

Court of Errors and Appeals.

THE CAMDEN AND ATLANTIC
RAILROAD COMPANY ET AL.,
APPELLANTS,
and
WILLIAM L. ELKINS,
RESPONDENT. } On Appeal.

BRIEF FOR APPELLANTS.

B. GUMMERE, Counsel.

Statement.

On *November 16th, 1882*, William L. Elkins filed a *pure injunction bill*, and on *January 6th, 1883*, an

amended bill, averring (1) that he had purchased and then held 13,500 shares of the stock of The Camden & Atlantic Railroad Company, being a majority of all the shares theretofore issued by said company, being 25,153 shares (*Book, page 20, lines 5-8*); (2) that the president and directors were hostile to his views and interests, unwilling to inform him of the policy or affairs of the company, and that several months before the filing of the bill, the secretary refused to permit him to obtain a list of the stockholders (*Book, page 21, lines 5-15*); (3) that he had been compelled to enjoin them from purchasing the shares of stock of one Massey in the Philadelphia and Atlantic City Railway (*Book, page 21, lines 15-21*); (4) that he had been compelled to enjoin them from issuing additional shares of stock to themselves and other stockholders in sympathy with them, and by that means to perpetuate their power against the shareholders of a majority of the stock (*Book, page 21, lines 21-32*); (5) that to prevent such majority from controlling the affairs and management of the company, and from electing directors acceptable to such majority, the defendants intended at the meeting of the board on November 16th, 1882, to alter the by-laws and fix some day in September, 1883, for the election of directors, instead of the fourth Thursday in February 1883, the time fixed therefor by the existing by-laws (*Book, page 21, line 10*); (6) and that the time for holding such elections was fixed by the corporators

named in the charter, and could not be changed by the directors without the consent of a majority of the stockholders (*Book, page 20, line 7.*) The bill therefore prayed an injunction against the proposed amendment of the by-laws by the directors, and enjoining the directors from in any other manner postponing the election of president and directors (*Book, page 22, lines 18-32,*)

The defendants answered (1) that 13,500 shares of stock stood *in the name of the complainant* on the books of the company, but averred that the same had in fact been purchased *by other persons or corporations for the purpose of transferring the control and management of the property and business of the Camden and Atlantic Railroad Company into the hands and control of corporations, purchasers of said stock, and owning or operating a rival railroad from Camden to Atlantic City* (*Book, page 33, line 8*); (2) that the complainant *had not filed his bill in good faith* to protect his own interests as a stockholder in said railroad company, that *he was not the real owner* of the stock standing in his name, but that the whole or the greater part *was in fact purchased and paid for by the Pennsylvania Railroad Company and West Jersey Railroad Company, who are the real owners thereof*, and are the owners and operators of the West Jersey and Atlantic Railroad, a rival railroad from Camden to Atlantic City (*Book, page 38, lines 7-20*); (3) that the complainant *filed his bill at the request* of the Penn-

sylvania Railroad Company and West Jersey Railroad Company, and is prosecuting the same on their account and at their expense, and not to protect his own interest, or that of the stockholders of the Camden and Atlantic Railroad Company (*Book, page 38, lines 20-29*); (4) that *the charter empowered the directors* to make by-laws for the management and regulation of the stock, property, &c., of the company, and that although the stockholders fixed the time of holding *the first* election of directors pursuant to the provisions of the charter, and the first board was elected on *June 24, 1852*, yet that the time and place of holding all other elections of directors have been fixed by by-laws adopted by the board of directors (*Book, page 25, line 11 to line 10, page 26*); (5) that the first board of directors adopted a by-law fixing the *fourth Thursday in June*, in each year, at the office of the company, as the time and place of holding such elections (*Book, page 26, line 10 to line 5, page 37*); that on *May 8, 1862*, the board amended the by-laws and fixed *the fourth Thursday in October*, as the time of holding such elections (*Book, page 27, lines 22-40*); that on *July 21, 1881*, the board again amended the by-laws and fixed *the fourth Thursday of February*, as the time of holding such elections (*Book, page 28, lines 20-39*); and that on *October 19th, 1882*, (a month before the filing of the original bill), the board again amended the by-laws and fixed *the fourth Tuesday of October*, as the time for

holding such election (*Book, page 29, lines 4-22*); and that *the stockholders* of the company *have never at any time adopted, altered or amended any by-laws whatever*, but have always acted under the by-laws made and amended by the board of directors (*Book, page 29, line 32 to line 2, page 30, page 36, line 35 to line 5, page 37.*)

The cause was heard on the bill and answer, and a final decree was made on *February 9th, 1883*, enjoining the defendants from hindering an election of directors to be held on *February 22d, 1883*.

Argument.

1. Charter Provisions.

1. The *charter itself* prescribes no specific time for holding elections, nor does it make *any* provision for holding them other than, that in *section 3*, it prescribes that the time and place of *the first* election of directors, shall be appointed by the stockholders, at a meeting to be called for that purpose by the corporators named in the charter (*Pamp. Laws, 1852, page 263, &c.*) The time and place of *holding subsequent elections* is left by the charter *to be regulated by the by-laws*.

2. The *power of enacting the by-laws* is *specifically conferred upon the directors* (*section 4, page 264, Pamp. Laws, 1852.*) Even if the stockholders be admitted to

have inherent power to enact by-laws, and that such by-laws would over-ride any by-law adopted by the directors in conflict therewith, yet as *the stockholders have never adopted any by-laws*, the authority of the by-laws adopted by the directors is supreme, and such by-laws are in law, and have during the corporate existence, in fact, been the only rules of action of the corporation.

3. The Court below held that the by-law adopted on *October 19, 1882*, changing the time of holding such elections from *the 4th Tuesday of February to the 4th Tuesday of October*, was a violation of the charter, which, he adjudges, fixes the term of office at "one year," and gives the stockholders a right "*once in each year*" to say by a majority of them who shall be directors. (*Book, page 42.*)

But it is submitted that there is no *positive* prescription in the charter to that effect; the only mention of elections is *recitative* and *not mandatory*, in *section 3* of the charter, to wit, "at the annual elections of said corporation;" and this *mention* of the elections is immediately followed by a provision (*section 4*) that if an election be not held at a day when, pursuant to the charter, it ought to be held, (which must mean *the day fixed by the by-laws*, inasmuch as *no day* is fixed by the charter), such election may be held at any other time, and the directors for the time being shall hold office until others are chosen. There is, therefore, no *rigid*

prescription that elections shall be held *each within 12 calendar months after the other*. The recitative mention of "*annual elections*" in section 3 of the charter may well be held to mean *once in each year of the corporate existence*; the corporation came into corporate existence in 1852, both by enactment and by organization, and elections have since been held *during each succeeding year of our era thereafter*; and it is a fair construction of the act that the legislative intent was the same as the continuous contemporaneous construction of the stockholders.

Warner v. Mower, 11 Vt., 385, cited in Field on Corporations, page 245, note 5.

Regularity of Adoption of By-Law.

The by-law condemned by the Court below was regularly *passed* by the directors, *by a unanimous vote* at one meeting, and confirmed by a unanimous vote at the next meeting.

It was argued below that *section 4 of article 6* of the by-laws (*Book, page 27, lines 11-17,*) was *not suspended*, and that the by-law of October 19, 1882, was passed at the same meeting at which it was introduced, in violation of said section 4; but it is settled law that a board of directors may, at its pleasure, repeal or suspend its own by-law, especially when a mere guide for its own convenience.

Field on Corporations, page 335.

And unanimous action of a legislative body in violation of one of its own by-laws, *is a virtual suspension, pro tempore, by the adoption of the irregular motion without objection.*

Cushing's Manual, sections 774, 794, 1478.

But even if the by-law in question were illegal, it is clear that the complainant *had ample opportunity for redress at law and in the proper forum.* It was adopted on *October 19, 1882*, and the action of the board *could have been reviewed on certiorari at the November term of the Supreme Court in that year.* Or if he preferred to wait until March, the statute (*Revision, page 196, section 107,*) gave him an ample remedy, by having a meeting to elect directors called, electing directors, and proceeding by quo warranto to oust the sitting board.

The complainant ought not, therefore, to have been permitted to avoid the appropriate forum of the law court, come into a court of equity and invoke its extraordinary injunction power as a mere matter of convenience. There was *no exigency of time*, as *4 months* would intervene between the passage of the by-law and the 4th Tuesday of February, when, according to his contention, the election should take place. It was not like the case in *1 McCarter, 380*, cited by the Vice Chancellor, where directors were about to vote on stock, illegally issued to themselves, at a nearly ap-

proaching election ; nor is any equity set up in the bill, or any peculiar circumstance, to show that a court of equity alone could relieve him. It is submitted, therefore, that his bill should have been dismissed, and he remitted to his *ample and more speedy remedy at law*.

Want of Bona Fides.

At all events, the complainant, under these circumstances, *was bound not to trick the Court*.

He averred in his bill that *he himself* had purchased and then held 13,500 shares of stock (*Book, page 20, section 8*) ; and swore to the fact in his supporting affidavit (*Book, page 23*) ; and avers that *his* interests are imperilled by the defendants. He holds himself out in his whole bill as *a bona fide purchaser and holder in his own right* of these shares of stock. Now the averments answer, if read as an answer to which there is no replication, are to be taken as true—*uncontradicted and admitted facts* upon which the complainant elects to go to hearing. Or if the hearing be deemed to have been under the rule to show cause, then the answer was read as an affidavit, and its allegations are admitted to be true, as complainant might have and did not contradict it by his own or other affidavits.

Even if the hearing *had been merely upon a motion to dissolve*, the complainant was bound to meet even new matter set up in the answer.

Holmes v. Jersey City, 1 *Beas.*, 299, 302.

But here the answer sets up, *in response to the averments of the bill*, that the complainant is a *bona fide stockholder*, and is prosecuting this suit to protect his own interests, that in fact he is a *mere intruder*, a *catspaw* for rival corporations which in fact purchased this stock, and that he is prosecuting this suit by their direction and at their expense. Such a defence he was bound to meet and deny, for, if true, a court of equity would not endure his presence.

No court of equity will permit a *mere catspaw* to impose himself upon it as a *bona fide suitor*, and to invoke the exercise of the tremendous power of injunction; the court neither wears a mask itself nor permits a suitor to do so.

Forrest v. Manch., Sheff. &c., R. R., 4 *De. G. F. & J.*, 126, 129-30;

Filder v. Lond., Brighton, &c., Railway, 1 *Hem. & Miller*, 489, 493-4;

Frooks v. S. Western Railway, 1 *Sm. & Giff.*, 142, 166-7;

Waterbury v. Merch. Un. Express Co., 50 *Barb.*, 157, 168.

This Court has the simple question before it, whether it will permit a citizen of Pennsylvania to invoke its extraordinary aid, when the courts of his own State would at once and ignominiously dismiss him under the same circumstances—whether it will use its

delicate and tremendous injunction powers to aid corporations to obtain the control of a rival, not by consolidation, but by the purchase of *a mere majority* of stock—whether this Court will aid such corporations to accomplish, by putting forward a mere catspaw, a purpose which they were unwilling to assume the responsibility of in their own corporate names?

Parker Summerville.

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NEW JERSEY
Court of Errors and Appeals.

BETWEEN

THE CAMDEN AND ATLANTIC
RAILROAD COMPANY ET AL.,

Appellants,

and

WILLIAM L. ELKINS,

Respondent.

On
Appeal.

Bill for Injunction.

[Filed November 16, 1882.]

IN CHANCERY OF NEW JERSEY.

Between

William L. Elkins,

Complainant,

and

The Camden and Atlantic Railroad Company,
Charles D. Freeman, President of said Com-
pany, and one of the Directors thereof, Joshua
R. Jones, J. Lowndes Newbold, MacGregor J.
Mitcheson, Franklin Evans, William Worrell,
William T. Ladner, Enoch A. Dougherty,
Thomas H. Dudley, James B. Dayton, Samuel
C. Cooper, Edmund E. Read, and John B. Hay,
being the other Directors of said Company,
Defendants.

To the Honorable Theodore Runyon, Chancellor of the State of New Jersey.

Humbly complaining, showeth unto your Honor, your orator, William L. Elkins, of Philadelphia, Pennsylvania:—

1. That the Camden and Atlantic Railroad Company, one of said defendants, is a railroad corporation, duly incorporated by an act of the legislature of said state, and owns and is now operating a line of railroad from
10 the city of Camden to the city of Atlantic, all in said state, that Charles D. Freeman is the President and one of the directors of said company, and that Joshua R. Jones, J. Lowndes Newbold, MacGregor J. Mitcheson, Franklin Evans, William Worrell, William T. Ladner, Enoch A. Dougherty, Thomas H. Dudley, James B. Dayton, Samuel C. Cooper, Edmund E. Read, and John B. Hay are the other Directors thereof.

2. Your orator further shows, that by-laws were adopted by said company, July 21, 1881, the second
20 article of which provided, in the first section thereof, as follows: "The annual meeting of the stockholders of the company, and the election of directors shall be held at the office of the company, between the hours of 10 A. M. and 2 P. M., on the fourth Thursday in February, in each year: of which election, at least ten days' notice shall be given, by advertisement in two public papers published in the city of Philadelphia, and in two published in the city of Camden."

3. Your orator further showeth, that there have been
30 issued and are outstanding of the stock of said company, seventeen thousand, six hundred and thirteen shares of the preferred stock, and seven thousand, five hundred and forty-eight shares of the common stock; that your orator has, for a considerable time, been purchasing the stock of said company, both preferred and common, as eligible opportunity offered; and that he is now the holder, as appears by the books of said company, of more than a majority of its entire issue of

stock, to wit, exceeding thirteen thousand, five hundred shares.

4. Your orator further showeth, that ever since he became a stockholder of said company, to any considerable amount, he has found the present president and directors of said company hostile to his views and interests, and the views and interests of other stockholders agreeing with your orator in opinion, and unwilling to give him any information touching the policy or affairs of the said company; that his application to be permitted to obtain a list of his fellow-stockholders, made to the secretary of the company, at its office, several months ago, was refused; that the present president and directors were determined to consummate the purchase of the interest of one Massey in the Philadelphia and Atlantic City Railway, which was resisted and opposed by your orator, and to prevent the consummation of which contemplated purchase, it was necessary for your orator to obtain the injunction of this honorable court; that your orator subsequently learned that it was the purpose of the present president and directors to issue a large amount of yet unissued capital stock, with the purpose, as he believed, to allot the same to themselves, or to such stockholders as might be in sympathy with them, without offering the same pro rata to the stockholders, to enable them to perpetuate their power, against the wishes of the holders of a majority of said stock, and that in order to prevent the consummation of this unjust and illegal purpose, it was necessary for your orator also to obtain injunction of this honorable court. 30

5. Your orator further showeth, that in pursuance of the same determined policy, and with the fraudulent intent to prevent the holders of a majority of the stock of said company from controlling the affairs and management, and electing directors of their own choice at the next annual meeting of said company, which, under the present by-laws, will occur on the fourth Thursday in February next, the said present president and directors, defendants as aforesaid, propose at the stated meeting of the board, to be held Thursday, November 16th, 40

1882, to so alter the by-laws as to postpone the annual election until some other and more distant day and, as your orator is informed, until the month of September, 1883, so as illegally and fraudulently to wrest from the control of the owners of the property any voice in its management for an additional period of at least six months. And your orator further showeth, that the six months in question are those in which the great bulk of the business of said company is transacted.

10 All of which actings and doings of the said Camden and Atlantic Railroad Company, and its said official, are contrary to equity and good conscience, and tend to manifest wrong and oppression of your orator, who is without remedy in the premises by the strict rules of common law.

In tender consideration whereof, and that the defendants may be restrained from altering the said by-law or in any other manner postponing the time for the annual election of the president and directors of said corporation,
 20 and that your orator may have such further and other relief as the nature of the case may require and is agreeable to equity and good conscience, may it please your honor, the premises considered, to grant unto your orator not only the State's writ of injunction issuing out of and under the seal of this honorable court to be directed to the said defendants, requiring them and every one of them absolutely and entirely to desist and refrain from altering the said by-law or in any other manner postponing the annual election of the president and directors of said corporation, but also the State's writ of
 30 subpœna, to be directed to the said defendants, commanding each of them to be and appear before your honor in this honorable court at a certain day therein named, then and there to answer the premises and to stand to, abide and perform all orders and decrees that shall be made by your honor. And your orator shall ever pray.

S. H. GREY,

Solicitor for and of Counsel with Complainants.

New Jersey, Essex County, ss.—Samuel H. Grey, being duly sworn on his oath, saith: That he is credibly informed, and believes that the directors of the Camden and Atlantic Railroad Company intend and design to so change the by-laws of said corporation, as to postpone the annual election of directors of said corporation, from the fourth Tuesday of February next to the month of September next, and that such action is intended to be taken by said directors at their meeting to-day.

S. H. GREY. 10

Sworn and subscribed at Newark, this 16th day of November, A. D., 1882, before me.

THEODORE RUNYON,
Chancellor.

State of Pennsylvania, City and County of Philadelphia, ss.—William L. Elkins, being duly sworn on his oath, saith: That he is the complainant in the above bill of complaint; that he has been a stockholder of the Camden and Atlantic Railroad Company for the period of about six months; that he is at the present time the 20 holder on the books of said company, of about thirteen thousand five hundred shares, being more than a majority of all the stock issued by said company; that ever since his purchase of said stock he has been thwarted and opposed by the present president and directors of said company; that they have, on repeated occasions, denied his right as one of the owners of said property; that they have refused him access to its list of stockholders, when properly requested by him; that they persisted in their attempt to place upon said company the 30 burden of a purchase from one William Massey, of his stock in the Narrow Gauge Railroad, between the cities of Camden and Atlantic; that this deponent was obliged to apply to this honorable Court to obtain its writ of injunction against the consummation of said improper purpose; that subsequently the present president and directors conceived the plan of securing themselves in the continued control of the corporation by an unau-

thorized and improper issue of stock, without offering the same pro rata to the stockholders; and that this deponent was only able to prevent the consummation of this scheme by the injunction of this honorable Court; that, as a last resort, in order to perpetuate their control of the property against the desires of the holders of a majority of the stock, they propose to postpone the annual election, the only result of which will be to leave them in undisturbed possession of their respective offices
 10 against the will of the holders of a majority of the stock of the corporation they assume to represent.

W. L. ELKINS.

Sworn and subscribed before me this 15th day of November, A. D., 1882, at Philadelphia.

[SEAL.]

C. H. KRUMBHAAR,
Commissioner for New Jersey.

Answer.

[Filed February 6, 1883.]

The joint and several answer of the Camden and Atlantic
 20 Railroad Company, Charles D. Freeman, Joshua L. Jones, J. Lowndes Newbold, MacGregor J. Mitcheson, Franklin Evans, William Worrell, William T. Ladner, Enoch A. Doughty, Thomas H. Dudley, James B. Dayton, Samuel C. Cooper, Edmund E. Read and John B. Hay, defendants to the bill of complaint of William L. Elkins, complainant.

1. These defendants now, and at all times hereafter, saving and reserving to themselves all and all manner of benefit and advantage of exception to the many errors
 30 and insufficiencies in the complainant's said bill of complaint contained, for answer thereto or unto so much and such parts thereof as these defendants are advised are material for them to make answer unto; these defend-

ants answer and say that these defendants admit, that the Camden and Atlantic Railroad Company, one of these defendants, was incorporated by an Act of the Legislature of the State of New Jersey, approved March 19, 1852, and owns and now operates a railroad from the City of Camden to Atlantic City, in said State, and that Charles D. Freeman is the president and one of the directors of the said railroad company, and that the defendants, Joshua R. Jones, J. Lowndes Newbold, MacGregor J. Mitcheson, Franklin Evans, William Worrell, 10 William T. Ladner, Enoch A. Doughty, Thomas H. Dudley, James B. Dayton, Samuel C. Cooper, Edmund E. Read and John B. Hay are the other directors of the said railroad company.

2. And these defendants further answering, admit and show that by the act of incorporation or charter of the said The Camden and Atlantic Railroad Company, and the supplements thereto, thirteen directors are authorized and required to be elected to transact and manage the business of the said company, that a majority of 20 said directors should constitute a quorum, and be competent to transact all business of the said company or corporation, and by the said act of incorporation and the supplements thereto, the said directors or a majority of them were given power, among other things, to make and prescribe such by-laws, rules, and regulations as to them should appear needful and proper touching the management and regulation of the stock, property, estate and effects of the said corporation or company, as by the said act of incorporation or charter and the sev-30 eral supplements thereto, which these defendants pray may be taken as part of this, their answer, reference being thereto had, will more fully and at large appear. And these defendants admit that certain by-laws for the said board of directors and for the said railroad company were adopted by the said board of directors of the said railroad company, on the twenty-first day of July, eighteen hundred and eighty-one, and that the second article of said by-laws provided in the first section thereof, that "the annual meeting of the stockholders of 40

the company and the election of directors shall be held at the office of the company, between the hours of 10 A. M. and 2 P. M., on the fourth Thursday in February in each year, of which election at least ten days' notice shall be given by advertisements in two public papers published in the city of Philadelphia, and in two published in the city of Camden," as stated in said bill of complaint; and your orators show that at a meeting of the said board of directors of the said railroad company, 10 held at the office of the said railroad company, in the city of Camden, on the nineteenth day of October, eighteen hundred and eighty-two, the said by-laws were amended, as appears by the minutes of the said meeting, as follows, viz.: "Mr. Doughty proposed the following as an amendment to the by-laws: Resolved, that from article two of section one strike out 10 A. M. and insert 11 A. M., and strike out February and insert October; agreed to;" and that at a meeting of the said board of directors of said company, held on the sixteenth 20 day of November, eighteen hundred and eighty-two, the minutes of the meeting of said board, held on the nineteenth day of October, were unanimously approved by the said board of directors.

3. And these defendants further answering, admit and show that there have been issued by the said The Camden and Atlantic Railroad Company seventeen thousand six hundred and thirteen shares of preferred stock and seven thousand five hundred and forty shares of common stock; that the said complainant had transferred 30 to him on the books of the said railroad company certain shares of stock, on the eleventh day of February, eighteen hundred and eighty-two, and on that day, as these defendants believe, the said complainant first became a holder of the stock of said railroad company; that the said complainant has now standing in his name on the books of the said company about thirteen thousand and five hundred shares of the stock of said company or corporation; and these defendants have been informed and believe, and state and aver, that the said stock 40 standing in the name of the said complainant on the

books of the said company, or nearly all thereof, has been purchased by other persons or corporations, and has been paid for by the money and means of other persons or corporations, and procured to be transferred by said persons or corporations on the books of the said railroad company to the said complainant, for the purpose of procuring and obtaining a controlling interest in the said railroad company, in order to consolidate the said railroad company with, or otherwise transfer the control and management, property, and business of the said railroad company or corporation into the hands, power, or control of said corporations purchasing said stock, interested in, or owning, or operating a rival railroad from the city of Camden to Atlantic City, and not for the purpose of managing and transacting the business of the said The Camden and Atlantic Railroad Company, and operating its railroad for the best interests of the said railroad company or corporation and the stockholders thereof.

4. And these defendants further answering say, they have not been informed, and know not, and cannot set forth, as to their belief, or otherwise, what the views of the said complainant touching the said railroad may be, or whether the president and directors of the said railroad company are hostile to the views of the said complainant, or stockholders alleged to agree with him; but these defendants, directors of the said railroad company, as aforesaid, state and show that they are, each of them, in their own right, owners of numbers of shares of the stock of the said company, that the president of the said company, Charles D. Freeman, owns, in his own right, fourteen hundred and sixty shares of said stock, and that the directors of the said company own very large amounts of the stock of the said company; and that these defendants, the president and directors of the said company have at all times sought and endeavored to transact the business and manage the affairs and property of the said railroad company, and operate its railroad for the best interest and profit of the said company or corporation, and all its stockholders, and these de-

defendants deny that they are hostile to the said complainant, or unwilling to give him any information touching the policy or affairs of the said railroad company, and these defendants aver and state that they have at all times been willing and ready to give to the said complainant all such information concerning the policy and affairs of the said company as would be right or proper for these defendants, directors, as aforesaid, to give to any stockholder of said company; that these defendants,
10 directors, as aforesaid, have requested the said complainant to attend, meet with, and be present at a meeting of the board of directors of the said company; but that the said complainant refused or failed to meet with said board of directors, or be present at said meeting; and these defendants submit that these defendants being informed and believing that the said complainant was acting for or in behalf of or as the agent of some rival company or corporation, in having transferred to him the stock of the said railroad company, as aforesaid, and
20 not for the best interest or profit of the said The Camden and Atlantic Railroad Company or its stockholders; these defendants would be justified in refusing to give said complainant information concerning the policy and affairs of the said company; and these defendants say that it may be true, as stated in said bill of complaint, that the complainant's "application to be permitted to obtain a list of his fellow-stockholders, made to the secretary of the company, at its office, several months ago, was refused;" but these defendants do not believe that the
30 said secretary ever, at any time, refused to permit the said complainant or any stockholder of the said company to examine the list, or make copies of the list of the stockholders of the said company, if the same was requested or applied for at a proper time, and in a proper manner; and these defendants deny that the directors of the said railroad company were ever determined to consummate the purchase of the interest of one Massey in the Philadelphia and Atlantic City Railroad Company; and these defendants show that a majority of said
40 board of directors, believing it to be for the best interests

of the said The Camden and Atlantic Railroad Company for it to own the interest of the said Massey in the said The Philadelphia and Atlantic City Railroad Company, by the president of this company, agreed with the said Massey to purchase the same, if such purchase should be sanctioned and approved by the stockholders of the said The Camden and Atlantic Railroad Company, at a meeting of the said stockholders to be called for that purpose; and these defendants admit that, before the said contract was submitted to the said stock-10 holders, for their sanction and approval, the said complainant filed a bill in this honorable court to restrain the execution of said contract or agreement, and that this court enjoined the execution of the same; and these defendants say that they know not and have not been informed, save by the complainant's said bill, what the said complainant learned was the purpose of the present president and directors of the said The Camden and Atlantic Railroad Company; but these defendants deny20 that it ever was the purpose or intent of these defendants, directors of the said railroad company to issue a large amount, or any amount, of the unissued capital stock of the said railroad company, or to allot any capital stock of the said railroad company to these defendants, or any of them, or to allot any of said stock to any other stockholder that might be in sympathy with these defendants (without offering the same, pro rata, to the stockholders), to enable these defendants, stockholders, as aforesaid, to perpetuate their power against the wishes of the holders of a majority of the stock of the30 said The Camden and Atlantic Railway Company, or for any other purpose or purposes whatsoever, or that it was the purpose of these defendants, directors, as aforesaid, to issue any of the said stock for any purpose, except in accordance with the provisions of the charter or act of incorporation of the said railroad company, and the acts supplementary thereto and amendatory thereof; and these defendants deny that it was their purpose, at any time, to issue said stock, or any part

thereof, for any fraudulent, unjust or illegal purpose whatever.

5. And these defendants, further answering, deny that these defendants, directors as aforesaid, on the sixteenth day of November, eighteen hundred and eighty-two, intended or designed, fraudulently, to change or alter the by-laws of the said company or corporation or to alter the said by-laws since the same were changed in July, 1881, except as above mentioned and set forth, changing
10 the time of the election of directors to the month of October, being the same time of the year that the same was and had for many years been held, before the same was altered in July, 1881, and these defendants state and show that by the act of incorporation of the said The Camden and Atlantic Railroad Company, the directors or a majority of the directors of the said company were made competent to transact all the business of the said company, and to make and prescribe such by-laws, rules and regulations as to them should appear needful and
20 proper touching the management and regulation of the stock, property, estate and effects of the said company or corporation, and these defendants submit that under and by virtue of the powers conferred upon the directors by the said act of incorporation, the directors of the said the Camden and Atlantic Railroad Company have full power in their discretion to change or alter the by-laws of the said company or corporation in the manner and as above mentioned and set forth, and to make and prescribe by-laws for the said company or corporation.

30 And these defendants submit, that the validity of any by-law, or any change or alteration of any by-law of the said company or corporation, made by the said directors of the said company or corporation in the exercise of their discretion, and binding the members of the said company or corporation or the election of the directors of the said company or corporation, is a matter which may be tried and determined at law, and not in a court of equity; and these defendants state and show that the
40 Company, was first transferred to the said complainant

on the books of the said company on the eleventh day of February, last past, and that all the stock standing in the name of the complainant on the books of the said company was transferred to him, and procured to be transferred to him on and since the said eleventh day of February, last past, and that, as these defendants are informed and believe, the said stock was procured to be transferred on the books of the said railroad company in the manner and for the purposes hereinbefore mentioned and set forth, and that the said complainant now 10 holds said stock, or a great majority of it, not for himself, but for the uses, intents and purposes hereinbefore mentioned and set forth, and that these defendants are informed, and believe, and allege, that the said complainant has not filed his said bill of complaint in this cause in good faith, and for the purpose of protecting his interest as a holder of the stock of the said The Camden and Atlantic Railroad Company standing in his name on the books of the said company; that the said complainant is not the real owner of the stock standing 20 in his name, but that a majority if not the whole of the said stock was purchased and paid for with the money or means of the Pennsylvania Railroad Company, or of the West Jersey Railroad Company, companies that are part owners of and largely interested in and controlling and operating the railroad of the West Jersey and Atlantic Railroad Company, a rival railroad from the city of Camden to Atlantic City, and that the said the Pennsylvania Railroad Company or the West Jersey Railroad Company is the owner of the said stock, and that this 30 bill has been filed at their request, and on their account and at their expense, and not to protect the interest of the said complainant or of the stockholders of the said The Camden and Atlantic Railroad Company.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they, or any, or either of them are charged in said bill of complaint, without this, that any other matter cause or thing in the said complainant's said bill of complaint contained material or necessary for these defendants to 40

make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided, or denied, is true to the knowledge or belief of these defendants, all which matters and things these defendants are ready and willing to aver, maintain and prove, as this honorable court may direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

10 P. L. VOORHEES,
Solicitor for and of Counsel with the Defendants.

State of New Jersey, ss.—The above answer of the Camden and Atlantic Railroad Company, one of the defendants mentioned therein, is hereby made, and the truth of the facts and averments contained therein verified under the common or corporate seal of the said The Camden and Atlantic Railroad Company, which it has for that purpose caused to be hereto affixed, attested by Charles D. Freeman, its president, this twenty-fourth day of November, in the year of our Lord, one thousand 20 eight hundred and eighty-two.

CHARLES D FREEMAN,
President Camden and Atlantic Railroad Co.
[Seal attached.]

State of New Jersey, ss.—Charles D. Freeman, being 30 duly sworn, deposeth and saith, that he is the president and one of the directors of The Camden and Atlantic Railroad Company, one of the defendants mentioned in the above answer, and has been such president for more than four years last past; that, as such president, he, this deponent, has become and now is familiar with the business and proceedings of the said company, and especially with the proceeding stouching the statements, matters, facts and things set forth and contained in said answer; that the statements, matters, facts and things set forth and contained in said answer, so far as they relate to the acts and deeds of this deponent are true, and so far as they relate to the acts and deeds of the said company, or any other person or persons, he, this

deponent, believes them to be true, and that the seal affixed to the above certificate of said company, in verification of the truthfulness of the said answer, is the common seal of said company, and the attestation thereof is the proper handwriting of this deponent.

CHARLES D. FREEMAN.

Sworn and subscribed at Camden, in the State aforesaid, this twenty-fourth day of November, A. D., 1882, before me, a master in chancery of the State of New Jersey.

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HENRY M. SNYDER, Jr.

M. C. C.

State of New Jersey, ss.—Charles D. Freeman, Enoch A. Doughty and J. Lowndes Newbold, being duly sworn and Samuel C. Cooper, alleging himself conscientiously scrupulous of taking an oath, and being duly affirmed, depose and say, that they are defendants named in the above answer, that the matters and things set forth in said answer, so far as they relate to the acts and deeds of these defendants, respectively, are true, and so far as they relate to the acts and deeds of others, they believe them to be true.

CHARLES D. FREEMAN,
SAM'L C. COOPER,
ENOCH A. DOUGHTY,
J. LOWNDES NEWBOLD.

Affirmed, sworn and subscribed, at the State aforesaid, this twenty-fourth day of November, A. D., 1882, before me, a master in chancery, of the State of New Jersey.

HENRY M. SNYDER, Jr. 30

M. C. C.

State of New Jersey, ss.—Edmund E. Read, alleging himself to be conscientiously scrupulous of taking an oath, and being duly affirmed, and James B. Dayton, William Worrell, John B. Hay, Franklin Evans and William T. Ladner, being duly sworn, depose and say,

that they are defendants named in the above answer, that the matters and things set forth in the above answer, so far as they relate to the acts and deeds of these deponents, respectively, are true, and so far as they relate to the acts and deeds of others, they believe them to be true.

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JAMES B. DAYTON,
WM. WORRELL,
J. B HAY,
FRANKLIN EVANS,
WM. T. LADNER,
EDMUND E. READ.

Affirmed, sworn and subscribed, at Camden, in the State aforesaid, this fifth day of December, A. D., 1882, before me,

JNO. F. JOLINE,
M. C. C.

State of New Jersey, Camden county, ss.—MacGregor J. Mitcheson, being duly sworn, deposes and says, that 20 he is one of the defendants named in the above answer, and that the matters, facts and things set forth in said answer, so far as they relate to his acts and deeds, are true, and so far as they relate to the acts and deeds of others, he believes them to be true.

MACGREGOR J. MITCHESON.

Sworn and subscribed, at Camden, in the county aforesaid, this sixth day of December, A. D., 1882, before me.

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HENRY M. SNYDER, Jr.
Master in Chancery.

Order to Amend.

[Filed January 6, 1883.]

Application having been made to the court by Samuel H. Grey, of counsel with complainant, for leave to amend the bill of complaint filed in above stated cause by the insertion therein of certain of the by-laws of the defendant corporation, and of certain other matters in said proposed amendments, under the notice thereof (duly served on said defendants' solicitor), set forth and contained; and it appearing to the Chancellor, by the admission in writing of said defendants' solicitor, endorsed on the said notice, that due and legal service thereof and of a copy of said proposed amendment was made upon him, and said application for leave to make said amendments now coming on to be heard in presence of said counsel of said several parties respectively, and the same having been argued by said several counsel, and the court being of opinion that said amendments applied for as aforesaid, ought to be made.

It is thereupon, on this sixth day of January, eighteen hundred and eighty-three, on motion of Samuel H. Grey, of counsel with complainant, ordered by his Honor the Chancellor, and said Chancellor doth hereby order that said bill of complaint be amended by inserting therein the several amendments annexed to and served with said notice of this application as aforesaid, on said defendants' solicitor, except the amendment relating to the title to office of said defendants as directors of said corporation, and that said bill of complaint be re-encrossed with said amendments, sworn to by said complainant and filed with the clerk of this court within three days from the date hereof; that a copy of said amended bill and affidavit be served on said defendants' solicitor within four days from the filing thereof, and that said defendants file answer to this amended bill within fifteen days from the filing of said bill, if they see proper so to do, or that in default thereof, said order to

show cause heretofore made be brought to a hearing upon the present answer before the Chancellor, at in Newark, on Monday, the 29th day of January instant, at twelve o'clock noon of said day, and that until the further order of this court to the contrary, the order of this cause, made on the sixteenth day of November, be and the same is hereby continued in full force and effect.

THEODORE RUNYON, C.

10 Respectfully advised,
A. V. VAN FLEET,
V. C.

Amended Bill for Injunction.

[Filed January 6, 1883.]

To the Honorable Theodore Runyon, Chancellor of the State of New Jersey.

Humbly complaining, showeth unto your Honor, your orator, William L. Elkins, of Philadelphia, Pennsylvania:—

1. That the Camden and Atlantic Railroad Company,
20 one of said defendants, is a railroad corporation, duly incorporated by an act of the legislature of said state, and owns and is now operating a line of railroad from the city of Camden to the city of Atlantic, all in said state, that Charles D. Freeman is the President and one of the directors of said company, and that Joshua R. Jones, J. Lowndes Newbold, MacGregor J. Mitcheson, Franklin Evans, William Worrell, William T. Ladner, Enoch A. Doughty, Thomas H. Dudley, James B. Dayton, Samuel C. Cooper, Edmund E. Read, and John
30 B. Hay are the other Directors thereof.

2. Your orator further shows, that by-laws were

adopted by said company, July 21, 1881, the second article of which provide, in the first section thereof, as follows: "The annual meeting of the stockholders of the company, and the election of directors shall be held at the office of the company, between the hours of 10 A. M. and 2 P. M., on the fourth Thursday in February, in each year: of which election, at least ten days' notice shall be given, by advertisement in two public papers published in the city of Philadelphia, and in two published in the city of Camden." 10

3. And your orator further shows that by article VIII, section 1, of said by-laws, it is provided as follows: "No alteration or amendment to these by-laws shall be made unless the same be proposed in writing at a stated meeting of the board of directors, and adopted at the next or a subsequent stated meeting, by a majority of the members present. But any by-law may be suspended by the consent of the majority of the whole board," as by reference to said by-law, to which your orator refers, will appear. 20

4. And your orator shows and charges, that no power exists in said board of directors, either by an amendment to said by-laws, or otherwise, to so change the time for the annual meeting of the stockholders of said company as to continue themselves in control of the property and business of said company beyond the period of time for which said board of directors was elected by the stockholders of said company to serve as directors thereof; that such action by said board of directors is *ultra vires* of said board and void, and that said proposed 30 amendment of said by-laws is designed to perpetuate the power of said board of directors, and so continue the members thereof in control of the property and affairs of said company beyond the time for which said board was elected by the stockholders to serve as directors of said company, and is in fraud of the rights of your orator and other stockholders of said company.

5. And your orator further shows that by the provisions of article VII of said by-laws, the order of business at meetings of said board is prescribed as follows: "Ar-40

ticle VII. Order of business. Section 1. When a quorum appears, the president shall call the board to order."

"Section 2. The order of business shall be as follows:

1. The minutes shall be read and corrected, if necessary. 2. Treasurer's Report. 3. Comparative statement. 4. Executive Committee's minutes. 5. Report of the Finance Committee. 6. Material bills. 7. Report of Committees. 8. Unfinished business. 9. Written communications. 10. New business." As by reference to said

10 by-law to which your orator refers, will appear.

6. And your orator further shows, that no lawful action can be taken by said board upon any proposed amendment to said by-laws, except the same be proposed in writing at one stated meeting, and acted upon and adopted as a distinct proposition at the next or a subsequent stated meeting by a majority of the members present, and that no amendment to said by-laws can be lawfully made by said board, even under the provisions of said by-law aforesaid, which will continue said board
20 of directors in office beyond the time for which they were elected.

7. And your orator further shows and charges, that the time for holding the annual meeting of the stockholders of said company for the election of directors thereof, was fixed by the incorporators of said company, named in the Act of the Legislature of New Jersey, entitled "An act incorporating the Camden and Atlantic Railroad Company," approved March 19, 1852, to which
30 your orator refers, and cannot lawfully be changed by any action of the board of directors thereof, without the approval and consent of the stockholders of said company holding a majority of the stock of said company.

8. Your orator further showeth, that there have been issued and are outstanding of the stock of said company, seventeen thousand, six hundred and thirteen shares of the preferred stock, and seven thousand, five hundred and forty shares of the common stock; that your orator has, for a considerable time, been purchasing the stock of said company, both preferred and
40 common, as eligible opportunity offered; and that he is

now the holder, as appears by the books of said company, of more than a majority of its entire issue of stock, to wit, exceeding thirteen thousand, five hundred shares.

9. Your orator further showeth, that ever since he became a stockholder of said company, to any considerable amount, he has found the present president and directors of said company hostile to his views and interests, and the views and interests of other stockholders agreeing with your orator in opinion, and unwilling to 10 give him any information touching the policy or affairs of the said company; that his application to be permitted to obtain a list of his fellow-stockholders, made to the secretary of the company, at its office, several months ago, was refused; that the present president and directors were determined to consummate the purchase of the interest of one Massey in the Philadelphia and Atlantic City Railway, which was resisted and opposed by your orator, and to prevent the consummation of which 20 contemplated purchase, it was necessary for your orator to obtain the injunction of this honorable court; that your orator subsequently learned that it was the purpose of the present president and directors to issue a large amount of yet unissued capital stock, with the purpose, as he believed, to allot the same to themselves, or to such stockholders as might be in sympathy with them, without offering the same pro rata to the stockholders, to enable themselves to perpetuate their power, against the wishes of the holders of a majority of said stock, and that in order to prevent the consummation of this un-30 just and illegal purpose, it was necessary for your orator also to obtain injunction of this honorable court.

10. Your orator further showeth, that in pursuance of the same determined policy, and with the fraudulent intent to prevent the holders of a majority of the stock of said company from controlling the affairs and management, and electing directors of their choice at the next annual meeting of said company, which, under the present by-laws, will occur on the fourth Thursday in February next, the said present president and direc-40

tors, defendants as aforesaid, propose at the stated meeting of the board, to be held Thursday, November 16th, 1882, to so alter the by-laws as to postpone the annual election until some other and more distant day and, as your orator is informed, until the month of September, 1883, so as illegally and fraudulently to wrest from the control of the owners of the property any voice in its management for an additional period of at least six months. And your orator further showeth, that the six
10 months in question are those in which the great bulk of the business of said company is transacted.

All of which actings and doings of the said Camden and Atlantic Railroad Company, and its said officers, are contrary to equity and good conscience, and tend to manifest wrong and oppression of your orator, who is without remedy in the premises by the strict rules of common law.

In tender consideration whereof, and that the defendants may be restrained from altering the said by-laws or
20 in any other manner postponing the time for the annual election of the president and directors of said corporation, and that your orator may have such further and other relief as the nature of the case may require and is agreeable to equity and good conscience, may it please your honor, the premises considered, to grant unto your orator not only the State's writ of injunction issuing out of and under the seal of this honorable court to be directed to the said defendants, requiring them and every one of them absolutely and entirely to desist and refrain
30 from altering the said by-laws or in any other manner postponing the annual election of the president and directors of said corporation, but also the State's writ of subpoena, to be directed to the said defendants, commanding each of them to be and appear before your honor in this honorable court at a certain day therein named, then and there to answer the premises and to stand to, abide and perform all orders and decrees that shall be made by your honor. And your orator will ever pray.

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S. H. GREY,

Solicitor for and of Counsel with Complainant.

State of New Jersey, Camden County, ss.—William L. Elkins, being duly sworn on his oath, saith:—That he is the complainant in the above bill of complaint; that he has been a stockholder of the Camden and Atlantic Railroad Company for the period of about one year; that he is at the present time the holder on the books of said company, of about thirteen thousand five hundred shares, being more than a majority of all the stock issued by said company; that ever since his purchase of said stock he has been thwarted 10 and opposed by the present president and directors of said company; that they have, on repeated occasions, denied his rights as one of the owners of said property; that they have refused him access to its list of stockholders, when properly requested by him; that they persisted in their attempt to place upon said company the burden of a purchase from one William Massey, of his stock in the Narrow Gauge Railroad, between the cities of Camden and Atlantic; that this deponent was obliged to apply to this honorable Court to obtain its 20 writ of injunction against the consummation of said improper purpose; that subsequently the present president and directors conceived the plan of securing themselves in the continued control of the corporation by an unauthorized and improper issue of stock, without offering the same pro rata to the stockholders; and that this deponent was only able to prevent the consummation of the scheme by the injunction of this honorable Court; that, as a last resort, in order to perpetuate their control 30 of the property against the desires of the holders of a majority of the stock, they propose to postpone the annual election, the only result of which will be to leave them in undisturbed possession of their respective offices against the will of the holders of a majority of the stock of the corporation they assume to represent, and to that end they design and intend to change the by-laws of said corporation, as set forth in said bill; and deponent further saith, that the by-laws set forth in said bill are a portion of the by-laws of said corporation, and are fully and truly set forth therein, and that the action of said 40

defendants, in attempting to alter said by-laws, is designed to perpetuate the power of said board of directors, and so continue the members thereof in the control of the property and affairs of said company beyond the time for which said board was elected by the stockholders, to serve as directors of said company, and is in fraud of the rights of your orator and other stockholders of said company.

W. L. ELKINS.

10 Sworn and subscribed before me, this 5th day of January, A. D., 1883, at Camden.

F. F. HOGATE,
M. C. C.

[SEAL.]

Answer to Amended Bill.

[Filed January 25, 1883.]

The joint and several answer of the Camden and Atlantic Railroad Company, Charles D. Freeman, J. Lowndes Newbold, MacGregor J. Mitcheson, Franklin Evans, William Worrell, Enoch A. Doughty, Samuel C. Cooper and John B. Hay, defendants, to the amended bill of complaint of William L. Elkins, complainant.

20 1. These defendants now, and at all times hereafter, saving and reserving to themselves all and all manner of benefit and advantage of exceptions to the many errors and insufficiencies in the complainant's said amended bill of complaint contained, for answer thereto or unto so much and such parts thereof as these defendants are advised are material for them to make answer unto, these defendants answer and say that these defendants admit,

30 that the Camden and Atlantic Railroad Company, one of the defendants, was incorporated by an Act of the Legislature of the State of New Jersey, approved March 19,

1852, and owns and now operates a railroad from the City of Camden to Atlantic City, in said State, and that Charles D. Freeman is the president and one of the directors of the said railroad company, and that the defendants, Joshua R. Jones, J. Lowndes Newbold, MacGregor J. Mitcheson, Franklin Evans, William Worrell, William T. Ladner, Enoch A. Doughty, Thomas H. Dudley, James B. Dayton, Samuel C. Cooper, Edmund E. Read and John B. Hay are the other directors of said railroad company. 10

2. And these defendants further answering, admit and show that by the act of incorporation or charter of the said The Camden and Atlantic Railroad Company, and the supplements thereto, thirteen directors are authorized and required to be elected to transact and manage the business of the said company, that a majority of said directors constitute a quorum, and are competent to transact all business of the said company or corporation, and by the act of incorporation and the supplements thereto, the said directors or a majority of 20 them are given power, among other things, to make and prescribe such by-laws, rules, and regulations as to them should appear needful and proper touching the management and regulation of the stock, property, estate and effects of the said corporation or company, as by the said act of incorporation or charter and the several supplements thereto, which these defendants pray may be taken as part of this, their answer, reference being thereto had, will more fully and at large appear. And these defendants state and show that shortly after the 30 said The Camden and Atlantic Railroad Company was incorporated as aforesaid, the corporators named in the said act of incorporation, or a majority of the said corporators, opened books to receive subscriptions to the capital stock of the said corporation or company, and that on the twenty-fourth day of June, eighteen hundred and fifty-two, the said corporators declared that the said capital stock of the said company or corporation had been subscribed, and that the books to receive subscriptions to the capital stock should be closed, and that the said sub-40

scribers, then being all present or represented by proxy, should meet at six o'clock in the afternoon of said day (the twenty-fourth day of June, eighteen hundred and fifty-two), to choose nine directors for the said company or corporation; that in pursuance of the said notice, a meeting of said stockholders was had and an election of directors was held, at which election a majority of said corporators acted as inspectors, and after the said directors had been duly elected at said election the said cor-
10 porators, or a majority of them, fixed the time and place of holding the first meeting of the directors of the said company or corporation at the Arch Street House, in the city of Philadelphia, at the hour of seven o'clock in the afternoon of the said twenty-fourth day of June, eighteen hundred and fifty-two; and that in pursuance thereof the said directors met at the time and place so appointed and were duly organized by the election of a president and secretary, and by a resolution passed at said meeting of said board of directors on the said
20 twenty-fourth day of June, eighteen hundred and fifty-two, it was resolved that Stephen Colwell, William W. Flemming and Samuel Richards, three of said directors, be appointed a committee to draft by-laws for the regulation of the board; that afterwards the said committee was continued by said board of directors from time to time, and at a meeting of said board of directors, held on the twenty-ninth day of December, eighteen hundred and fifty-two, the said committee reported by-laws, which
30 over for final action until the next meeting of said board of directors; that on the meeting of said board of directors held on the seventh day of January, eighteen hundred and fifty-three, the said board of directors adopted said by-laws for said company or corporation, and that by the said by-laws so adopted by the said board of directors on the said seventh day of January, eighteen hundred and fifty-three, it was provided by article II., section one, that "The annual election of directors shall be by ballot, and shall be held at the office of the com-
40 pany between the hours of 10 A. M. and 2 P. M., on the

fourth Thursday in June in each year, of which election at least two weeks' notice shall be given by advertisement in two public papers published in the city of Philadelphia and in two published in the city of Camden;" and by article six, section three, that "the order of business shall be as follows: 1st, reading the minutes, which shall be considered as approved unless there be a motion to amend; 2d, written communications; 3d, reports of committees; 4th, treasurer's reports; 5th, engineer's reports; 6th, unfinished business; 7th, new 10 business;" and by article six, section four, that "no alteration or amendments to these by-laws shall be made unless the same be proposed in writing at a stated meeting of the board of directors, and adopted at the next or a subsequent stated meeting, by a majority of the members present; but any by-law may be suspended by the consent of a majority of the whole board;" and that in pursuance of the said by-laws so adopted as aforesaid, elections for the election of directors of the said company or corporation were held yearly on the fourth 20 Thursday in June until and on the fourth Thursday in June in the year eighteen hundred and sixty-two. And these defendants further show, that at a meeting of the said board of directors, held on the eighth day of May, eighteen hundred and sixty-three (as appears by the minutes of the said board of directors), "on motion duly made and seconded, it was resolved that section four of article six of the by-laws be suspended. It was agreed to unanimously, eight members of the board being present. It was then, on motion duly made and seconded, 30 resolved that from section one, article two of the by-laws, the word June be stricken out and the word October inserted in place thereof; that the words two weeks be stricken from the same section, and the words ten days inserted, so that said section shall read as follows, viz.: The annual election of directors shall be by ballot, and shall be held at the office of the company between the hours of eleven A. M. and one P. M., on the fourth Thursday in October in each year, of which election at least ten days' notice shall be given by advertisements in 40

two public papers published in the city of Philadelphia and in two published in the city of Camden;" and at said meeting it was further resolved "that no election of directors shall take place until the fourth Thursday in October next;" that in pursuance of the said by-laws so adopted and amended as aforesaid by the said board of directors, elections for the election of directors of the said company or corporation were thereafter held yearly on the fourth Thursday in October until and on the
10 fourth Thursday in October, in the year eighteen hundred and eighty. And these defendants further show, that at a meeting of the said board of directors, held on the twenty-first day of April, eighteen hundred and eighty-one, "on motion of Mr. Lucas, the secretary was instructed to have a revised edition of the by-laws prepared, and to present it to the board at its next meeting;" and at a meeting of the said board of directors, held on the nineteenth day of May, eighteen hundred
20 and eighty-one, a committee of the said board of directors was appointed to revise said by-laws; and that afterwards, at a meeting of the said board of directors, held on the twenty-first day of July, eighteen hundred and eighty-one, the by-laws of the said The Camden and Atlantic Railroad Company were presented to and adopted by the said board of directors; and that the said by-laws so revised and adopted by the said board of directors on the said twenty-first day of July, eighteen hundred and eighty-one, provided, in article two and section one, that "The annual meeting of the stockholders
30 of the company and the election of directors shall be held at the office of the company, between the hours of ten A. M. and two P. M., on the fourth Thursday in February in each year, of which election at least ten days' notice shall be given by advertisement in two public papers published in the city of Philadelphia and in two published in the city of Camden," as set forth in said bill of complaint, when the said by-law is stated and alleged to have been "adopted by the said company July 21, 1881." And these defendants further show, that
40 by the said article two and section one of said by-laws

so revised and adopted by the said board of directors as last above stated, it was further provided that "The election shall be by ballot, unless by unanimous consent, when the vote may be taken *viva voce*." And these defendants show, that at a meeting of said board of directors of the said The Camden and Atlantic Railroad Company, held at the office of the said company in the city of Camden, on the nineteenth day of October, eighteen hundred and eighty-two, the said by-law last above mentioned was amended, as appears by the minutes of said 10 meeting, as follows, viz: Mr. Doughty proposed the following as an amendment to the by-laws: "Resolved, That from article two, section one, strike out '10 A. M.' and insert '11 A. M.' and strike out 'February' and insert 'October.' Agreed to," and that the said amendment was agreed to without objection by the members of the said board of directors at the said meeting; and that at a meeting of the said board of directors of said company, held on the sixteenth day of November, eighteen hundred and eighty-two, the minutes of said board of directors held on the 20 nineteenth day of October as aforesaid, were unanimously approved by the said board of directors. And these defendants deny that the said The Camden and Atlantic Railroad Company adopted the by-laws mentioned in the said bill of complaint, or any, or either of them, or any by-laws whatsoever on the twenty-first day of July, eighteen hundred and eighty-one, or at any other time or times. And these defendants deny that the said The Camden and Atlantic Railroad Company has at any time or times, by any act of the said company, made, passed 30 or adopted any by-law or by-laws whatsoever. And these defendants deny that the stockholders of the said The Camden and Atlantic Railroad Company have at any time or times made, passed or adopted any by-law or by-laws. And these defendants show that the said The Camden and Atlantic Railroad Company and the stockholders of the said company have never had or acted under any by-law or by-laws whatsoever, except the said by-laws made and adopted and altered, amended and

revised by the said board of directors of the said company as hereinbefore mentioned and set forth.

3. And these defendants further answering, state and show that by article eight section one of the said by-laws, revised, amended, altered, and adopted by the board of directors of the said company, on the twenty-first day of July, eighteen hundred and eighty-one, it is provided as follows: "No alteration or amendment to these by-laws shall be made, unless the same be proposed in writing at a stated meeting of the board of directors, and adopted at the next, or a subsequent stated meeting, by a majority of the members present, but any by-law may be suspended by the consent of a majority of the whole board." And these defendants deny that the said last mentioned by-law was at any time or times adopted or passed by the said company, as charged in said bill of complaint, or by the stockholders of the said company, or in any other way or time than by the said board of directors of the said company, as above mentioned and set forth.

4. And these defendants further answering, state and show that by the charter or act of incorporation of the said The Camden and Atlantic Railroad Company, the board of directors of the said company, or a majority thereof, have full power to make and prescribe such by-laws, rules and regulations, as to them shall seem needful and proper, and these defendants submit that the said board of directors have full power at any time to change, alter, amend, revise and repeal the by-laws by the said board of directors, prescribed or adopted in any and all particulars, that to the said board of directors shall appear needful and proper. And these defendants show that the said board of directors have changed, altered, amended and revised the said by-laws as hereinbefore mentioned and set forth. And these defendants show that the said The Camden and Atlantic Railroad Company, incorporated as aforesaid, has not, at any time, by any act of the said company, or any act of the stockholders of the said company, prescribed, made, or adopted any by-law or by-laws touching the manage-

ment and regulation of the business or affairs of the said company, and that the only by-laws of the said company are the by-laws made, prescribed, revised, and adopted by the board of directors of the said company as aforesaid. And these defendants deny that no power exists (as charged in paragraph four of said amended bill of complaint), in the said board of directors of the said railroad company, by amendment to the said by-laws, or otherwise to change or alter the said by-laws so made, prescribed, revised, and adopted by the said board of 10 directors, as aforesaid. And these defendants state and submit, that the said board of directors have full power and authority to change, alter, amend, or repeal the said by-laws adopted by the said board of directors, at any time and in any manner, and for any purpose that to the said board of directors shall seem needful and proper and for the best interests of the said company. And these defendants deny that any alteration of said by-laws (passed by said board of directors as aforesaid), by the said board of directors, is ultra vires of the said 20 board or void, or is in fraud of the rights of the said complainant, or of any of the stockholders of the company. And these defendants deny that it is now proposed by the said board of directors of the said The Camden and Atlantic Railroad Company, to make any alteration, amendment, or change in the said by-laws, so made, prescribed, amended, revised and adopted by the said board of directors as aforesaid.

5. And these defendants, further answering, admit, that by the provisions of article seven, of said by-laws, 30 so made, prescribed, adopted and revised by the said board of directors of the said The Camden and Atlantic Railroad Company, as aforesaid, the order of business, at the meetings of the said board, is prescribed as follows, viz.: Article seven,—Order of Business.—Section 1. When a quorum appears, the president shall call the board to order. Section 2. The order of business shall be as follows: First, The minutes shall be read, and corrected if necessary. Second, Treasurer's report. Third, Comparative statements. Fourth, Executive Commit- 40

tee's minutes. Fifth, Report of the Finance Committee. Sixth, Material bills. Seventh, Report of committees. Eighth, Unfinished business. Ninth, Written communications. Tenth, New business—as by the said by-laws, reference being thereto had, and to which these defendants refer, will more fully and at large appear.

6. And these defendants, further answering, deny that no lawful action can be taken (as charged in paragraph six of said amended bill of complaint) by said board of
10 directors, upon any proposed amendment to the said by-laws, made, prescribed, revised and adopted by the said board of directors, as aforesaid, except the same be proposed in writing at one stated meeting, and acted upon and adopted, as a distinct proposition, at the next or a subsequent stated meeting, by a majority of the members of the said board of directors present. And these defendants submit, that the said board of directors have full power and authority, at any and all times, when-
20 alter, amend and change the said by-laws, by the said board of directors, made, prescribed, revised and adopted, as aforesaid, or any of the said by-laws, or any part thereof, and that the said board of directors may, at any time, lawfully change, alter or amend the said by-laws, so made, prescribed, revised and adopted by the said board of directors, as aforesaid, for any purpose or purposes whatsoever.

7. And these defendants, further answering, deny that the time for holding the annual meeting of the stock-
30 holders of the said The Camden and Atlantic Railroad Company, for the election of directors thereof, was fixed by the corporators of the said company named in the act of the legislature of New Jersey, entitled "An act incorporating The Camden and Atlantic Railroad Company," approved March 19, 1852. And these defendants deny that the said corporators had any right, power or authority, whatsoever, to make or fix the time for the holding of the annual meeting of the stockholders of said company for the election of directors. And these
40 defendants deny that the said corporators ever did, in

any way or manner, fix the time of holding said annual meeting of said stockholders.

8. And these defendants further answering, admit and show that there have been issued by the said The Camden and Atlantic Railroad Company about seventeen thousand six hundred and thirteen shares of preferred stock and seven thousand five hundred and forty shares of common stock; that the said complainant had transferred to him on the books of the said railroad company certain shares of stock, on the eleventh day of February, 10 eighteen hundred and eighty-two, and on that day, as these defendants believe, the said complainant first became a holder of the stock of the said railroad company; that the said complainant has now standing in his name on the books of the said company, about thirteen thousand five hundred shares of the stock of the said railroad company or corporation; and these defendants have been informed and believe, and state and aver, that the said stock standing in the name of the said complainant on the books of the said company, or nearly all thereof, has 20 been purchased by other persons or corporations, and has been paid for by the moneys and means of other persons or corporations, and procured to be transferred by said persons or corporations on the books of the said railroad company to the said complainant, for the purpose of procuring and obtaining a controlling interest in the said railroad company, in order to consolidate the said railroad company with, or otherwise transfer the control and management of the property and business of the said railroad company or corporation into the hands, power, 30 or control of said corporations purchasing said stock, interested in, or owning, or operating a rival railroad from the city of Camden to Atlantic City, and not for the purpose of managing and transacting the business of the said The Camden and Atlantic Railroad Company, and operating its railroad for the best interests of the said railroad company or corporation and the stockholders thereof.

9. And these defendants further answering say, they have not been informed, and do not know, and cannot set 40

forth, as to their belief, or otherwise, what the views of the said complainant touching the said railroad may be, or whether the president and directors of the said railroad company are hostile to the views of the said complainant, or stockholders alleged to agree with him; but these defendants, directors of the said railroad company, as aforesaid, state and show that they are, each of them, in their own right, owners of large numbers of the shares of the stock of the said railroad company, that the president of
10 the said company, Charles D. Freeman, owns, in his own right, fourteen hundred and sixty shares of said stock, and that the directors of the said company own, in their own right, very large amounts of the stock of the said company; and that these defendants and directors of the said company have at all times sought and endeavored to transact the business and manage the affairs and property of the said railroad company, and operate its railroad for the best interests and profits of the said company or corporation, and all its stockholders, and these de-
20 fendants deny that they are hostile to the said complainant, or unwilling to give him any information touching the policy or affairs of the said railroad company, and these defendants aver and state that they have at all times been ready and willing to give to the said complainant all such information concerning the policy and affairs of the said company as would be right or proper for these defendants, directors, as aforesaid, to give to any stockholder of said company; that these defendants, directors, as aforesaid, have requested the said com-
30 plainant to attend, meet with, and be present at a meeting of the board of directors of the said company; but that the said complainant refused or failed to meet with said board of directors, or be present at said meeting; and these defendants submit that these defendants being informed and believing that the said complainant was acting for or on behalf of or as the agent of some rival company or corporation, in having transferred to him the stock of the said railroad company, as aforesaid, and not for the best interest or profit of the said The Camden
40 and Atlantic Railroad Company or its stockholders;

these defendants would be justified in refusing to give said complainant information concerning the policy and affairs of the said company ; and these defendants say that it may be true, as stated in said bill of complaint, that the complainant's " application to be permitted to obtain a list of his fellow-stockholders, made to the secretary of the company, at its office, several months ago, was refused ;" but these defendants do not believe that the said secretary ever, at any time, refused to permit the said complainant or any stockholder of the said com- 10
pany to examine the list, or make copies of the list of the stockholders of the said company, if the same was requested or applied for at a proper time, and in a proper manner ; and these defendants deny that the directors of the said railroad company were ever determined to consummate the purchase of the interest of one Massey in the Philadelphia and Atlantic City Railroad Company ; and these defendants show that a majority of the said board of directors, believing it to be for the best interests of the said The Camden and Atlantic Railroad Com- 20
pany for it to own the interest of the said Massey in the said The Philadelphia and Atlantic City Railroad Company, agreed with the said Massey to purchase the same if such purchase should be sanctioned and approved by the stockholders of the said The Camden and Atlantic Railroad Company, at a meeting of the said stockholders to be called for that purpose ; and these defendants admit that, before the said contract was submitted to the said stockholders, for their sanction and approval, the said complainant filed a bill in this honorable court to restrain 30
the execution of the said contract or agreement, and that this court enjoined the execution of the same ; and these defendants say that they know not and have not been informed, save by the complainant's said bill, what the said complainant learned was the purpose of these defendants, the president and directors of the said The Camden and Atlantic Railroad Company ; but these defendants deny that it ever was the purpose or intent of these defendants, directors of the said railroad company, to issue a large amount, or any amount, of the unissued capital 40

stock of the said railroad company, or to allot any capital stock of the said railroad company to these defendants, or any of them, or to allot any of said capital stock to any other stockholders that might be in sympathy with these defendants (without offering the same, pro rata, to the stockholders), to enable these defendants, stockholders, as aforesaid, to perpetuate their power against the wishes of the holders of a majority of the stock of the said The Camden and Atlantic Railroad Company,
10 or for any other purpose or purposes whatsoever, or that it was the purpose of these defendants, as aforesaid, to issue any of the said stock for any purpose, except in accordance with the provisions of the charter or act of incorporation of the said railroad company, and the acts supplementary thereto and amendatory thereof; and these defendants deny that it was their purpose, at any time, to issue said stock, or any part thereof, for any fraudulent, unjust or illegal purpose whatever.

20 10. And these defendants, further answering, deny that these defendants, directors of the said the Camden and Atlantic Railroad Company, as aforesaid, on the sixteenth day of November, eighteen hundred and eighty-two, intended or designed fraudulently to change or alter the by-laws made and prescribed, revised and adopted by the said board of directors, as aforesaid, or to alter or amend the said by-laws, revised and adopted by the said board of directors on July 21, 1881, as aforesaid, and amended as above mentioned and set forth,
30 changing the time of the election of directors to the month of October, being the same time of the year that the said election was and had been held for many years before the same was altered by the revisions of the said by-laws by the said board of directors in July, 1881, as above mentioned and set forth. And these defendants state and show, that the said The Camden and Atlantic Railroad Company has not at any time, or times, by any act of the said company, or by any act of the stockholders of the said company made, passed, enacted or adopted
40 any by-law or by-laws whatsoever, and that the said

railroad company has never had by-laws, or acted under any by-laws whatsoever, except the by-laws made and prescribed, altered, revised, amended and adopted by the said board of directors of the said company as aforesaid ; and these defendants state and show, that by the act of incorporation of the said The Camden and Atlantic Railroad Company, the directors, or a majority of the directors of the said company were made competent to transact all the business of the said company, and to make and prescribe such by-laws, rules and regulations 10 as to them should appear needful and proper touching the management and regulation of the stock, property, estate and effects of the said company or corporation ; and these defendants submit, that under and by virtue of the powers conferred upon the directors by the said act of incorporation, the directors of the said The Camden and Atlantic Railroad Company have full power, in their discretion, to change, alter or amend the by-laws by the said board of directors made, prescribed, altered, revised and amended as aforesaid, in the manner and as 20 above mentioned and set forth, and to make, prescribe and adopt by-laws as above set forth ; and these defendants submit that the validity of any by-law or of any change, alteration or amendment of any by-law made by the said board of directors of the said corporation or company, in the exercise of their discretion, and which shall appear to be needful and proper to the said board of directors, is a matter which must be examined, tried and determined at law, and not in a court of equity, and for which the said complainant has a full and adequate remedy at law ; and these defendants state and show that the stock of the said The Camden and Atlantic Railroad Company, was first transferred to the said complainant on the books of the said company on the eleventh day of February, eighteen hundred and eighty-two, and that all the stock standing in the name of the complainant on the books of the said company was transferred to him, and procured to be transferred to him on and since the said eleventh day of February, last above mentioned, and that, these defendants are informed and believe, the 40

said stock was procured to be transferred on the books of the said railroad company in the manner and for the purposes hereinbefore mentioned and set forth, and that the said complainant now holds the said stock, or the greater part thereof, not for himself, but for the uses, interests and purposes hereinbefore mentioned and set forth, and that these defendants are informed, and believe, and allege, that the said complainant has not filed his said bill of complaint in this cause in good faith, and for the purpose of protecting his interest as a holder of the stock of the said The Camden and Atlantic Railroad Company standing in his name on the books of the said company; that the said complainant is not the real owner of the stock standing in his name, but that the greater part, if not the whole, of the said stock was purchased and paid for with the money or means of the Pennsylvania Railroad Company, or of the West Jersey Railroad Company, companies that are part owners of and largely interested in and controlling and operating the railroad of the West Jersey and Atlantic Railroad Company, a rival railroad from the city of Camden to Atlantic City, and that the said the Pennsylvania Railroad Company or the West Jersey Railroad Company is the owner of said stock, and that this bill has been filed at their request, and on their account, and at the expense of the said railroad companies last above named, or of one of them, and not to protect the interest of the said complainant or of the stockholders of the said The Camden and Atlantic Railroad Company. And these defendants deny all and all manner of unlawful combination wherewith they, or any, or either of them are charged in said bill of complaint, without this, that any other matter cause or thing in the said complainant's said bill of complaint contained material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided, or denied, is true to the knowledge or belief of these defendants, all which matters and things these defendants are ready and willing to aver, maintain and prove, as this honorable court may direct, and humbly pray to be

hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

P. L. VOORHEES,

Solicitor for and of Counsel with the Defendants.

State of New Jersey, ss.—The above answer of the Camden and Atlantic Railroad Company, one of the defendants mentioned therein, is hereby made, and the truth of the facts and averments contained therein verified under the common or corporate seal of the said The Camden and Atlantic Railroad Company, which it 10 has for that purpose caused to be hereto affixed, attested by Charles D. Freeman, its president, this twenty-second day of January, in the year of our Lord, one thousand eight hundred and eighty-three.

CHARLES D FREEMAN,

President Camden and Atlantic Railroad Co.

[Seal attached.]

State of New Jersey, ss.—Charles D. Freeman, being duly sworn, deposeth and saith, he is the president and one of the directors of The Camden and Atlantic 20 Railroad Company, one of the defendants named in the above answer, and has been such president for more than four years last past; that, as such president, he, has become and now is familiar with the business and proceedings of the said company, and especially with the facts and proceedings touching the statements, matters, facts and things set forth and contained in said answer; that the statements, matters, facts and things set forth and contained in said answer, so far as they relate to the acts and deeds of this deponent are true, 30 and so far as they relate to the acts and deeds of the said company, or any other person or persons, he, this deponent, believes them to be true, and that the seal affixed to the above certificate of said company, in verification of the truthfulness of the said answer, is the common seal of the said company, and the attestation thereof is the proper handwriting of this deponent.

CHARLES D. FREEMAN.

Sworn and subscribed at Camden, in the State aforesaid, this twenty-second day of January, A. D., 1883, before me, a master in chancery of the State of New Jersey.

HENRY M. SNYDER, Jr.

M. C. C.

State of New Jersey, ss.—Franklin Evans and Samuel C. Cooper, alleging themselves conscientiously scrupulous of taking an oath, and being duly affirmed, and
 10 MacGregor J. Mitcheson, J. Lowndes Newbold, William Worrell, and John B. Hay and Enoch A. Doughty being duly sworn, depose and say, that they are each defendants named in the above answer, that the matters and things set forth in the above answer, so far as they relate to the acts and deeds of these defendants, respectively, are true, and so far as they relate to the acts and deeds of others, they believe them to be true.

MACGREGOR J. MITCHESON,
 FRANKLIN EVANS,
 SAM'L C. COOPER,
 J. LOWNDES NEWBOLD.
 WM. WORRELL,
 J. B HAY,
 ENOCH A. DOUGHTY.

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Sworn and subscribed, at the State aforesaid, this twenty-fifth day of January, A. D., 1883, before me, a master in chancery, of the State of New Jersey.

HENRY M. SNYDER, Jr.

M. C. C.

Order for an Injunction.

[Filed February 14, 1883.]

IN CHANCERY OF NEW JERSEY.

Between

William L. Elkins,
Complainant,

and

The Camden and Atlantic Railroad Com-
pany and others,

Defendants.

On Bill,
&c.

Order for
an Injunc-
tion.

The rule to show cause heretofore granted in this cause, coming on to be heard in the presence of Samuel H. Grey, solicitor of the complainant, and Peter L. Voorhees, solicitor of the defendants, and the matter having been fully argued and considered, and the court being of the opinion that the injunction prayed for ought to be granted: It is, on this ninth day of February, eighteen hundred and eighty-three, ordered, adjudged and decreed, that an injunction do issue in favor of the complainant and against the president and board of directors of The Camden and Atlantic Railroad Company, defendants in this cause, restraining them, their and each and every of their officers, agents or attorneys, from doing anything which will defeat or prevent a meeting of the stockholders from being held for the election of directors on the twenty-second day of February, eighteen hundred and eighty-three.

THEODORE RUNYON, C.

Respectfully advised.

A. V. VAN FLEET, V. C.

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Opinion.

[Filed February 6, 1883.]

On application for an injunction, heard on bill and affidavits, and answer and affidavits.

Mr. S. H. Grey for complainant. Mr. P. L. Voorhees and Mr. B. Williamson for defendants.

VAN FLEET, V. C.—

The complainant seeks to prevent the directors of the defendant corporation from continuing themselves in office, against the will of the holders of a majority of the 10 stock, for a period beyond the term for which they were elected. The directors against whom he asks the court to exert its power were elected on the twenty-third day of February, 1882, for the term of one year. Their term of office will consequently expire on the twenty-second day of February, 1883. The charter provides that annual meetings of the stockholders shall be held for the election of directors, and that each share of stock shall be entitled to one vote. For some years prior to 1881, the annual meeting for the election of directors was held 20 on the fourth Thursday of October in each year, but on the twenty-first of July, 1881, the directors adopted a by-law, changing the date from the fourth Thursday of October to the fourth Thursday of February. The change thus made, so far as the record in this case shows, was acquiesced in by the stockholders, and the present board was elected on the day so designated. On the nineteenth day of October, 1882, the present board attempted, by resolution, to change the time of the annual meeting from the fourth Thursday of February to the 30 fourth Thursday of October. This action is the grievance of which the complainant complains.

The effect of the change, it will be perceived, is to increase the term of office of the persons who attempted to

make it, from one year to one year and eight months, nearly double the period for which they were elected. And this they have attempted to do without the consent of the proprietors of the corporation, except so far as they may happen to be represented by the persons constituting the board of directors. If they may lawfully do what they have attempted, it is difficult to perceive why they may not, a month, more or less, before the day now fixed, make another change, and so continue changing the day from time to time, as long as they may find it agreeable to continue in office, and thus absolutely deprive the proprietors of the corporation of that provision of the charter which secures to them the right to designate annually the persons who shall manage the affairs of the corporation.

That provision of the charter which declares that annual meetings of the stockholders shall be held for the election of directors, grants to the stockholders a highly important and valuable right, which the directors can neither defeat nor impair. It gives the stockholders the right to say, once in each year, not once in eighteen months, or two years, by a vote of a majority of shares, who shall be elected directors, and as such have the conduct and management of the business of the corporation for the next year. The right, therefore, to change the day for the annual meeting is one, which, from its very nature, can alone be exercised by the stockholders. No board of directors can, without the stockholders' consent, hold office for a period longer than one year.

It is not, perhaps, necessary that the stockholders should be called together specially for the purpose of making a change in the day. If the directors should attempt to change the day, as they did in 1881, and the stockholders should subsequently meet on the day so designated, and proceed without objection or remonstrance, to the election of a board of directors, their action would probably be entitled to be regarded as furnishing conclusive evidence of assent. I think the day so designated would be entitled to be regarded as the

day fixed by the stockholders, and that the subsequent meeting should be held on the day so fixed.

The object of the directors, in attempting to defer the next annual meeting, is perfectly obvious. The complainant now holds a majority of the stock issued by the defendant corporation; he and the directors are at variance; the complainant has been compelled to appeal to this court, in two previous instances, to be protected against the consequences of the wrongful acts of the directors; he means, undoubtedly, to use the power he 10 possesses, as the holder of a majority of the stock, to prevent their continuance in office; and they unquestionably resorted to the device of attempting to change the day of the annual meeting, for the purpose of prolonging their term of office. If it was entirely clear that they possessed the power to do what they have attempted to do, I think their use of it, under the circumstances, and for the purposes stated, would deserve to be denounced as fraudulent. There can be no doubt about the relations which the directors of a corporation hold to its 20 stockholders—they are trustees. *Stewart v. Lehigh Valley Railroad Company*, 9 Vr., 521. And like all other persons entrusted with fiduciary powers, they are bound to use their authority for the maintenance of the rights and the protection of the interests of their *cestui que trust*. To attempt to use their power for their own personal advantage, to the injury of their *cestui que trust*, is an abuse of the confidence reposed in them, which entitles the *cestui que trust* to the protection of a court of equity; and if they attempt, by means of their power or posi- 30 tion, to deprive the *cestui que trust* of any of his rights, their act, in its legal consequences, regardless of the motive which prompted it, is a fraud. Chancellor Green, in *Hills v. Parish*, 1 McCar., 380, declared that any action, by the directors of a corporation, which was designed to retain themselves in office, and thus perpetuate their control over the affairs of the corporation, against the will of the holders of a majority of the stock, was illegal and void, and that the injured stock-

holders, in such a case, were entitled to relief by injunction.

The action of the directors, under consideration, was not only wholly without warrant of law, but was unquestionably designed to defeat the stockholders in the exercise of a right granted to them by law. The directors intended that their action should serve as an excuse for not calling the stockholders together, at a time when the stockholders had a right to have an annual meeting
10 held. In order to frustrate that purpose, it is necessary that this court should act. An injunction must go, enjoining the directors from doing anything which will defeat or prevent a meeting of the stockholders from being held, for the election of directors, on the twenty-second day of February, 1883.

Petition of Appeal.

[Filed March 23, 1883.]

COURT OF ERRORS AND APPEALS OF NEW JERSEY.

20 Between The Camden and Atlantic Rail- road Company, et al., and William L. Elkins,	Appellants, Respondent.	} }	Petition of Appeal.
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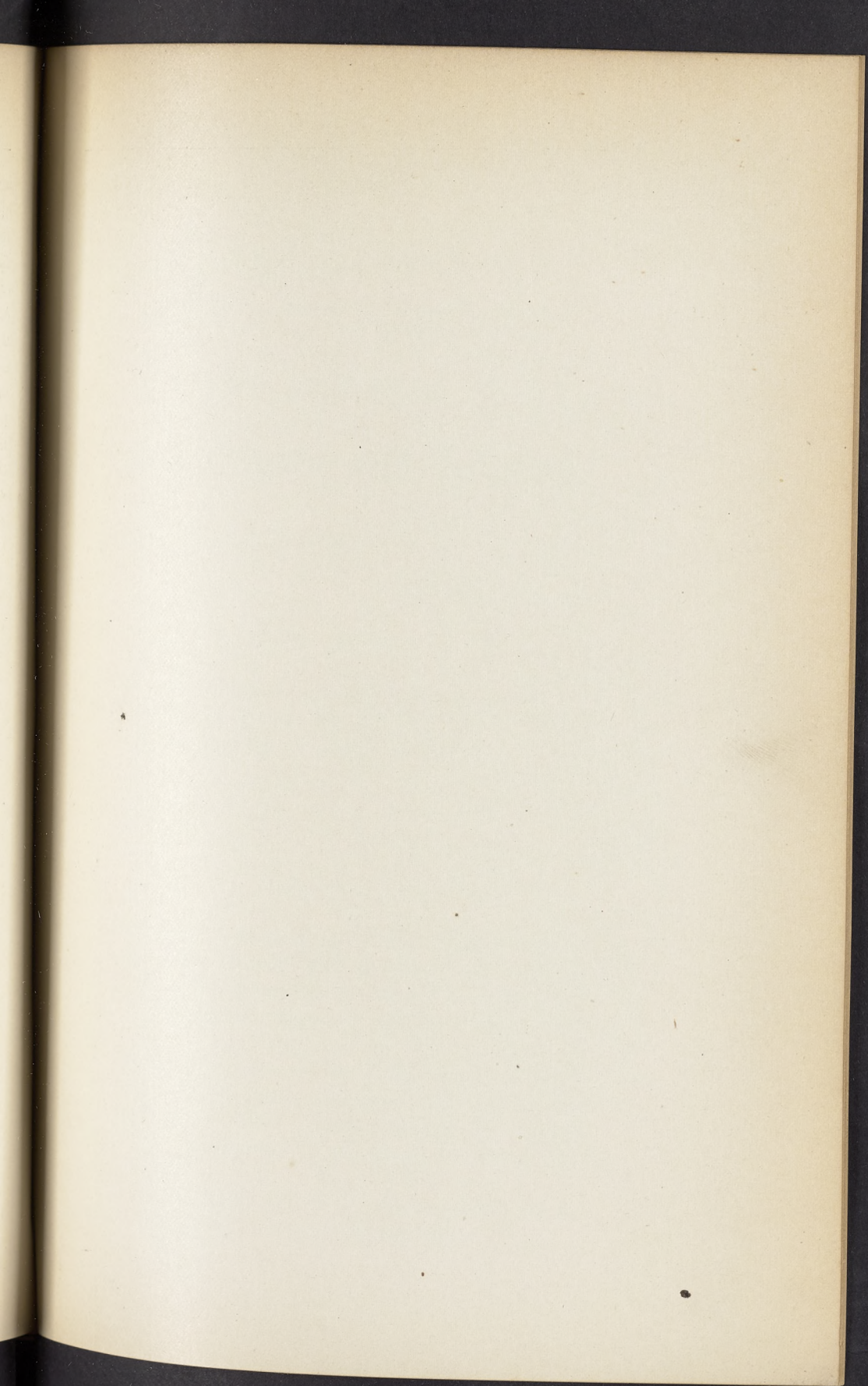
*To the Honorable Court of Errors and Appeals of N. J., in
the last resort in all causes :*

The humble petition of The Camden and Atlantic
Railroad Company, Charles D. Freeman, MacGregor J.
Mitcheson, Franklin Evans, Samuel C. Cooper, J. Lown-
30 des Newbold, William Worrell, John B. Hay and Enoch
A. Doughty, the appellants in the above stated cause,
respectfully shows that your petitioners find themselves

aggrieved by a final decree or order, made in the Court of Chancery, in said cause, by his honor, Theodore Runyon, chancellor of New Jersey, bearing date the ninth day of February, A. D. eighteen hundred and eighty-three, in this respect, to wit: that the said decree or order adjudges that an injunction do issue in favor of the complainant in the said cause (who is the respondent above named) and against the president and board of directors of The Camden and Atlantic Railroad Company, defendants in said cause (and the appellants above named) restraining them, their and each and every of their officers, agents or attorneys from doing anything which will defeat or prevent a meeting of the stockholders from being held for the election of directors on the twenty-second day of February, A. D. eighteen hundred and eighty-three. And your petitioners humbly appeal from that part of the said decree or order of the said chancellor, which decrees or orders, as aforesaid, upon the ground that the same is erroneous, for that the said chancellor should have decreed or ordered that the bill of complaint in the said cause in the Court of Chancery, should have been dismissed with costs, and the injunction prayed therein refused. Your petitioners, therefore, pray that the said decree or order of the said chancellor may be reversed, set aside, and for nothing holden; and that your petitioners may have such relief in the premises as to this honorable court shall seem meet.

BARKER GUMMERE,
Solicitor and of Counsel with Appellants.





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