans. I cannot say—I do not know.

Quest. What was the nature of the agreement between you? [Objected to by Mr. Vanatta.]

Ans. It was in regard to buying the Morris County Bank stock—I don't remember the purport of it—I have seen too many of them; I have seen one in which Mr. Norton, Mr. Campbell, Mr. Monroe, and Allen were concerned.

Here adjourned for dinner.

After dinner—Re-examination of *Thomas E. Allen*, by Mr. Vanatta.

Quest. When you speak of Mr. Samuel S. Halsey having paid you something over \$80,000, do you mean that he delivered that amount of money, or that that is the amount of what he paid to you and to other persons at your instance? [Objected to, as not re-examination.]

Ans. I mean what he paid me and what he paid others.

Quest. What portion of it was paid to you directly?

Ans. It was in the neighborhood of \$42,000.

Quest. To what persons or class of persons was the residue paid? [Objected to by Mr. Little.]

Ans. It was paid to the creditors of the Morris County Bank—depositors and billholders.

Quest. Was any paid to the State Bank at Newark, and if so how much? [Objected to.]

Ans. \$10,499.52, I think.

Quest. Did you pay that, and if so, with what?

Ans. I paid it by Mr. Halsey's check, on the 8th or 9th July, 1865.

Quest. Did you see Mr. Robert B. Campbell on that day, and if so, where? [Objected to.]

Ans. I saw Mr. Campbell here in Morristown, alongside of the park.

Quest. Had you been to Newark that day?

Ans. I had, and came up in the freight train—about two

o'clock, I suppose it was; I met Mr. Campbell in front of the old Presbyterian church; I told him where I had been, and what I had been doing; I told him I had been paying the State Bank.

Quest. Did you tell him where you had got the money? [Objected to.]

Ans. I told him I understood Mr. Halsey had received \$50,000 for the bank, and I was paying the debts of the bank with it.

10 *Quest.* Did you tell him that what you had paid the State Bank was obtained from Mr. Halsey? [Objected to, as leading.]

Ans. I don't know that I did.

Quest. Tell us what you did tell him about your payment to the State Bank? [Objected to.]

Ans. I told Mr. Campbell that I understood Mr. Halsey had received \$50,000 (I think it was), and I was using it to pay the indebtedness of the bank, and that I had paid the State Bank that day.

20 *Quest.* State what further conversation took place that day between you and Mr. Campbell about the money that had come, or would come, into Mr. Halsey's hands from that foreclosure? [Objected to as not rebutting in any sense.]

Ans. On my remark to Mr. Campbell about my paying the debts, he said, "But where am I to get my \$50,000;" I then told him that we had never had but \$35,000, and that would be paid out of that money—I had reference to the money in Sam's hands.

Quest. What did he say to that?

30 *Ans.* He made the remark, that he must have his \$50,000; I couldn't say all that was said—that's the substance of it.

Quest. Were you present at the sale of the Hibernia mine property under the foreclosure proceedings?

Ans. Yes, sir; the sale took place at the hotel of Jacob O. Drake, here in Morristown; Samuel S. Halsey was there; Robert B. Campbell was there; James Monroe was there; Eli S. Norton was not there; Mr. Campbell was there when it was struck off.

40 *Quest.* Between the day of sale and the 22d day of August, did you have any talk with Mr. Campbell, besides the one along the square which you have mentioned?

Ans. I can't say; yes, I did; I saw Mr. Campbell at his office on the 8th August; I paid to Mr. Campbell the \$20,000 that was paid that day; I paid him my check, as president, for \$20,000, on, I think, the New York National Exchange Bank—it was dated the 4th of August—it was certified; I am not sure whether or not I told him where I got it.

Quest. Did you, on that day, inform him how much money you had got of Halsey, or how much money Halsey had paid out on your order, or have any talk with Campbell on that subject—if so state it? 10

Ans. We talked about this money matter; I recollect Mr. Campbell said Mr. Monroe had not paid his note when it become due; I don't recollect that much was said about this money matter.

Quest. What note do you refer to?

Ans. My impression is that he referred to the note due the 1st August; I didn't hear the amount of it, that I remember of.

Quest. How was this note mentioned?

Ans. Mr. Campbell had wrote me, a few days beforehand, 20 about my paying this \$20,000 note when it was due; this is Mr. Campbell's letter that I refer to (producing it); this letter, marked here, by commissioner, *Exhibit 6* on part of defendant. [Objected to by Mr. Little.]

Another paper shown to witness.

Quest. In whose handwriting is that?

Ans. In Mr. Campbell's; I received it through the mail, in Morristown, in due course of mail; it refers to Morris County Bank stock to be assigned to Mr. Tyler by Mr. Monroe; Mr. Campbell left Mr. Monroe's certificates to be transferred from Mr. Monroe to Mr. Tyler, which we did at Mr. Monroe's request. [Evidence objected to.] 30

This last letter marked *Exhibit 7* on part of defendant.

Quest. In this letter he speaks of certificates and powers left with you—what do they refer to?

Ans. Certificates of stock issued to Monroe, and power of attorney, left by Mr. Campbell at the bank, to have the stock transferred to Mr. Tyler.

Quest. I see, by this letter, that Mr. Campbell says that Monroe is going to explain to you his (Campbell's) position 40

about that \$50,000—did he explain to you Campbell's position about the \$50,000, and if so, when and where? [Objected to by Mr. Little.]

Ans. I am quite sure Mr. Monroe came to my house within a day or two from this date, and my recollection is that his explanation was, that I should deposit what money there was on hand in the bank, and open the bank. [Objected to.]

Quest. Did Monroe represent, at that time, that it was Mr. Campbell's wish that you should start the bank with the
10 money, or that he spoke for Mr. Campbell in that respect? [Objected to as leading.]

Ans. I couldn't say that he named Mr. Campbell particularly; he said that was the wish of those interested in the stock of the bank.

Quest. I find Mr. Campbell stating here this, "that he (referring to Monroe) can explain it to you, perhaps, for I am afraid I did not make you fully comprehend the state of affairs"—did you ever learn from Mr. Campbell what state of affairs he alluded to there?

20 *Ans.* I don't know that I could answer that; the only thing I could say about it was, that he couldn't make me believe that we owed him \$50,000.

Quest. Last question repeated.

Ans. I don't know as I did.

Quest. For how long a time did Monroe have his place of business at 16 Wall street?

Ans. I am not able to say.

Quest. Did he ever give you his card?

30 *Ans.* Yes, sir—that is it (producing it)—I think I received that from him in December, 1864—it is just as I got it, except the figures on the back of it; I never knew him to have a room in any other part of 16 Wall street, except this room, No. 12, not until they moved up stairs last May. This card is here marked, by commissioner, *Exhibit 8* on part of defendant.

Quest. You speak about getting Monroe's checks on the 14th of February, 1865—what kind of checks were they? [Objected to.]

40 *Ans.* One was a check, without a date, on the Bank of the State of New York for \$3000, which I was to use by putting

in the date, and notifying him—and the other was a check for \$12,000, dated 14th February, 1865, marked “ memorandum.”

Quest. Did you ever present those checks for payment?
[Objected to.]

Ans. I received a letter from him a few days after, not to use the \$3000 check; the other one, I have merely asked him if he could pay it—I merely presented it to him for payment.

Quest. Why didn't you present it at the bank for payment? 10

Ans. He wrote me that he had no funds there.

Quest. How soon was that after you got the check?

Ans. It was in the month of February—within a few days after it was given.

Quest. Did you ever inform Mr. Campbell about Mr. Monroe having given you these checks?

Ans. I think not.

Quest. How did Mr. Campbell learn about the checks being given?

Ans. I don't know. 20

Quest. At the time of these conversations you had with Mr. Campbell about your having got only \$35,000, did you make any explanations about your having received only \$35,000?

Ans. Yes; I told him I got \$35,000, and Mr. Monroe kept the balance.

Here witness, being shown *Exhibit A* on part of plaintiff—

Quest. In whose handwriting is the body of that letter?

Ans. I think James Monroe's; I did not see it written; it was written before it was handed to me. 30

Quest. Do you know why those blanks were left in it?

Ans. No, sir; the reason he gave was that the communication to which this was an answer was not present with him.

Quest. Did you ever see the communication from Mr. Tyler, to which it purports to refer?

Ans. No, I think not.

Quest. Was the note of Mr. Campbell of that date present when you signed this?

Ans. No; I took Mr. Monroe and Mr. Norton's word 40 that it was all correct for the loan of \$50,000.

Quest. Was Campbell by at the time you signed this letter, or thereabouts?

Ans. I think not; I may have seen him the same day in the office.

Paper marked 1 on part of the plaintiff, being shown witness—

Quest. When did you write that part of that paper that is in your handwriting?

Ans. I have no knowledge.

10 *Quest.* In whose handwriting is the residue of it?

Ans. I don't know—it looks a little like Mr. Campbell's; I don't know when or where it was made; I don't think the figures on top of it were made for any particular purpose; I have no remembrance of having requested or directed that paper to be made.

Quest. Did General Tyler ever pay you anything for any Morris County Bank stock?

Ans. No, sir.

Quest. Did you ever sell or transfer any to him?

20 *Ans.* No, sir, nothing more than what I spoke of that Mr. Monroe had transferred to him.

Quest. You were asked about the authority that the board of bank directors gave you to transfer those mortgages—have you any further explanation to make in regard to that?

Ans. I was in error in regard to the amount I named the other day that they put on it, of \$75,000, that being the amount agreed upon between Mr. Monroe and myself; the authority given by the bank was a general one to raise and borrow money upon the property of the bank to pay the
30 debts; I think there was no amount named.

Quest. You spoke about some conversations with Mr. Little in respect to General Tyler's claim since it came into his hands; at either of those conversations, was there anything said about the Morris County Bank stock held by General Tyler, and if so, what? [Objected to.]

Ans. At the first interview at his house there was something said about it; the conversation was more with Theodore Allen than with me.

Quest. State what was said about it in connection with
40 this claim of General Tyler? [Objected to.]

Ans. Theodore Allen said something like this to Mr. Little—that he either held it as a bonus or a purchase; Mr. Little said yes; if I remember right, he said he would either have to pay for it or give it up.

Quest. Have you ever refused, or ever been unwilling to pay back all the money you got, with interest?

Ans. No, sir.

2d cross-examination by Mr. Little.

I offered to pay Mr. Campbell the balance of the \$35,000 in money—it was at his house; he had had \$20,000 and 10 \$5000, and I offered to pay the balance in money.

Quest. Do I understand you now that there was no limit as to the amount for which you were to assign the bonds and mortgages of the bank?

Ans. So I understand it, sir.

Quest. When did you discover that you had made that error?

Ans. The next day, or the next day but one—when I saw the arrangement between Monroe and myself.

Quest. Then you had power to assign that bond and mortgage for any sum, at your discretion, to raise money?

Ans. Yes—I considered it so.

Quest. Where did you get that power from?

Ans. I believe it was the board of directors.

Quest. Have you any doubt about it?

Ans. No, sir.

Quest. Was the resolution recorded?

Ans. I think it is.

Quest. Have you seen that resolution since this examination commenced?

30

Ans. Yes, sir.

Quest. Who was present when that resolution was passed?

Ans. Can't say—a majority.

Quest. When was the resolution passed?

Ans. I think it was on the 7th April, 1864.

Quest. What, then, did you mean by saying that all the parties concerned in the loan knew that you had not power from the board of directors to make the assignment?

Ans. Because I had crossed off the power before I gave it to them.

Quest. You had the power under that order, had you not?

Ans. Yes, I considered it so—but I crossed it off before I delivered it.

Quest. Why did you cross it off?

Ans. Because it was a general resolution to sell property, raise money, and collect debts, to pay debts.

Paper is here shown to witness by Mr. Little.

Quest. Is that your handwriting?

Ans. Yes, sir.

10 [This is the paper heretofore marked by commissioner *Exhibit C* on part of the plaintiff.]

Here letter from Thomas E. Allen, dated July 13th, 1865, to R. B. Campbell, is shown to witness by Mr. Little.

Quest. Is that your handwriting?

Ans. Yes, sir; it was written in answer to letter marked *Exhibit 7* on part of the plaintiff; it is here marked by the commissioner *Exhibit D* on part of the plaintiff.

Quest. Was that check which you paid to the State Bank at Newark drawn to your order by Mr. Halsey?

20 *Ans.* Yes, to my order as president.

Quest. How much of the money which you received from Mr. Halsey have you on hand—in other words, how much has been paid out?

Ans. It has all been paid out.

Quest. To whom was the last paid?

Ans. The last I paid to Mr. Halsey for rent, on the 2d of this month, if I remember.

2d re-examination by Mr. Vanatta.

I have the funds at command to pay Mr. Tyler, whenever
30 he will accept the just amount.

THOMAS E. ALLEN.

Sworn to and subscribed, this 8th day of January, A. D.
1866, before me.

ALFRED MILLS, S. C. C.

Samuel S. Halsey, a witness produced on part of the defendant, being duly sworn, on his oath says—I was solicitor in the case of the Morris County Bank against Theodore T. Wood and others, defendants, in which the Hibernia mine

property was sold; that property was sold in June, 1865, I think—I think it was sold the 21st June; I received the money arising on that sale; the whole property included in the mortgages which I foreclosed brought \$86,400 on the sale; that money was paid to Mr. Dalriddle, master; I received from the master, July 10th, 1865, fifty thousand one hundred dollars (\$50,100)—on July 17th, twenty thousand dollars (\$20,000)—on July 18th, ten thousand dollars (\$10,000)—that is all the money I received from him; the balance consisted of real estate bought in by Mr. Allen for the 10 bank, or by the bank, and receipted to the master for as cash, and of a certificate of deposit due to Mr. Dalriddle, which he held as a creditor of the Morris County Bank, and which I paid him.

Quest. Please state how much of that money you paid to Thomas E. Allen, or by his direction, and to whom and when?

Ans. On July 8th, I paid to Mr. Pitney \$962.24.

On same day, I paid to the Iron Bank \$7835.54.

On same day, I paid to the State Bank at Newark \$10,- 20
499.51.

On July 11th, I paid John Wills \$9,333.53.

On same day, I paid A. W. Bell \$313.09.

On same day, I paid Edwin A. Stevens \$6,748.01.

On same day, I paid V. Dalriddle \$530.83.

About that date, I paid Charles H. Mulford \$128.76.

About the same date, I paid Samuel Vanness \$3090.00.

On July 18th, 1865, I paid to Mr. Thomas E. Allen, \$36,- 000.00, (thirty-six thousand dollars) making a total, up to that time, of \$75,441.51. 30

I paid the costs and expenses, master's fees and commissions, advertising, &c., \$1,437.92.

The Robertson lot, included in the mortgage, was bought in by Mr. Allen for \$2,557.50, which amount was receipted for to me as cash, so far as I was concerned with the bank—this was about the same time, between 18th and 27th July; July 27th, 1865, I paid to Mr. Allen my check for six thousand nine hundred and sixty-three dollars and seven cents, (\$6963.07) which makes the total amount received \$86,400.

Quest. While that foreclosure suit was going on, did you 40
see Mr. Robert B. Campbell?

Ans. Yes, sir—quite a number of times before the sale; I saw him first, I think, at the Morris County Bank; it must have been three or four months before the sale—perhaps longer.

Quest. What was his business there then? [Objected to.]

Ans. He was the attorney of Mr. Monroe.

Quest. Was Mr. Monroe present at same time?

Ans. Yes, sir.

Quest. What was Mr. Monroe's business there then? [Objected to.]

Ans. Mr. Monroe was the owner of a large amount of stock, and he was interested in getting the bank started.

Quest. Was that the business in which Mr. Campbell was assisting him?

Ans. Yes, sir.

Quest. How often were Mr. Campbell and Mr. Monroe there together? [Objected to.]

Ans. Sometimes twice a week, sometimes once a week, and sometimes once in two weeks, sometimes not so often; 20 this was for a period of three or four months; I think Mr. Campbell was sometimes there alone, in the absence of Mr. Monroe; I think he told me once that Mr. Monroe desired him to come up there, and look after these matters; Mr. Monroe did the principal part of the talking there about the starting of the bank; Mr. Campbell was in my office; the first time he came in, if I recollect right, was somewhere about my first acquaintance with him; then Monroe came with him; they came to inquire about the assets and condition of the bank; it was about the time of their first 30 chasing stock; I told them the condition the foreclosure suits were in, and gave them an opinion as to the condition of the bank; I told them I was conducting the foreclosure—though they knew that; they came there to see me about it—they wanted my opinion as to the bank, its assets and liabilities—I gave them my opinion, not in writing; I don't know whether either of them made a memorandum of it at the time; I recollect making the stock out worth some thirty or forty cents, and Mr. Monroe thought it was worth more.

Exhibit, marked 1, on part of plaintiff, being shown to 40 witness—

Quest. Do you know in whose handwriting that statement is?

Ans. No, sir, I do not; when Mr. Campbell and Mr. Monroe called on me, they had a statement somewhat similar to that one (I can't identify that one), by which they made out the stock worth considerably more than I did; I think my highest estimate was forty cents,

Quest. Was that before or after the 1st January, 1865, that they two called at your office?

Ans. I can't give the exact date—it was about the time of Mr. Monroe's first purchase of stock.

Quest. Do you recollect Mr. Allen's raising money of Mr. Monroe—I mean \$35,000, or thereabouts?

[Objected to.]

Ans. No, sir; except as I heard it from Mr. Allen.

Quest. Now, was this visit of Campbell and Monroe before or after you heard of his getting this money?

Ans. It was long before.

Quest. After that first visit of Messrs. Monroe and Campbell to your office, were Mr. Campbell's visits frequent or seldom to your office?

Ans. Seldom—four or five; I saw him frequently at the banking house; I saw him and Monroe on the day of sale; on the day of sale, or on any day prior to the sale, he did not notify me that he had an assignment of the bonds and mortgages I was foreclosing, nor that General Tyler had an assignment of them, or any interest in them; the first I heard of that was from Mr. Little, I think—just prior to the bringing of this suit; I couldn't say whether or not I had obtained a decree on the mortgages at the time Campbell and Monroe were first at my office; after the day of sale, I think I saw Mr. Campbell two or three times here in Morristown, at the banking room; I recollect distinctly seeing him once with reference to the property bringing what I estimated it would—this was shortly after the sale; I don't think the money had yet been paid to me by the master—it was in the early part of July; he asked me if I had yet received the money from the master; I told him no, I had not yet received it; I saw him between the sale and the paying of the money out by me, perhaps two or three times; I saw him along the

street and at the banking-house: I may have seen him more, perhaps only twice; he asked me if I had received the money; I told him just how the thing stood; at the first conversation I hadn't received any of the money; at the next conversation, I told him, I think, that I had received part of it—I told him the master had not paid it all over—but I am not positive about that; I couldn't say whether or not I saw Mr. Campbell on the 9th of July last.

Quest. What was Mr. Campbell's business here after the
10 sale, so far as you ascertained? [Objected to.]

Ans. I thought he was acting as Mr. Monroe's attorney; he was around the bank, conversing with the officers of the bank, sitting in the room; I had never known him in any other way than in connection with Mr. Monroe.

Cross-examination of S. S. Halsey, by Mr. Little.

Quest. You say you understood from Mr. Allen, at one time, that he got \$35,000 from Mr. Monroe—did he tell you how he secured it?

20 *Ans.* I didn't mean to say that I understood he got that sum of money—I never heard the amount; he did not tell me how he had secured it, that is, what he got.

Quest. Did you never know that the mortgages had been assigned by Mr. Allen until after the money had been collected and paid out?

Ans. No, sir.

Quest. If Mr. Allen had told you that he had assigned these mortgages, as president of the bank, to secure money borrowed of General Tyler or Mr. Campbell, would you have
30 paid out all of this money to him or to his order?

Ans. No, sir, except on the order of the assignee, though I have full confidence in Mr. Allen.

Quest. I see by your statement here that you received no money from the master until the 10th July, and you paid out, as you state, on the 8th July, about \$19,000—how do you account for that?

Ans. Mr. Dalruple and myself went to New York, and received that money about the 5th of July, I think; we brought it home, and I received a certain portion of the
40 money made by me as administrator for sales made that

same day, and he received from the purchaser his portion as master; my proportion was in a letter of credit from the New York National Exchange Bank; his portion was in a certificate of deposit from the Bank of the Republic; Mr. Broadwell, the president of the Iron Bank, knew of the way in which this money was paid to us, and Mr. Dalrimple had told him, or I had told him, that Mr. Dalrimple would pay over to me \$50,000, but that he hadn't any confidence in the Bank of the Republic, and he wouldn't check against that certificate of deposit until there was time for it to go down, 10 and it should be ascertained whether it was good or not—and I drew against the money that Mr. Dalrimple was to pay me, and the checks were cashed; the moneys paid out by me, as above stated, were paid out by me either on Mr. Allen's order (as president) or on his receipt.

Quest. Do you recollect meeting Mr. Campbell here in Morristown at or about the time the money was paid to the State Bank?

Ans. I don't recollect.

Quest. Did you not at that time tell Mr. Campbell that you 20 had not received anything yet from the master?

Ans. If I told him anything, I told him that.

SAMUEL S. HALSEY.

Sworn to and subscribed, this 8th day of January, 1866, before me.

ALFRED MILLS, S. C. C.

Adjourned, by consent, until Friday, January 12th, 1866, ten A. M.

February 12th, 1866.—Counsel appear—Examination proceeds by consent.

30

Theodore E. Allen, a witness produced on part of the defendant, being duly sworn, on his oath says—I live in Morristown, and do business in New York; I know Robert B. Campbell and Eli P. Norton—their office is No. 16 Wall street; there is a sign of Norton & Campbell, counsellors at law, on the main entrance to the building, and their separate names below; I first noticed that sign there in August last 40

—that was the first time I was at their office; this sign was there yet last Thursday.

Quest. Did you ever have any conversation with Robert B. Campbell about a \$5000 payment, which your father, Thomas E. Allen, made by check to Eli P. Norton, in the summer of 1865, and if so state that conversation? [Objected to by Mr. Little.]

Ans. I did have a conversation with Mr. Campbell, in August, 1865, in regard to this check of five thousand dollars, (dated July 28th, I think); Mr. Campbell said he had never received the money, but that Mr. Monroe had borrowed it of him for ten days, and given his check for it; I asked how it was—he said Mr. Monroe told him he had collected the \$5000, and wanted to use it for ten days; that is all the conversation I ever had with him in regard to that check; since then, I had some general conversation with him, but nothing special with regard to that check; I saw Daniel Tyler, the plaintiff, once in September or October, previous to the commencing of this suit—I saw him at Mr. Campbell's office—
20 Mr. Campbell's room, 16 Wall street.

Quest. Did you have any conversation with him about his claim against your father, and if so state what you said to him, and what he said to you?

Ans. I was sent for by General Tyler, as I was told, to see him in regard to making a settlement of this claim; I had offered to purchase the claim; I made the offer to him of paying him twenty-seven thousand three hundred dollars, as the balance of the claim, giving him about one-fifth in cash, and the balance in notes of three, six, nine, and twelve
30 months, with certain stocks as collateral, on his surrendering four hundred and fifty shares of bank stock (Morris County Bank) given as bonus; he asked me whether I represented my father—I told him I did not; he then, in quite a passionate way, said he would keep the stock and collect the money both; there was then some conversation between Mr. Monroe, Mr. Tyler, and myself, in regard to the value of the Morris County Bank stock, and since that I have not seen Mr. Tyler, except at these examinations in Mr. Mills' office.
[Above answer objected to by Mr. Little.]

Cross-examination by Theo. Little, esq.

I am secretary of the New York Cigar and Tobacco Manufacturing Company; Mr. Monroe told me that General Tyler had sent for me; Mr. Campbell said, when I went to the office, that they wanted to see me; I had before that time already made an offer to Mr. Campbell to buy the claim; my offer was a definite one—I offered him my own notes with my father's endorsement—I mean I offered the notes at both times; I offered to give 900 shares of Morris County Bank stock as collateral, also 1000 shares of the 10
Tonowanta Bituminous Coal Company, of McKean county, Pennsylvania; I did not own the 1000 shares of coal stock—James Monroe owned it—they were not in my possession at the time of the offer; I did not make either of these offers, in any sense, as the agent of my father; I have once had that coal stock in my possession since that time—I had it transferred to my father—the stock and power of attorney by Mr. Monroe's directions—not by his directions, but the stock was given to him by Mr. Monroe, and I transferred it to him (my father). 20

Quest. Do you mean to say that you presented it to your father?

Ans. I gave it to him as collateral for any debt Monroe might owe him.

Quest. What debt, if any, did Monroe owe your father, for which that stock was given as collateral?

Ans. The Tyler debt, it is usually called, or has been lately called.

Quest. Did your father not hold any claims against James Monroe personally at the time? 30

Ans. I don't know, unless in connection with the Tyler claim; I recollect seeing in my father's possession two checks of James Monroe, amounting to \$12,000 or \$15,000—don't know exact amount.

Quest. On what bank were those checks drawn?

Ans. I don't recollect.

Quest. Do you know how your father came into possession of those checks, from what he told you or in any other way?

Ans. Yes, sir—he told me; he told me that they were given to him by Monroe in February, 1865, (I think); the 40

smallest check was to be used—the other was a memorandum ; when I speak of No. 16 Wall street, I speak of the number of the building—there are a great many rooms in the building—it is four or five stories ; I don't know whether Campbell or I introduced the conversation in reference to the \$5000 payment ; I did not know, before the first conversation, that there was any dispute about the \$5000 payment ; when I proposed to buy the claim, he refused to allow the \$5000 payment, and I claimed that he should allow it ; he
 10 did not refuse my offer on the day I made the proposition, but on the next day, or in a day or two afterwards, he refused it on account of the dispute about the \$5000—that was one of the reasons he declined ; I think that the check that was to be used was \$3000 or \$4000, and the other was the balance.

THEODORE E. ALLEN.

Sworn to and subscribed, this 12th day of February, A. D. 1866, before me.

ALFRED MILLS, S. C. C.

20

Testimony on part of Plaintiff.

NEW JERSEY SUPREME COURT.

Daniel Tyler

vs.

Thomas E. Allen.

} *In case.*

[Filed March 7, 1866.]

Examination of witnesses, &c., on part of the plaintiff, taken at my office in Morristown, New Jersey, on Monday, the 12th day of February, eighteen hundred and sixty-six, T. Little, esq., appearing for plaintiff, and J. Vanatta, esq.,
 30 for defendants.

ALFRED MILLS, S. C. C.

Theodore Little, esq., a witness on part of the plaintiff, being duly sworn, says—after these papers came into my hands, (which I think was some time in September last), I had two conversations with Thomas E. Allen—possibly three—I have no distinct recollection of but two—the one at my house (which he spoke of), in the presence of his son, Theodore, which is the first one, and the other at my office; the second one was when Mr. Allen called at my house, and I walked with him to the office; I asked him to pay this claim, and his first declaration to me was, that he was'nt 10 bound to do so, and that the bank was'nt bound to pay any more than \$35,000, because that was all the money that had been received, and that Mr. Monroe had no right to assign the bond and mortgage for less than \$50,000; I replied to him that I had in my possession either his agreement in writing to the assignment by Monroe, or a copy of it; my impression is that I had a copy of it at that time; the agreement was signed by him and by Monroe, and I stated to him the substance of that paper; his reply was, that he had entirely forgotten that he had signed such a paper; this is (I 20 am satisfied) the paper to which I alluded (producing it).

This paper is here marked *Exhibit E* on part of the plaintiff.

Among the papers, which I had at that time in this cause, was this one (producing it), dated August 22d, 1865, containing an authority from Mr. Campbell to Mr. Allen to receive the proceeds of the mortgages; I considered it of some importance to know, before the suit was commenced, whether Mr. Allen received the money under that authority or not, and in this conversation, which I have referred to, I said to 30 him plainly, that I had a paper giving him authority to receive the money, and requesting him, when it was received, to bring it to Mr. Campbell, and asked him why he did'nt do so; his answer was that he did not receive the money under that authority, but had received it long before the letter was received; that answer settled my mind as to the course I should pursue in collection of the claim; that conversation occurred in the first part of October (about the 5th of October), and on the same day, or the day after, I communicated the purport of it to Mr. Campbell. 40

The paper last referred to is here marked *Exhibit F*, on part of the plaintiff.

Cross-examination of Mr. Little by J. Vanatta, Esq.

Quest. Have you the note or letter addressed by Mr. Tyler to Monroe, which is referred to in this *Exhibit*, marked *A*, on part of the plaintiff?

Ans. I have had the letter; where it is now I can't state; I have had it in my possession long enough to read it.

Quest. Is it out of your possession now?

10 *Ans.* I don't know where it is; if I had it I should not produce it, as I think it has nothing to do with this case.

Quest. Did you receive notice in writing, at a previous stage of this examination, to produce it?

Ans. I did receive such notice.

Quest. Please state the contents of that letter as accurately as you can?

Ans. I could'nt come within gunshot of it; and if I knew them by heart, I would'nt state them—I think they have nothing to do with the case; if the court say, on the hearing
20 of the argument, that you are entitled to have that paper, I shall endeavor to have it in the court room to be produced; but I shall not produce it unless the court shall so direct.

Quest. In your conversation with Mr. Allen, as to the contents of this paper marked *Exhibit A*, did you not make reference to the contents of the letter or note of General Tyler, therein referred to?

Ans. In no way, that I know of—I am quite positive it was not referred to, except in the general way of saying that the paper signed by Mr. Allen consented to the transfer by Mon-
30 roe of the mortgage upon the terms agreed to by Monroe, as I understood it; I feel quite sure that that was so, for I recollect very well saying to Mr. Allen, that it made no difference (he having given that consent), whether Monroe had received \$5000 or \$35,000—that he, Mr. Allen, could'nt set up that defence.

Quest. You say that, in your conversation with Mr. Allen, you stated to him that, by this paper, marked *Exhibit A*, he had agreed or consented to Monroe's assigning the bond and mortgage to Tyler—will you explain how you truth-

fully could so say to Mr. Allen without referring to Tyler's note or letter referred to in that paper (*Exhibit A*), or, in other words, how could you make anything intelligible in that paper without reference to the matter contained in the other?

Ans. At that time I am quite sure I had neither in my possession, nor had I ever seen the paper which is referred to by Mr. Vanatta; I had a statement in writing from Mr. Campbell, made at my request, of the agreement, or substance of the agreement, on which the mortgages were assigned, and I had either the assignments, or copies of the assignments, of the mortgage, from the bank to Mr. Monroe, and from Mr. Monroe to General Tyler; there was nothing in any of them that indicated that James Monroe could only assign the bond and mortgage upon the payment of \$50,000, except, I think, there was somewhere a copy of a letter, signed by Mr. Allen, prior to the date of *Exhibit A*, in which he gave a notice, either to Mr. Campbell or General Tyler, that the mortgage should not be assigned, unless \$50,000 were received; and when Mr. Allen said to me, that he had not received the \$50,000, I suppose he referred to that notice, and I immediately called his attention to the note of February 8th, in which he expressly consented to the terms, whatever they were; that notice is dated 3d February, 1865, and is directed to James Monroe—I have a copy of it before me; I considered the letter of February 8th as a waiver of any objection that Mr. Allen had made, if there had been any.

Quest. Do you mean to say that the paper dated February 3d, which you have referred to in your answer, is the letter from General Tyler referred to in *Exhibit A*?

Ans. No, sir, I do not—I mean to say that it is the paper I hold in my hand.

Quest. Had you any acquaintance with Robert B. Campbell prior to this claim being placed in your hands?

Ans. None whatever, sir.

Quest. Had you ever seen him before, to your knowledge?

Ans. I had no recollection of seeing him—I have none now, though I presume I saw him on one of the days of sale; I was in no way concerned for General Tyler at or be-

fore the making of those sales; I desire to offer the paper to which I have above alluded, the copy of the notice dated 3d February.

This paper is here marked *Exhibit G* on part of the plaintiff.

Question by Mr. Vanatta.—Will you be good enough to tell us why you regarded this paper (*Exhibit A*) as a waiver of what was insisted on in that paper you last offered?

Ans. As I understood the case from Mr. Campbell, by his 10 statement, the application in the first place to General Tyler was for a loan of \$30,000—the application made in the latter part of January, 1865—a loan to be secured by the assignment of these bonds and mortgages—that the terms of the loan had been agreed upon between Monroe and General Tyler, or Mr. Campbell, as General Tyler's attorney, I don't know which; that subsequently, before the loan was completed, Mr. Allen gave this notice of February 3d (of which this one here is a copy), which at once prevented the completion of the loan; that afterwards this paper of February 20 8th was addressed to General Tyler, and received by him, signed by Mr. Allen and Monroe, which was regarded as a waiver of the notice of February 3d, and the negotiation was completed, and the money furnished, but that, prior to this notice of February 8th, Monroe made an application for a further loan of \$20,000, and General Tyler offered to loan \$18,000, and it was in reference to those two matters, as I understood, that this letter of February 8th referred, and, as I was informed at the time by Mr. Campbell, Mr. Allen knew the terms on which the loans were proposed, and I so 30 assumed, and he didn't deny it.

Quest. Then, if I understand you, your opinion that this paper (marked *Exhibit A*) was a waiver, was formed from information given you by Campbell, as to the preceding negotiations between Tyler, on the one part, and Monroe and Allen, on the other, and not from an inspection of the written proposition of General Tyler, referred to in paper marked *Exhibit A*?

Ans. I didn't understand that Allen had anything to do with the negotiation of the loan between Monroe and Tyler, 40 further than to give the notice dated February 3d, 1865, and

the letter of February 8th, 1865; at that time I had never seen the letter referred to in *Exhibit A*; I may have seen a copy of it—if not, I undoubtedly had from Mr. Campbell a statement of the terms of the loan; I had a statement, from Campbell, of the general terms of the loan, now in my hand; my opinion was based upon the information conveyed to me by Mr. Campbell, as to the terms of the loan, and my own judgment, as to the effect of these two papers.

Quest. What, if anything, is there in that letter of General Tyler, to preclude its production? 10

Ans. Nothing that I suppose affects this case, one way or the other.

THEO. LITTLE.

Sworn to and subscribed, this 12th day of February, A. D. 1866, before me.

ALFRED MILLS, *M. C.*

Paper, purporting to be assignment by the Morris County Bank to James Monroe, dated February 11th, 1865, offered by Mr. Little, and marked *Exhibit H* on part of the plaintiff.

ALFRED MILLS, *M. C.* 20

February 12th, 1866.

New Jersey Supreme Court.

Daniel Tyler.

vs.

Thomas E. Allen

} *In case.*

Please take notice, that on Tuesday next, the 27th instant, at eleven o'clock in the forenoon, or as soon thereafter as the motion can be heard at the State House, at the city of Trenton, we will make a motion before Hon. Daniel Haines, one of the Justices of the Supreme Court, to discharge the said defendant from arrest by virtue of the writ of *capias ad respondendum*, issued in this case, and to discharge his bail, or

to discharge the defendant on common bail, or to reduce the amount of bail, and to make such order in the premises as the nature of the case may require, and in support of such motion, we will rely upon the defects and deficiencies in the affidavits upon which the order for arrest was made, and also upon the evidence taken before Alfred Mills, esq., Supreme Court Commissioner, in this case.

Dated 21st February, 1866.

Your ob't servants,

10

VANATTA & DE MOTT,

Attorneys of defendant.

To Theodore Little, esq., *Att'y of plaintiff.*

New Jersey Supreme Court.

February Term, 1866.

Thomas E. Allen,

adsm.

Daniel Tyler.

In case.

The defendant having been arrested, on a writ of *capias ad respondendum*, issued in this case, of a plea of trespass on
 20 the case upon promises by virtue of an order for bail made therein, by Hon. Peter Vredenburgh, one of the justices of this court, bearing date the twenty-second day of November, 1865, and an order having afterwards been made by Hon. Daniel Haines, one of the justices of this court, bearing date the twenty-first day of December, 1865, that testimony in writing by and before Alfred Mills, esq., a Supreme Court commissioner, might be taken concerning the truth of the affidavits and proofs upon which the order for said writ was
 30 given to the plaintiff's attorney, by the attorneys of the defendant, of a motion to be made on the first day of the present term of this court, before Mr. Justice Haines, at the state house at Trenton, to discharge the said defendant from arrest by virtue of the writ of *capias ad respondendum* issued

in this case, and to discharge his bail, or to discharge the defendant on common bail, or to reduce the amount of bail, and to make such order in the premises as the nature of the case might require.

And the said motion coming on to be heard before the said justice, it was thereupon agreed between the attorney of the plaintiff and the attorney of the defendant, with the assent of the court, that the said motion be made to, and heard and decided by the court, instead of a single judge, and thereupon the said motion was made to the court, and 10 the original affidavits to hold to bail, and the depositions taken pursuant to said order, and the exhibits therein referred to having been read, and the arguments of the counsel of the said parties, respectively, having been heard, the court deferred judgment until this day, and now, on this thirteenth day of March, 1866, the court having fully considered the premises, and the judgment of the court being asked for by the counsel of the defendant—

It is ordered, that the said defendant take nothing by his said motion, and that the said order for arrest be affirmed. 20

J. VANATTA,

Of counsel with defendant.

Assignment of Errors.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Thomas E. Allen

vs.

Daniel Tyler.

} *On writ of error to the Supreme Court.*

Afterwards, that is to say, on the sixteenth day of March, eighteen hundred and sixty-six, before the Court of Errors and Appeals, comes the said Thomas E. Allen, by Vanatta 30 and De Mott, his attorneys, and says, that in the order to hold to bail, record, and proceedings aforesaid, and in making and affirming the order aforesaid, there is manifest error,

and the said plaintiff in error here assigns the following errors, for which the judgment of the Supreme Court and the said order to hold to bail should be reversed, namely:

1. Because the defendant in error does not appear to have any cause or right of action against the plaintiff in error.
2. Because the affidavits, upon which the said order to hold to bail was made, do not contain or show any legal or sufficient evidence to prove that the plaintiff in error fraudulently contracted the debt mentioned and specified in the
10 said order to hold to bail.
3. Because the evidence in the case shows and proves that the plaintiff in error did not fraudulently contract the debt mentioned and specified in the said order to hold to bail.
4. Because the evidence in the case shows that the plaintiff in error was not indebted to the defendant in error in so great a sum as is named in the said order to hold the plaintiff in error to bail.
5. Because the said order to hold the plaintiff in error to bail is excessive, unreasonable, and unwarranted.
- 20 6. Because the Supreme Court should have ordered the plaintiff in error discharged from arrest, instead of refusing to discharge him.
7. Because the Supreme Court affirmed, instead of reversing and quashing, the said order to hold the plaintiff in error to bail.
8. Because, if the plaintiff in error was liable to be held to bail in said action, he should have been held to bail in a less sum than the one for that purpose specified in the said order to hold to bail, and because the Supreme Court erred
30 in refusing to reduce the amount of bail.
9. And because the said order to hold to bail was affirmed in and by the said Supreme Court, when, by the constitution and laws of this state, the said order ought to have been reversed and quashed, and the plaintiff in error discharged from arrest.

And the said Thomas E. Allen prays that the order, judgment, and affirmance aforesaid, on the order aforesaid, for the errors aforesaid and for other errors in the said record and proceedings being, may be reversed, annulled, and altogether holden for nought, that he may be discharged from
40

arrest, and restored to all things which he hath lost by occasion of the said order and the said affirmance thereof.

VANATTA & DE MOTT,
Att'ys of plaintiff in error.

Joinder in error in common form.

Exhibits on part of Defendant.

EXHIBIT No. 1.

16 Wall street,
N. Y., Aug. 22, 1865.

Thomas E. Allen, esq., president, &c. 10

Dear sir—I understand that the proceeds of the Wood mortgages that I hold are in a condition to be paid over. I hereby authorize you to collect the money as the president of the bank, and pay over the same to me, or enough to satisfy the claims that I hold.

Mr. Monroe says that he expects to see you on Wednesday evening at your house. I shall be in my office on Thursday and Friday—11 o'clock will be as good a time to find me as any.

Yours truly, 20
ROB'T B. CAMPBELL.

EXHIBIT No. 2.

16 Wall street,
New York, Aug. 30, 1865.

Thomas E. Allen, esq.

Dear sir—Some time since you had authority to collect and transmit to me the money proceeding from the Wood mortgages, and I understood when I saw you last, that you would bring me in the money to pay off General Tyler's \$25,000 contract *to-day*, and I so told the General. I was 30 very much disappointed not to receive your note saying that

you would see me on Friday. I am sorry that I was not in this morning when you called, and I hope that you will bring in the money with you on Friday *without fail*.

Mr. Monroe has made propositions to the General for another loan, but he has neither accepted nor refused them, but he has said that he would not entertain them until the present loan was paid; that mortgages had been assigned to him or rather to me for his benefit; that the money had been realized on them, and that he wanted it paid over, and
10 was anxious that I should go to Morristown personally and get it. But I knew that you would prefer that it should be received from the master by yourself, and therefore I sent you the request to collect it and send it to me, and I feel that every day that the General is kept out of his money is damaging the credit of the bank and of Mr. Monroe with him, and throwing obstacles in the way of any other transactions with him.

Yours, truly,

ROB'T B. CAMPBELL.

20 P. S. Do not fail to bring in the money.

EXHIBIT No. 3.

16 Wall street,
N. Y., Sept. 6, 1865.

T. E. Allen, esq.

Dear sir—Your memorandum of stock purchased by you since Feb. 14 last came duly to hand and I am much obliged for it. What I asked you for, and you promised to send to me to-day, was the dates of the money received from the
30 foreclosure of the mortgages and the times when and the persons to whom the same was paid. You said that you had all the facts at your house, and would send them to me to-day, as you could not wait to pick them out from the paper that you showed me at the bank.

Yours, respectfully,

ROB'T B. CAMPBELL.

EXHIBIT No. 4.

16 Wall street,
New York, April 21, 1865.

Thos. E. Allen, esq., prest., &c.

Dear sir :—I send you herewith duplicate papers for commencing to change a state bank to a National Bank. I want all of these papers properly executed, *i. e.* both copies complete. The “authority for conversion” is complete on the first page except the names of the directors, which you will please fill in before offering the same for signature. 10
The second page is for the signatures, and should indicate the number of shares to the name of each stockholder on the books of the bank since the capital has been increased to \$200,000. The certificate of organization is complete on the first page, the second page has place for a list of the names, residences, and number of shares of all the stockholders of the bank. On the third page you will get the signatures of the directors (as many as possible and at least one half), and all the directors who sign will acknowledge their signatures (to both copies) before a notary public, who 20 will put his certificate on the fourth page *and affix his seal.*

The “articles of association” are complete, excepting the signatures of the directors, which are to be procured on both copies, and the president is to sign the certificate on the third page of one of the copies (on the other copy this certificate is stricken out).

I will affix the proper stamps to all the papers when they are returned to me.

Get these things done as soon as possible and forward them to me or Mr. Monroe at 16 Wall street. Mr. Monroe 30 wants to go on to Washington on Tuesday night, and must take those papers with him.

Hasten.

Yours, truly,

ROB'T B. CAMPBELL.

EXHIBIT No. 5.

The Morris County Bank to James Monroe.

Assignment of bonds, mortgages, and mine lease, dated

February —, 1865, acknowledged 13 Feb. 1865. Assignment is upon condition that it be void upon the payment on the ——— day of June, 1865, of \$50,000, with interest.

EXHIBIT No. 6.

16 Wall street,
N. Y., Aug. 4, 1865.

Thos. E. Allen, esq.

Dear sir:—I take the liberty of reminding you that your contract and note to Gen'l Tyler came due on the 8th inst.
10 The other payments of Mr. Monroe having not been met, I think that the Gen. will be urgent that this one should be paid promptly at its maturity.

Yours, resp'y,

ROB'T B. CAMPBELL.

EXHIBIT No. 7.

16 Wall street,
N. Y., July 12, 1865.

T. E. Allen, esq.

Dr. sir:—I received your note stating that Mr. Pierson
20 "wants Mr. Monroe to assign the stock on the books of the bank" before you issue the scrip. I do not understand what that is for. The certificates and powers that I left for you appeared to me to be in the usual form for transferring stock. I wish that you would send me the new certificate as soon as possible.

I have explained to Mr. Monroe (who says that he is going to see you this afternoon) what my position is about the \$50,000—that it is absolutely necessary that I should have that amount. He can explain it to you perhaps, for I am
30 afraid that I did not make you fully comprehend the state of affairs.

Yours, truly,

ROB'T B. CAMPBELL.

EXHIBIT No. 8.

JAMES MONROE,

COUNSELLOR AT LAW,

16 Wall st.,

New York.

Room 12.

Exhibits on part of Plaintiff.

EXHIBIT No. 1.

New York, Feb. 8, 1865.

Gen. Tyler.

Dear Sir—Your note of January, ult., directed to the undersigned, James Monroe, and your note of this date, directed to Rob't B. Campbell, esq., have been received.

We hereby accept the terms stated in said communication, the proposition of January, ult., being accepted as of February 1st, 1865.

Yours, respectfully,

THOMAS E. ALLEN,
JAMES MONROE.

EXHIBIT A.

New York, Feb. 8, 1865. 20

Gen. Tyler.

Dear Sir—Your note of January —, ult., directed to the undersigned, James Monroe, and your note of this date, directed to Rob't B. Campbell, esq., have been received.

We hereby accept the terms stated in said communications, the proposition of January —, ult., being accepted as of February 1, 1865.

Yours, respectfully,

THOMAS E. ALLEN,
JAMES MONROE.

30

EXHIBIT B.

New York, Feb. 8, 1865.

Robert B. Campbell, esq., Wall street, N. Y.

My Dear Sir—As to furnishing Mr. Monroe and Mr. Allen twenty thousand (\$20,000) dollars, for six months, on the joint and several note secured by the mortgages, I will agree to deliver them eighteen thousand (\$18,000) dollars of 5-20's coupon bonds, and receive therefrom the notes as above for (\$20,000) dollars, and one hundred and fifty (150) shares in
10 the capital stock of the Morris County Bank, the shares to be put into your hands as trustee.

Very truly, yours,

DAN'L TYLER.

EXHIBIT C.

James Monroe, esq.

Dear Sir—I have thought over our talk had yesterday, and I now protest against using the lease or mortgage for a less amount than \$50,000. If you cannot have that amount then we will drive the sale under the mortgage and pay our
20 debts that way. For the *Com* in Newark had declined to loan on the securities—there has been some under current come in there, and I shall not come on on Saturday, as I have an engagement here that I had forgotten. Unless I hear from you by stage this night, showing some positive necessity for me to come, I will write Mr. Campbell this day.

Feb. 3, 1865.

T. E. A.

EXHIBIT D.

Morris County Bank,

July 13, 1865.

40 R. B. Campbell, esq.

Dear Sir—Yours of the 12th was received, and I think Mr. Pierson was correct in his opinion on issuing scrip, as what you left was only transfers without the power. I here

hand you the scrip to Daniel Tyler, No. 103, for 450 shares, and did intend to have come to see you this day, but did not get the money yet, and will come as soon as I have the money handed over.

Yours,

THOS. E. ALLEN.

EXHIBIT E

Is a copy of *Exhibit A*, dated February 8, 1865.

EXHIBIT F

Is a copy of the letter of Rob't B. Campbell to Thomas E. 10 Allen, dated August 22d, 1865, offered by defendant, and marked *Exhibit 1*, on his part.

EXHIBIT G

Is a copy of *Exhibit C*.

EXHIBIT H.

This indenture, made this eleventh day of February, one thousand eight hundred and sixty-five, between the Morris County Bank, of Morristown, in the state of New Jersey, party of the first part, and James Monroe, of the city of New York, party of the second part, witnesseth, that the said 20 party of the first part. for and in consideration of the sum of fifty thousand dollars, lawful money of the United States of America, to them paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred, and set over, and by these presents do grant, bargain, sell, assign, transfer, and set over to the said party of the second part, two certain indentures of mortgage, both made and executed by Thomas T. Wood and Mary B. his wife, to the said parties of the first part, one thereof bearing date the sixth day of 30

June, one thousand eight hundred and fifty-six, and recorded in the office of the clerk of Morris county, on the fifth day of October, one thousand eight hundred and fifty seven, in Book C 2 of Mortgages, on page 541, and made to secure the sum of one hundred thousand dollars, and the other thereof, bearing date the eighth day of October, one thousand eight hundred and fifty-seven, and recorded in the office of the said clerk on the twelfth day of said October, in Book C 2 of Mortgages, at page 557, and made to secure
 10 the sum of seventy-five thousand dollars, together with the bonds or obligations therein described, and the money due and to grow due thereon, with the interest; and also, a certain mining lease, made and entered into by and between the said Theodore T. Moore and the Trenton Iron Company, bearing date the first day of April, one thousand eight hundred and sixty-one.

To have and to hold the same unto the said party of the second part, his executors, administrators, and assigns, to and for his and their own use and benefit forever; subject
 20 only to the provisoes in the said indentures of mortgages mentioned. And the said party of the first part does hereby make, constitute, and appoint the said party of the second part his executors, administrators, and assigns, its true and lawful attorney, irrevocable in its name or otherwise, but at his own proper costs and charges, to have use, and take all ways and means for the recovery of the said money and interest; and in case of payment to discharge the same as fully, to all intents and purposes, as the said party of the first part might or could do if these presents were not made.

30 Now, therefore, the condition of this instrument is such, that if the said party of the first part shall well and truly pay or cause to be paid to the said party of the second part, the sum of fifty thousand dollars, on the eleventh day of June next, together with interest thereon, at and after the rate of six per centum per annum, interest payable monthly, then this instrument to be void, else to remain in full force and virtue.

In witness whereof, the parties hereto of the first part, have caused these presents to be executed by their president,

and their corporate seal to be hereunto affixed the day and year first above written.

THOMAS E. ALLEN,
President Morris County Bank.

MORRIS COUNTY BANK, { SEAL OF }
by Thos. E. Allen, president. { BANK. }

Signed, sealed, and delivered, in presence of

RICHARD L. LEGGETT,
HENRY PALMER.

State of New York, city and county of New York, ss.— 10
Be it remembered, that on this thirteenth day of February,
A. D. 1865, before me, the subscriber, a commissioner for the
state of New Jersey for taking the acknowledgment and
proof of deeds, personally came Thomas E. Allen, the presi-
dent of the Morris County Bank, known to me, who, being
duly sworn, did depose and say—that he resided in the town
of Morristown, in the state of New Jersey; that he was
president of the Morris County Bank; that he knew the
corporate seal of said bank; that the seal affixed to the fore-
going assignment was such corporate seal; that it was 20
affixed by authority of said bank; that he signed his name
thereto by like authority, as president of said bank, for the
uses and purposes before expressed.

In witness whereof, I have hereunto set my hand
[L. s.] and official seal, this 13th day of February,
A. D. 1865.

HENRY PALMER,
Comm'r for the state of New Jersey.

Opinion of the Court.

The defendant was arrested and held to bail on a *capias ad respondendum*, issued on an order of a justice of this court, under the act entitled "An act respecting imprisonment for debt in cases of fraud." It appears, by the affidavits on which the order for bail is founded, that the defendant fraudulently contracted the debt, for the recovery of which the suit is brought. The defendant, upon his arrest, applied for and obtained an order for the taking of testimony concerning the truth of the affidavits and proofs, upon which the order 10 for the writ was made. Testimony was accordingly taken, in writing, before one of the commissioners of this court, and is now submitted to us. The question is, whether it appears, by such affidavits and proofs, that the writ was improperly or improvidently issued, or should not have been issued. The defendant, by his application for the order to take testimony, virtually admits that the affidavits on which the order for bail is founded, are sufficient to warrant such order. The question to be decided is one of pure fact. Has the defendant succeeded in showing that the plaintiff's affi- 20 davits, on which the order for bail was made, are untrue, and hence the writ improperly and improvidently issued? It is not necessary for the court to go into a discussion of all the minute facts and circumstances, relied upon on the one side and the other, to give character to the transaction out of which the debt in question arose. Suffice it to say, that after a careful examination, as well of the original affidavits as of the depositions taken on the part of the defendant, it does not appear to us that the defendant has succeeded in showing the untruth of the affidavits, on which the order to 30 hold to bail was made, nor that the writ should not have been issued. It was contended, on the argument, that the defendant had made certain payment, which had not been credited to him, and that therefore the amount for which bail was required was too large. We do not think that this appears to be so from the evidence. It may be that upon the trial of the cause the defendant will be able to show, as was claimed by his counsel before us, that there is no debt due to plaintiff from defendant, and, if any, much less in amount than that for which the writ issued. The evidence 40 before us, on this preliminary motion, fails to bring us to either of these conclusions. The writ and order therefor must stand.

