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New Jersey Court of Errors and Appeals.

THE BRIDGEWATER COPPER MINING COMPANY, appellants, *and* HENRY S. HOYT, administrator of Goold Hoyt, dec'd, respondent,	*On appeal from decree of chancellor.*

STATE OF THE CASE:

On the 13th day of January, 1840, Goold Hoyt filed a bill in the court of chancery to foreclose a certain mortgage, alleged, in said bill, to have been given to him by the Bridgewater Copper Mining Company.

The bill was in the usual form, and set out that the said appellants, being a corporation under the laws of this state, were justly indebted to the said Goold Hoyt in the sum of $86,378, for stock in the Bridgewater copper mines, together with certain lands and premises, situate in the township of Bridgewater, in the county of Somerset, before that time sold, assigned, and conveyed to the said 10 appellants; and that, being so indebted, the said company, on the 15th of December, 1836, executed and gave to the said Goold Hoyt a bond conditioned for the payment of said sum, on or before the 15th day of December, 1838, with lawful interest from the date, to be paid semi-annually; and that, the more effectually to secure the payment of the said bond, the said company, at the same time, made and executed, under their corporate seal, their indenture of mortgage, bearing date December 15, 1836, by which they conveyed to the said Goold Hoyt several tracts of land in the county of Somerset, all of which are described in said indenture; 20 which mortgage was to be void on payment of the money mentioned in the bond, according to its condition.

The bill further sets forth the acknowledgment and recording of said mortgage; that the acknowledgment was on the 15th December, 1836, and the recording on the 12th April, 1837, and that the money remained unpaid. It then prayed for a foreclosure and sale of the said mortgaged premises, *pro ut* the said bill.

On the 14th of August, 1840, the appellants filed an answer to said bill, under their corporate seal, as follows:

The answer of the president and directors of the Bridgewater 30 Copper Mining Company to the bill of complaint of Goold Hoyt:

These defendants, saving and reserving to themselves, now and at all times hereafter, all and all manner of benefit and advantage of exception to the manifold uncertainties and imperfections in the said complainant's said bill of complaint contained, for answer thereunto, or so much or such parts thereof as these defendants are advised is material or necessary for them to make answer thereto, they answer and say—That they admit that the said complainant is possessed of a bond and mortgage of the purport of

those described in his said bill of complaint; that the said bond and mortgage purport to bear date, and to have been executed by the said the president and directors of the Bridgewater Copper Mining Company, on the day and year in that behalf mentioned and set forth in the said bill.

And these defendants, in further answering, say—That the said bond and mortgage, though purporting to have been given and executed by the president and directors of the Bridgewater Copper Mining Company, were not, in truth and in fact, given by the said corporation, nor by any persons lawfully authorized to give and execute the same in their behalf, or to affix the seal of the said corporation thereto; that the persons calling themselves the board of directors, by whose order and direction the said bond and mortgage were given, were not lawfully elected directors of said company, nor had they, at the time, any power or authority to execute any such bond and mortgage to the said complainant; that the same were given by the order and direction of Peter I. Stryker, James S. Nevius, James S. Green, and William Thomson, alleging themselves to be a board of directors of the Bridgewater Copper Mining Company, when they were not in truth and in fact, at the time, duly or lawfully elected directors of said company; that there had been no election by the stockholders for the space of three years and upwards, and that part of said pretended directors had never been elected by the stockholders pursuant to the charter, but had been appointed by other directors, whose terms of office had long previous thereto expired.

And these defendants, in answering, further say—That even if the persons above named, by whom or whose order the said bond and mortgage were given, had been duly elected and chosen directors of said company, and, as such, authorized to do any acts to bind the said corporation, yet that the same could only be done in the manner prescribed by the charter and by-laws of said corporation; that, having no natural rights or powers, they could only exercise such as were conferred on them by law, and exercise these in such mode and at such times as the law directs.

And they further say—That, by the charter of said company, it is provided that a majority of the directors for the time being shall form a board or quorum for the transacting of the business of the said corporation, and shall have power to make and prescribe such by-laws, rules, and regulations, not repugnant to the constitution and laws of the United States and of this state, as to them shall appear needful and proper touching the main agreement and disposition of the stock, property, estate, and effects of the said corporation; that, after the organization of the said company, certain by-laws were adopted for the regulation of the said company, pursuant to said charter; that it was ordained in said by-laws, among other things, as follows: "There shall be a regular meeting of the board of directors held at Somerville, county of Somerset, state of New Jersey, on the first Monday in January, and at such place and in such state as may be designated by the president for

the occasion, on the first Tuesday in April, July, and October, of every year. Extra meetings may be held at such place as may be designated by the president, whenever, in his judgment, the same may be deemed necessary, or whenever a requisition shall be made upon him by any two of the directors to call the same." And, by the said by-laws, it is further ordained, as follows: "It shall be the duty of the secretary to issue written summons for, and to attend all regular meetings of the board of directors, and to keep a minute of the proceedings of the same, to be by him recorded in a book to be by him provided for that purpose." 10

And these defendants, in further answering, say—That at the time when the said bond and mortgage purport to have been made and given, to wit, on the thirteenth day of December, eighteen hundred and thirty-six, four persons, claiming to be directors of said company, that is to say, Peter I. Stryker, James S. Nevius, James S. Green, and William Thomson, casually met in the city of New Brunswick, and, after pretending to make a certain compromise or arrangement with the said complainant of a suit then pending in this court, they agreed to make and give to the said complainant the bond and mortgage referred to in said bill; that the 20 said meeting was not a regular meeting of the said board of directors, according to the provisions and meaning of the charter and by-laws of said company, nor was it an extra meeting on the call of the president, or designated by him, upon a requisition of any two of the directors; that no written notice was ever given of said meeting to the other members of the board, either by the secretary or any one else, but the proceedings were had in the absence of three of the directors, and without their knowledge or consent.

And these defendants, being the lawful directors of said company, and standing, as they do, in the character of trustees for the 30 rights and property of others, do most respectfully insist, that they are not, nor is the company or corporation bound by the unauthorized acts and proceedings of four persons, styling themselves a board of directors, convened without authority and acting without notice to others equally interested, and clothed with equal rights and privileges; that although, by the charter, four directors, being a majority, shall form a board or quorum for transacting business, yet the power to act as a board is confined to such times as they shall be lawfully assembled and convened for business, either at a stated meeting, or at an extra meeting lawfully convened by the 40 president, either on his own judgment or on a requisition of two of the directors, and upon written notice given to all the members of the board.

And they further insist, that, as the said bond and mortgage were made and given without authority, and in violation of the charter and by-laws of the company, and in fraud of the rights of the stockholders, they are, as against these defendants and all others interested, void and of none effect.

And they further say—That the said complainant, who was present at the time of the giving of the said bond and mortgage, was 50

well acquainted with the charter, by-laws, and situation of the said company, having formerly been president of the board, and knew that the said meeting was irregular and unlawful, and that the whole transaction was without authority, and a fraud upon the company.

And these defendants, in further answering, say—That, by the second section of the act incorporating said company, it is provided that the property and affairs of the said corporation shall be managed and conducted by seven directors, who shall be citizens of the United States, and be annually chosen on the first Monday of January, at such time of the day, and at such place in the county of Somerset, and state of New Jersey, as the by-laws of the said corporation shall direct; that the plain intent and meaning of the said act is, that the persons elected to manage and conduct the affairs of the said company shall be stockholders, and interested in the affairs to be managed, and not strangers who have no interest in the welfare and prosperity of the company.

And these defendants say—That at the time when the said bond and mortgage were given, two of the persons present claiming to be directors of said company, and to have the management of its affairs, and to be authorized to bind it to any large amount, were not stockholders in said company, and had no interests in its concerns, and never had any; they were strangers to the interests of the company, and were never elected by the stockholders.

And these defendants insist, that the said bond and mortgage, thus given, is to all intents and purposes void, as against them and the corporation.

And these defendants, in further answering, say—That they deny that, at the time of the execution of the said bond and mortgage mentioned in the said bill of complaint, the company was indebted to the said Goold Hoyt in the sum of eighty-six thousand three hundred and seventy-eight dollars, or any such sum, for stock in the Bridgewater copper mines, and for certain lands and premises in the county of Somerset, before that time sold, assigned, and conveyed to the said the president and directors of the company. And they also deny that the said stock and property constituted the consideration for which the said bond and mortgage were given; on the contrary, they say that the immediate consideration of the said bond and mortgage was a certain other mortgage on the same property, given by the said company to the said complainant, on or about the 10th day of October, one thousand eight hundred and thirty, for the sum of sixty-five thousand dollars.

And they further say—That the said bond and mortgage, so given by the said company, of the date of 10th of October, aforesaid, was usurious and void; that, at the time of giving the same, the said complainant demanded, and corruptly and usuriously received, upon the whole sum mentioned in the said mortgage the interest for six months in advance, at the rate of six per cent. per annum, and thereby illegally and usuriously received and took upon the said contract above the value of six dollars for the forbearance of

one hundred dollars for a year, and at the same rate for the whole amount, by reason of which the said mortgage and contract became and was void in law, under the provisions of the act entitled, "An act against usury," and the supplement thereto.

And these defendants further say—That, after the money on the said mortgage became due and payable, the said complainant instituted a suit in this honourable court to foreclose the equity of redemption of and in the mortgaged premises, and for a sale of the same; and, in bar of said suit, the defendants set up and insisted, among other things, that the contract and security were void, for the reason above assigned; and, while the matter was pending in the said court undisposed of, and when, as these defendants are advised, the said suit, if prosecuted to a close, would have resulted in favour of the defendants, and the securities would have been declared void, and been given up to be cancelled, the said Goold Hoyt, under various plausible pretences, induced the four persons, herein before mentioned claiming to be directors of the company, to settle and compromise the said suit, and the matters in difference between the parties to the same, and thereupon the said Peter I. Stryker, James S. Nevius, James S. Green, and William Thomson, without any meeting of the board having been lawfully convened, in the absence of the other directors, or the persons claiming to be such, and without consultation with, or direction from the company or stockholders, did, on the said thirteenth day of December, eighteen hundred and thirty-six, make a settlement of said suit; and, upon the settlement of the same, did execute and give to the said complainant the said bond and mortgage mentioned in his said bill, in fraud of the rights of the stockholders of said company, and to their great injury and detriment. And these defendants allege and insist, that the said last mentioned bond and mortgage were given for the principal and interest of the former one; and that the object of the said complainant in staying said suit, and making a compromise of the same, was to obtain a new security, in the expectation and hope, thereby, to avoid the legal defence of the defendants; but these defendants humbly insist that the said last mentioned bond and mortgage, being given in lieu of the former, and founded on the same illegal consideration, is void in law, and of no effect, as against these defendants.

And these defendants pray that they may have the same benefit and advantage from their answer in this behalf, as though the said matters had been specially pleaded in bar of the claim of the complainant.

And these defendants, in answering, further say—That when the said bond and mortgage of October, 1830, were given to the said complainant, he was a member of the company, and president of the board of directors; that it was agreed by the board to raise money, by loan, to carry on the mining operations of the company; that, for the purpose of so doing, they gave the bond and mortgage to the said complainant for the sum of sixty-five thousand dollars; and he, instead of advancing the money, or any part

thereof, gave to the company a promissory note of Peter I. Stryker to the amount of the said mortgage, payable on demand. And these defendants are informed, and so allege, that there was no such sum of money due from the said Peter I. Stryker to the said complainant; that the said money, or any part thereof, was not paid or raised upon said note; and that the said note was afterwards, to wit, in July of the following year, given up and restored to the said Peter I. Stryker.

And these defendants say—That the whole proceeding was an artifice and contrivance on the part of the said complainant, the real object of which was, under pretence of aiding the company by a loan of money, to speculate on the necessities of the company, and obtain a large and productive lien on the property.

And these defendants submit, that, independently of the fact of usury in the first contract or mortgage, the same was inequitable, without just consideration, a fraud upon the community, and especially upon those who then were, or might thereafter be interested in said company; and the mortgage on which the present suit is instituted, being a mere substitute for the other, and having no other or better consideration, stands in the same condition, and ought not, in equity, to be enforced against these defendants.

And these defendants deny all unlawful combination, &c.

Which said answer was verified by the said defendants in the usual form.

After the answer was filed, the complainant filed an amended bill, in substance as follows:

Humbly complaining, showeth unto your excellency your orator, Goold Hoyt, of the city of New York, in the state of New York, that on or about the 15th of December, 1836, "the president and directors of the Bridgewater Copper Mining Company," being a company duly and legally incorporated by an act of the legislature of the state of New Jersey, and then and now existing as a corporate body, and doing and carrying on business as such in this state, being justly and truly indebted to your orator in the sum of $86,378, for and on account of stock in the Bridgewater Copper Mining Company, together with certain lands and premises situate and being in the township of Bridgewater, in the county of Somerset, in this state, before that time sold, assigned, and conveyed to the said "the president and directors of the Bridgewater Copper Mining Company," being the same lands and premises hereinafter more particularly mentioned and described in the deed of mortgage hereinafter mentioned; and the said "the president and directors of the Bridgewater Copper Mining Company," being seized in fee-simple or otherwise, were entitled to the lands, tenements, and hereditaments hereinafter mentioned, and being justly indebted therefor to your orator in the said sum of $86,378, for securing the payment thereof to your orator, his executors, administrators, or assigns, did, on the day and year aforesaid, make and execute, under their corporate seal, to your orator their certain bond or obligation, bearing date the day and year aforesaid, conditioned for the pay-

ment of the sum of $86,378, lawful money of the United States, on or before the 15th December, 1838, with interest from the date thereof, to be paid semi-annually, without any fraud or other delay; and the said "the president and directors of the Bridgewater Copper Mining Company" did, for the better and more effectually securing the payment of the said sum of money, according to the condition of the said bond, make and execute, under their corporate seal, their indenture of mortgage, bearing date the said 15th December, 1836, by which the said "the president and directors of the Bridgewater Copper Mining Company," for and in consideration of the said sum of $86,378, therein and thereby acknowledged to have been paid to them before the sealing and delivery of the said indenture, and thereby did give, grant, &c., to your orator, his heirs and assigns for ever, all the several tracts of land and premises situate in the township of Bridgewater, in the county of Somerset, and state of New Jersey, following, to wit, &c.; but subject to a proviso or condition, in the said indenture expressed, that if the said "the president and directors of the Bridgewater Copper Mining Company," or their successors, do and shall well and truly pay, or cause to be paid, to your orator, his attorney or attorneys, his heirs, executors, administrators, or assigns, the sum of $86,378, on or before the 15th December, 1838, with interest from the date thereof, to be paid semi-annually, according to the condition of the said bond or obligation, without any deduction or defalcation for taxes, assessments, or any other impositions whatsoever, that then and from thenceforth the said indenture and the said obligation, and every thing therein contained, should cease and be void, any thing therein contained to the contrary in any wise notwithstanding.

And your orator further showeth, that the execution of the said indenture of mortgage was on the 15th December, in the year last aforesaid, duly acknowledged by the said "the president and directors of the Bridgewater Copper Mining Company," by their president, Peter I. Stryker, before James Taylor, esquire, one of the judges of the inferior court of common pleas in and for the said county of Somerset, and who was authorized to take the said acknowledgment. And that the said indenture of mortgage was also duly recorded in the clerk's office of the said county of Somerset on the 12th April, 1837, in Book L. of Mortgages, page 413, as in and by the said bond and mortgage, &c.

And your orator further showeth unto your excellency, that your orator, together with Stephen Hoyt, Russell H. Nevins, and Elihu Townsend, on the 12th August, 1830, owned and possessed a large amount of stock, to wit, to the amount of $80,000, in the Bridgewater copper mines, and that they, or one of them, was the owner of the lands then possessed by "the president and directors of the said Bridgewater Mining Company;" that the said Peter I. Stryker, on or about the day and year last aforesaid, came to the city of New York, and offered to purchase of your orator and the said Stephen Hoyt, Russell H. Nevins and Elihu Townsend, who were then residents in the said city, and citizens of the state of New

York, all their right, title, and interest in the said stock, lands, and property of the said company, and, in satisfaction thereof, proposed to pay them the sum of $15,000 on the 15th September then next, and to secure the payment of $65,000, the residue of the purchase money, by a bond and mortgage upon the said mines and real estate, and to pay the interest thereon semi-annually in advance; which proposition was accepted, and thereupon an agreement in writing was then and there entered into by the said Stephen Hoyt, in behalf of himself and your orator, and the said Russell H. Nevins and Elihu Townsend, with the said Peter I. Stryker, for the sale of their stock, lands, and interest, for the sum of $80,000, $15,000 of which was to be paid on the 15th day of September, then next, and the balance, to wit, $65,000, to be secured by a bond and mortgage upon the said mines and real estate, to be paid in four equal yearly payments, with lawful interest on the same, payable half-yearly in advance. And that afterwards, to wit, on or about the 11th October, 1830, in execution of the said agreement, your orator and the said Stephen Hoyt, Russell H. Nevins and Elihu Townsend, conveyed, assigned, and transferred all their and each of their said stock, lands, funds, and property to the said Peter I. Stryker, or to the said company, or for their use and benefit; and thereupon, and in pursuance of the said agreement, the said Peter I. Stryker, together with one Henry Vanderveer, made and executed to your orator and the said Stephen Hoyt, Russell H. Nevins and Elihu Townsend, a bond for the said sum of $15,000, part of the consideration money for the said purchase, and for the balance of the said purchase money, to wit, $65,000, which belonged exclusively to your orator, the said "the president and directors of the Bridgewater Copper Mining Company" made and executed to your orator four several bonds, bearing date the day and years last aforesaid, conditioned for the payment of $16,250, each, the first thereof payable on the 15th September, 1832, the second payable on the 15th September, 1833, the third payable on the 15th September, 1834, the fourth payable on the 15th September, 1835, with the lawful interest thereon from the 11th October, 1830, payable half-yearly in advance, as expressed in the said bonds and mortgage, and according to the terms of the purchase aforesaid. And the said "the president and directors of the Bridgewater Copper Mining Company," being then seized in fee-simple of the lands and premises mentioned and described in the mortgage first before mentioned, in further pursuance of the said agreement, made and executed to your orator, under their corporate seal, their certain deeds of mortgage, bearing date on or about the 11th October, 1830, upon the before mentioned and described lands and premises, to secure to your orator the payment of the said last mentioned four bonds, according to their several and respective conditions. And the said "the president and directors of the Bridgewater Copper Mining Company," for themselves and their successors, did, in and by the said last mentioned deed of mortgage, covenant and grant to and with your orator,

his heirs and assigns, that your orator, his heirs and assigns, should and might from time to time, and at all times, after default should be made in the performance of the proviso or condition contained in the said last mentioned deed or mortgage, peaceably and quietly enter into, have, hold, use, occupy, and enjoy all and singular the said granted and bargained premises, with the appurtenances, without the let, suit, trouble, hinderance, or denial of the said "the president and directors of the Bridgewater Copper Mining Company" or their successors, or of any other person or persons whatsoever; which said last mentioned mortgage, on the day of the date thereof, was duly acknowledged by the said "the president and directors of the Bridgewater Copper Mining Company," by the said Peter I. Stryker, as president of the said company, and that the seal of the said company had been thereto affixed, pursuant to an order of the said corporation, before Thomas A. Hartwell, one of the masters of this court; and that the said last mentioned mortgage, on the 12th day of October, in the year last aforesaid, was duly recorded in the clerk's office in the county of Somerset, and recorded on the same day in Book H. of Mortgages, pages 150, 151, 152, 153.

And your orator further showeth unto your excellency, that the said sum of $65,000, or any part thereof, was not paid to your orator, or any other person for him, at the several times limited and appointed in and by the said last mentioned mortgage for the payment thereof, or at any other time, but that default was made in the payment thereof, whereby the legal estate in the said lands and premises became vested in your orator; that a larger arrear of interest having accrued and being due to your orator, as well as the principal of the said last mentioned mortgage, and the said company having delayed and put off your orator for a considerable time with delusive promises of payment, your orator filed his bill of complaint in this honourable court to foreclose the said last mentioned mortgage, and for a sale of the mortgaged premises, to which bill the said "the president and directors of the Bridgewater Copper Mining Company" put in their answer, under their corporate seal, and which said answer was signed by the said Peter I. Stryker, as the president of the said company, and to which said answer was annexed on affidavit, sworn to by the said Peter I. Stryker on 21st August, 1834, in which he swears that he then was, and for some years past had been the president of the Bridgewater Copper Mining Company.

And your orator further showeth unto your excellency, that there being difficulties and disputes existing between your orator and the said company respecting the validity of the said first mortgage, that, on or about the 6th December, 1836, a compromise and settlement of all matters in difference between your orator and "the president and directors of the Bridgewater Copper Mining Company" were made and entered into by the said Peter I. Stryker, as the president of the said company, and as their agent and acting by their authority, and assisted and attended by James S. Green, esquire,

the counsel of the said company, who represented themselves to be fully authorized by the said company to make a settlement and compromise with your orator of all matters in difference between the said company and your orator; that upon the said settlement and compromise, after correcting all errors and mistakes, and making all such deductions as the said company claimed a right to have made, there was found to be due to your orator, on account of the said purchase, the sum of $86,378.

And your orator further showeth unto your excellency, that on or about the 12th December, in the year last aforesaid, the said Peter I. Stryker produced and delivered to the solicitor of your orator a certified copy of a resolution, passed by the board of directors of the Bridgewater Mining Company, in the words, or to the effect following, to wit: "At a meeting of the board of directors of the Bridgewater Copper Mining Company, held at Stille's hotel, in the city of New Brunswick, on Tuesday the 17th December, 1836, were present Peter I. Stryker, James S. Nevius, James S. Green, and William Thomson, the following preamble and resolution were offered, and unanimously adopted: 'Whereas a compromise and settlement of all matters in difference between this board and Goold Hoyt, of the city of New York, has been made, and, after correcting all errors and mistakes, and crediting all payments, and making such deductions as this company claim a right to have made on account of the purchase for which this company heretofore gave its bonds and mortgage on its real estate, lands, and property in the township of Bridgewater, in the county of Somerset, there is justly and legally due and owing him from this company the sum of $86,378, for and on account of the said purchase, and to secure the payment of which sum, with interest, this company have agreed to give their bond and mortgage—it is therefore ordered by this board, that a bond and mortgage be given by this company to the said Goold Hoyt, to secure to him the payment of the said sum of $86,378, in two years from the 15th day of the present month, together with legal interest thereon, to be paid half-yearly from the date of the said bond and mortgage; and it is further ordered, that the president of this company be authorized to carry into effect the said compromise and settlement, and to sign and execute, under his hand and corporate seal of this company, the said bonds and mortgage, to secure the payment thereof, on the lands, premises, and property heretofore mortgaged to him; and that after the said mortgage shall be recorded, according to law, that the said bond and mortgage be delivered to the said Goold Hoyt, or his attorney, on the cancelling the said former mortgage, and bonds accompanying the same.'—A true extract from the minutes. W. Thomson, sec'y B. C. Mining Company."

And your orator further showeth unto your excellency, that your orator, having full faith and confidence in the honour and character of the two gentlemen who negotiated the said compromise, and of those who composed the board that passed the said resolution con-

firming the said compromise and settlement, and directing it to be carried into effect on the part of the said company, and in entire confidence that they were acting in good faith, and that they would not act in the said business without knowing that they were legally appointed and had full and ample authority for what they were doing; and your orator not having the least suspicion that the validity of the said bond and mortgage, of the date of the 15th December, 1836, would or could be doubted or questioned, the said original mortgage was delivered to the said Peter I. Stryker, at his request; and your orator has been informed, and believes it to be true, that he, as the president of the said Bridgewater Copper Mining Company, and by the direction of the board of directors, after a considerable space of time had elapsed, caused the said original mortgage to be cancelled of record, in order that the said company might be able to procure a certificate from the clerk of the county that there was no mortgage on the said real estate and property but the last one so given to your orator as aforesaid, and that they did procure such certificate; and the said company have repeatedly since, and recently made use of the said certificate, in Europe and in the United States, to enable them to obtain a loan of money on the credit of the said real estate and property, or to sell and dispose of their said real estate and property. And that the said president and directors of the Bridgewater Copper Mining Company have always, until a few months past, recognized the validity of the said last mentioned mortgage, and acquiesced in the said settlement and compromise, and have from time to time applied to your orator not to put his said last mentioned mortgage in suit, and have obtained time by their delusive promises and assurances, that they expected to, or were in hopes of selling the mortgaged premises, and that the whole debt due him by the company should be paid.

And your orator further showeth unto your excellency, that the said Peter I. Stryker, at the time of the making of the said settlement and compromise, was president of the board of directors of the said company, and had been for several years before a large stockholder in the said company, and the principal and most active man in the transacting and management of the affairs and business of the said company, and acted as the duly authorized agent of the said company in the transacting of their business; and that when he executed and delivered the said second mortgage, and when he obtained the said first mortgage, and caused it to be cancelled on record, he represented himself as acting in the name and in behalf of the said company, and duly authorized by them to make, execute, and deliver the said second mortgage to your orator; and it was upon the faith of the said representation and of the said resolution, and your orator's and solicitor's perfect confidence in the character and probity of the gentlemen whose names are mentioned in it, that he obtained the said original mortgage from your orator's solicitor, and that if the said second mortgage is invalid for any cause whatever, the said first mortgage ought, in equity, to be con-

sidered in full force and virtue, the same having been obtained from your orator by fraud and imposition, or delivered to the said Peter I. Stryker under the influence of mistake, and full faith in the supposed goodness of the said second mortgage.

And your orator further showeth unto your excellency, that the said sum of $86,378, nor the interest thereon, or any part thereof, was not paid to your orator, or to any other person on his account, according to the condition of the said obligation, but default was made in the payment of the said principal sum, at the time limited and appointed for the payment thereof, by the said indenture, whereby the legal estate of the said lands, hereditaments, and premises became vested in your orator, and that the whole of the said principal sum is now due and owing to your orator, together with the interest thereon from the date of the said obligation; and your orator, being desirous of being paid the same, he has frequently and in a friendly manner applied to and requested the said the president and directors of the Bridgewater Copper Mining Company, and to the said Peter I. Stryker, as the president of the said company, to pay to your orator the said principal sum of $86,378, together with all the arrears of interest which have accrued and are now due and owing thereon to your orator; and as the said lands, hereditaments, and premises are but a very slender and insufficient security for what is now due and owing to your orator for principal and interest as aforesaid, and the said defendants have been ever since the execution of the said first mortgage, and now are in the possession of the said mortgaged premises, and in the receipt of the rents and profits thereof, your orator well hoped that such his reasonable requests would have been complied with, and that the said "the president and directors of the Bridgewater Copper Mining Company" would have paid to your orator the said principal sum, and the interest thereon, as in justice and equity they ought to have done; but now so it is, may it please your excellency, the said "the president and directors of the Bridgewater Copper Mining Company," combining and confederating with Peter I. Stryker, and with divers other persons, at present unknown to your orator, whose names, when discovered, he prays may be herein inscribed, with apt and proper matter and words to charge them as parties thereto, and contriving here to injure and oppress your orator in the premises, and to cheat and defraud him out of the money due upon the said second mortgage, absolutely refuse to comply with such your orator's just and reasonable requests aforesaid; and, to give some colour for such refusal, the said "the president and directors of the Bridgewater Copper Mining Company" and the said Peter I. Stryker sometimes will pretend that the said company never owed any such principal sum of money to your orator as aforesaid, and that they never made and executed, under their corporate seal, any such bonds or obligations and indentures as aforesaid, or either of them, the contrary whereof your orator charges to be the truth, and which the said defendants will sometimes admit, but then they give out and pretend that the

said company have paid to your orator the said principal sum, and all the interest that had accrued thereon, and that there is nothing due on the said obligation and indenture of mortgage, so given by the said company to your orator, as last aforesaid, the contrary whereof your orator charges to be truth; and that the whole of the said principal sum is now due and owing to your orator, together with a large arrear of interest thereon, and that the legal estate in the said mortgaged premises has become vested in your orator; and at other times the said defendants pretend and give out that there are other mortgages, judgments, and encumbrances affecting the said premises, made and executed by them, or confessed by them, or recorded against them, or some person or persons under whom they claim, prior, in point of time, to the said indentures of mortgages so made and executed by the said defendants to your orator; but the particulars thereof, or when, or by whom made, confessed, or recorded, and for what consideration or amount, or who holds or claims the same, or what is now due thereon, the said defendants refuse to discover. And your orator further charges, that if there are any such mortgages, charges, or encumbrances affecting the said mortgaged premises, or any part thereof, they are subsequent to your orator's said mortgages, or are fraudulent and proper to be relieved against in this honourable court. And, at other times, the said defendants pretend that the said first mortgage, so granted to your orator as aforesaid, was usurious and void, for that, at the time of giving the same, the complainant corruptly and usuriously agreed for and received upon the whole of the said sum of $65,000 the interest for six months in advance, at the rate of six per cent. per annum, and thereby corruptly and illegally agreed for and received more interest than at the rate of six per cent. per annum, by reason of which the said first mortgage became and was void in law, under and by virtue of the acts of the legislature of New Jersey against usury, whereas your orator charges that the said contract and mortgage were not usurious, and that it was not corrupt or illegal upon a *bona fide* contract for the sale of property, as that was, to agree for or to receive interest in advance upon the purchase money; that the said contract was a *bona fide* one for the sale of stock and other property, and not for the loan of money, and that he sold the said property upon the express terms of payment that, as $65,000 of the purchase money was to be paid by instalments at distant days, that the interest should be paid semi-annually in advance, as expressed in the said first mortgage; and your orator expressly denies that the said sales or the said stipulations were a shift or device to cover or conceal usury, or that the said first mortgage was tainted with usury, or void in law.

And your orator further charges, that, if the said agreement for the payment of interest in advance was usurious or illegal, that there was no corrupt intention on his part to agree for or take illegal interest; and that, notwithstanding he was advised by his counsel that the said mortgage was not tainted with usury, and was entirely free from any such vice, yet, as the defendants complained

that the said agreement for the payment of interest semi-annually in advance was illegal, your orator consented to reform the original contract in that particular, and to forego all benefit and advantage from it, and it was mutually agreed, at the time of the said settlement and compromise, that the said stipulation in the said first mortgage and bond should be rescinded and waived, and that any excess of interest which your orator had received upon the said original contract or mortgage, beyond the rate of six per cent. per annum, should be deducted and allowed for in calculating and as-
10 certaining the amount for which the said mortgage and bond were to be given. And your orator further charges, that a calculation was made accordingly, by the said Peter I. Stryker himself, and the excess of interest which it was alleged had been received in consequence of the said stipulation for the payment of interest in advance, beyond the legal rate of interest, was deducted and allowed for to the said company, and that no usurious interest upon the said contract was calculated or included in the said second mortgage.

And your orator insists, that if there was any thing objectionable
20 in the original contract and mortgage, yet as that was one of the matters in difference between your orator and the said company, and one of the errors or mistakes complained of by the defendants, and was corrected and allowed for by mutual consent and agreement before the giving of the said second mortgage, and no usurious interest included therein, the said second mortgage is entirely free from the objection of usury.

And at other times the said defendants pretend that the said Peter I. Stryker was not authorized to make the said settlement and compromise with your orator, and that the said board of direc-
30 tors was not legally assembled when the said resolution was adopted and passed; and, also, that the said Peter I. Stryker, James S. Nevius, James S. Green, and William Thomson, or some of them, were not duly elected directors of the said company, and were not directors when they passed the said resolution, and that therefore the said second mortgage is void, and is not the deed of the said "the president and directors of the Bridgewater Copper Mining Company," the contrary of all which your orator charges to be true.

And your orator further charges, that the said Peter I. Stryker,
40 ever since the first organization of the said corporation, has acted as the authorized agent of the said company in the management and transactions of the said company, and in making and entering into contracts for the company, and that his acts, as such agent, are binding on the said company; and that the said Peter I. Stryker, James S. Nevius, James S. Green, and William Thomson, for a long time both before and after the passing of the said resolution, claimed to be directors of the said company, and acted as such directors, and from time to time attended the meetings of the said board of directors, and, as such directors, participated in all the
50 proceedings of the said company, and constituted a component

part of the said board, as by the book of minutes or proceedings of the said board of directors, which your orator alleges to be in the possession of the defendants, or one of them, or under their control, and which your orator prays may be produced and left with one of the masters of this court for inspection and examination of your orator and his solicitor, as this honourable court shall direct, will, on reference, appear. And that they, when assembled, were a majority of the said board, and a quorum for the transaction of business, and were assembled in the usual way in which the said board were accustomed to assemble for the transaction of business, 10 and therefore, as directors and a board *de facto*, though there may have been some irregularity in their election, or in their assembling, of which your orator had no knowledge or notice, and does not admit, yet the acts and doings of the said board of directors being done under colour of right, their proceedings are valid and binding upon the said corporation, and their contracts cannot be vacated or set aside for irregularity in the election of some of the directors, or for any want of formality in the assembling of the said board.

And your orator further charges, that the proceedings of the said board of directors, in passing the said resolution, and the va- 20 lidity of the said second mortgage, have been and were acquiesed in for years by the said "the president and directors of the Bridgewater Copper Mining Company," and until it was found that your orator could not any longer be put off by delusive promises and false representations, when a change of the president and directors of the said company was devised and contrived, as a plan to cheat and defraud him out of a just and honest debt. And your orator respectfully insists, that if the said second mortgage shall be deemed or considered void for any such pretences as last aforesaid, that then the said first mortgage ought to be considered in full force 30 and effect, as having been obtained from your orator, and wrongfully cancelled, either by fraud or mistake. All which actings, doings, and pretences of the said defendants are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator in the premises. In consideration whereof, and forasmuch as your orator is remediless by the strict rules of the common law, and cannot have discovered any adequate relief, except in a court of equity, where matters of this kind are properly cognizable and relievable, and where the equity of redemption may be barred and foreclosed, and the mortgaged premises sold to pay 40 what is due or shall accrue and become due to your orator—to the end, therefore, that the said "the president and directors of the Bridgewater Copper Mining Company," under their corporate seal, and according to law and the practice of this honourable court, and the said Peter I. Stryker and their confederates, may, upon their several and respective corporate oaths, to the best of their several and respective knowledge, remembrance, information, and belief, a full, true, direct, and perfect answer make to all and singular the matters aforesaid, and that as fully as if the same were here again repeated, and they particularly interrogated thereto, 50

and more especially that the said defendants may, in manner aforesaid, answer and set forth whether the said "the president and directors of the Bridgewater Copper Mining Company" were not indebted to your orator in the aforesaid sum of $86,378, or some other and what sums? And whether, for the securing the payment of the said principal sums, together with the interest which might accrue thereon to your orator, they did not make and execute, under their corporate seal, and according to law, the before mentioned bond or obligation and mortgage first before mentioned, of
10 the date, tenor, and purport and effect before mentioned and set forth, or some other and what bond and mortgage, for what sum, and for what date, and when due and payable? And whether the said mortgage was not duly acknowledged and recorded, as before mentioned, or how otherwise, and when and by whom? And whether the said principal sum has not become due and payable, or when the same will become due and payable? And whether the said principal sum of $86,378, together with a large and what arrear of interest thereon, do not remain due and owing to your orator? And whether the said mortgage first given, as aforesaid,
20 to your orator was not duly executed and recorded, and whether it was ever paid, and how, and by whom? And whether there are any other and what mortgages, charges, or encumbrances upon the said mortgaged premises, or any and what part thereof, and by whom made, done, or suffered, and of what date, and for what sums, and who now has or claims the same respectively? And that the said Peter I. Stryker, who is made a party to the bill for the purpose of discovery, may further set forth and discover whether he was not, in the month of December, 1836, president of the said Bridgewater Copper Mining Company, or at
30 some other and what time, and when he was first appointed president of the said company, and when he ceased to be such president, and whether he is now a director of the said company, and, if not, when he ceased to be a director of the said company? Who are now the president and directors of the said company, and when they were respectively elected or appointed, and where they respectively reside? Whether such settlement and compromise, as before stated, were not made, or some other and what settlement, and by whom, in behalf of the said company? Whether he did not act for and in behalf of the said company, and repre-
40 sent them in the making of the said settlement and compromise, or who did act for and represent them in the making of it? Whether he was not aided and assisted in the making of it by the said James S. Green, the counsel of the said board in that business, or by any other and what person? Whether, in negotiating and making the said settlement, he was not treated and negotiated with as being duly authorized by the said company to make the said settlement and compromise, and to act for and in their behalf? And who acted for and represented your orator on that occasion, and whether your orator was personally present or not? Whether
50 the said "the president and directors of the Bridgewater Copper

Mining Company" did not, on or about the time for that purpose before mentioned, or some other and what time, pass and adopt the before mentioned resolution, or some other and what resolution? Whether he did not deliver a copy of the said resolution to the solicitor of your orator, or to some other and what person, as the evidence of the said settlement and compromise having been confirmed by the said board of directors, and of his authority, as president of the said board, to make and execute the said second mortgage and bond, and to carry the said compromise into effect, or for some other and what purpose? Whether he did not make and execute the said second mortgage and bond as the president of the said board, and as being duly and legally authorized to execute the said second mortgage and bond, and to deliver them to your orator or to his solicitor, or whether he knew or supposed, at the time he executed and delivered them, that he was not duly and legally authorized to execute and deliver the said second mortgage and bond, and to take up and cancel the said first mortgage, and if he did, whether he mentioned or concealed that fact from your orator and his solicitor?

Whether the said James S. Nevius and William Thomson had not, before the passing and adopting the said resolution, acted as directors of the said Bridgewater Copper Mining Company, and whether they, or some, and which of them, had not and did not, both before and after the passing of the said resolution, act as directors of the said company, and attend the meetings of the board of directors of the said company, and participate as directors in the proceedings of the said board, and when they, respectively, ceased to attend the meetings of the said board; if they, or either of them, are or is not now directors or a director of the said company? Whether he himself did not usually attend the meetings of the said board, and take an active part in the transacting of the business of the said company; and whether he did or did not know, at that time, who where the directors of the said board, and in the practice of attending the meetings of the said board? Whether the proceedings of the meetings of the board of directors of the said company have been regularly kept, and who was at the time of passing the said resolution secretary of the said board, and has the book or books of minutes or proceedings of the said board of directors; and when and where was the first meeting of the said board after the delivery of the said second mortgage, and who attended the said meeting as directors? Whether he did not designate the time and place of meeting of the board of directors, and summon or direct the said James S. Nevius, James S. Green, and William Thomson to be summoned to attend the meeting of the board of directors at the time and place when the said resolution was passed, or at whose instigation the said meeting of the board took place? And whether it was not a common and usual thing for the said board to meet without written summons being issued for that purpose? Whether the board of directors did not frequently meet and transact business, without being summoned or

called together in a way or manner not more formal than when the said resolution was passed? Whether he did not obtain from your orator's solicitor, or from some other and what person, and when and how, and under what pretence, the said first mortgage? Whether the said first mortgage has been cancelled, and when and by whose orders, and what has become of it, or who has it, and when he last had it, saw or heard of it, and where it was then?

Whether he was directed by the board of directors, and who composed the board, to obtain and cancel the said first mortgage, or whether he obtained and cancelled it of his own accord, and without any direction so to do? Whether a certificate was not obtained from the clerk of the county, after cancelling the said first mortgage by him, or by the order of the board of directors, and for what purpose or for what object, and when? Whether the said certificate or certificates did not state the existence of the said second mortgage as an encumbrance upon the said mortgaged premises, or what encumbrances on them? Whether the said certificate or certificates were not produced to the board of directors, and when and how often, and what they ordered to be done with them, and what has become of the said certificate or certificates? And that an account may be taken of what is due to your orator, for principal and interest, on his said second mortgage security from the company. And that the said defendants, the said president and directors of "the Bridgewater Copper Mining Company," may be decreed to pay to your orator what shall be found to be due to him on the said second mortgage security, and any further interest which may accrue thereon, together with your orator's costs; or if it shall appear to your excellency that the said second mortgage is invalid and void, that then and in that case that the said first mortgage may be decreed to be in full force and effect, and to have been obtained from your orator, and cancelled by gross fraud or mistake; and that an account may be taken of what is due to your orator thereon, for principal and interest, and that the said defendants may be decreed to pay the same, with your orator's costs.

And that the said mortgaged premises, or so much thereof as may be necessary for that purpose, be sold to pay the same, according to law and the practice of this court. And that the said "the president and directors of the Bridgewater Copper Mining Company," and all persons claiming under them, may be for ever absolutely barred and foreclosed of and from all right of equity of redemption of, in, and to the said mortgaged premises, or so much thereof as may be sold for the purpose aforesaid, and may deliver up to your orator, or to the purchaser or purchasers of the said mortgaged premises, all title deeds, papers, writings, and vouchers in their custody or power relating to or concerning the said mortgaged premises. And that your orator may have such further relief, or may have such other relief as the nature of his case may require and shall be agreeable to equity.

May it please your excellency to grant unto your orator the

state's writ of subpœna or subpœnas, to be directed to the said "the president and directors of the Bridgewater Copper Mining Company" and to the said Peter I. Stryker, thereby commanding them, and each of them, at a certain day and under a certain pain, therein to be inserted, to be and appear before your excellency, in this honourable court, then and there to answer the premises, and, further, to stand and abide such order and decree therein as shall be agreeable to equity and good conscience.

And your orator shall ever pray, &c.

I. H. WILLIAMSON, 10
Solicitor and of counsel with the complainant.

To this bill Peter I. Stryker put in the following answer:

That he admits that the complainant is possessed of a bond and mortgage of the purport of those described in his said bill of complaint; that the said bond and mortgage purport to bear date, and to have been executed by the president and directors of the Bridgewater Copper Mining Company, on the day and year in that behalf mentioned and set forth in the said bill.

And this defendant, in further answering, admits, that, on or about the 12th August, 1830, an agreement was entered into between this defendant and one Stephen Hoyt, acting for himself, and representing himself as acting for Goold Hoyt and Nevins and Townsend, whereby the said Stephen Hoyt, Goold Hoyt, and Nevins and Townsend agreed to sell to the said Peter I. Stryker, this defendant, all their interest in the stock of the Bridgewater Copper Mining Company for the sum of $80,000, and that this defendant agreed with them to purchase from them all their interest, as above mentioned, for the said sum of $80,000, and pay them the sum of $15,000, on or before the 15th September, then next, and the residue in five years from that date, with interest on the same, payable half-yearly in advance, the principal of which to be satisfactorily secured, as will appear by a certain article of agreement in writing, made between the said parties, and to which this defendant, for greater certainty, begs leave to refer. 20 30

And this defendant further saith, that by a subsequent agreement, also made in writing, and which was made a part of the original agreement, it was agreed that the said sum of $65,000 should be paid in four equal annual payments, instead of five, as at first agreed, and the interest thereon should be paid semi-annually in advance.

And this defendant, in further answering, saith, that, in compliance with said agreement, he did, on the 15th September, then next ensuing, that is to say, on the 15th September, 1830, deliver to the said Stephen Hoyt, acting for himself and his associates, before named, a certain bond, executed by this defendant and one Henry Vanderveer, for $15,000, payable on the 15th September, 1831, which was then and there accepted by the said Stephen Hoyt, in part fulfilment of the said article of agreement, and the acceptance of which is thereon endorsed and signed by the said 40

Stephen Hoyt. And he further saith, that at or about the same period of time, but at what particular day this defendant does not now recollect, he did, in further performance of the said agreement, give his own note for the sum of $65,000.

And this defendant, in further answering, saith, that it was understood and agreed by and between the parties, at the time of making the agreement above referred to, that not only the stock of the said Stephen Hoyt, Goold Hoyt, and Nevins and Townsend should be transferred, but that the possession of the mines and real
10 estate of the said company, of which the said Goold Hoyt was then president, should be delivered up to this defendant, so that he might have the benefit of his purchase. And this defendant alleges, that the said Goold Hoyt and his associates, under various pretences, put off the consummation of the contract, on their part, until about the 11th October, 1830, and that, within the period that elapsed between the said 15th September and 11th October ensuing, the said Goold Hoyt and his associates, or some or one of them, surrendered all their possession and right of possession of said mines and property to a third person, thereby disabling themselves from
20 honestly and fairly executing their said contract.

And this defendant further saith, that he had no knowledge whatever of said surrender; that he relied implicitly on the integrity of the said Goold Hoyt and his associates that they would fairly execute and carry out the said agreement, and thus enable him to carry on the mining operations, either by himself or by others, which was his object and intention at the time of entering into the said contract; and this defendant expressly avers, that possession of the said mines and real estate has not been delivered to him, or to any other person or persons in his behalf, or for his use and be-
30 nefit, according to the understanding of this defendant and the true construction and intent of the said agreement; but, on the contrary, the mines and real property were delivered into the hands of another person, in consequence of which, and by whom, this defendant was deprived of that control of the property which he expected to enjoy, and which he ought to have had.

And this defendant, in answering, further saith, that about this time a negotiation for a loan was had and carried on between the Bridgewater Copper Mining Company and the said Goold Hoyt, the particulars of which this defendant cannot undertake to state
40 from memory, but begs leave, for the same, to refer to the minutes of the company, as referred to by the said complainant in his bill. That the said company agreed to give to the said Goold Hoyt four several bonds, for the sum of $16,250, each, payable on the 15th September, 1832, and on the same day in each of the three succeeding years, with lawful interest from the 11th October, 1830, payable half-yearly in advance, secured by a mortgage on the mines and property of said company, and thereupon to take up and receive the said note of $65,000, so given as aforesaid by this defendant, on his contract, above set forth; and accordingly, on
50 the 11th October, 1830, they did execute such bonds and mortgage

to the said Goold Hoyt, and the said note of $65,000 was thereupon delivered over to the said company; and this defendant avers that the said last mentioned bonds and mortgage are the same as are described and set forth in the bill of the complainant, and which are therein described as having been given and received for the balance of the purchase money of said property. And this defendant submits that the said bonds and mortgage, whether founded on an agreement for a loan, or given in part for the purchase money of the said property, being founded on a corrupt and usurious agreement to take from him more than the legal rate of interest, were and are void under the laws of this state. And he further states, that, under and in pursuance of such agreement, the said Goold Hoyt actually received the sum of $1950, or one year's interest, in advance, on the said sum of $65,000.

And this defendant, in further answering, admits that the sums due on the bonds mentioned in the same mortgage were not paid by the company, and that the complainant filed his bill in chancery of New Jersey to foreclose the equity of redemption of the said mortgage, and for a sale of the said mortgaged premises, to which said bill an answer was put in under the seal of the company, and that the same was signed by the defendant, as president of said company. And this defendant presumes that he made the usual affidavit to said answer, and that he therein set forth that he was president of said company; but this defendant has not, at this time, any distinct recollection of the said affidavit or of its contents; but for greater certainty in that behalf refers to the said affidavit on file in the proper office.

And this defendant further, in answering, saith, that, at or about the time of filing said bill, the said Goold Hoyt instituted a suit in the supreme court of this state, against this defendant and Henry Vanderveer, to recover the amount due on the said bond for the payment of $15,000, so given as aforesaid by this defendant and the said Vanderveer to the said Goold Hoyt; and also another suit, that is to say, an action of trespass and ejectment in the said supreme court, against Augustus F. Camman and others, to secure the possession of the said mines and mortgaged premises; that to the first of these suits, that is to say, to the bill filed by the complainant against the said company for the foreclosure of the said mortgage, they, the said company, set up by way of defence, either in their plea or answer, or in both, that the said mortgage was given and made for an usurious consideration or contract, and therefore void; that to the suit brought by this complainant against this defendant and the said Henry Vanderveer on the said bond conditioned for the payment of the said sum of $15,000, the same defence was set up and insisted on by these defendants; that the said suits remained a long time in the said courts pending and undetermined, until at length the said Goold Hoyt, afraid, as this defendant presumes, further to prosecute them, agreed to abandon and discontinue the whole of the said suits, on condition that the costs of the said suits should be paid; and thereupon this

defendant, on the 2d February, 1836, paid to Thomas A. Hartwell, esquire, the attorney and solicitor of the said Goold Hoyt, the sum of $150, being the amount of costs agreed to be paid in the said three causes, on the discontinuance of the same, and which said several suits were severally discontinued by the said Goold Hoyt.

And this defendant further, in answering, saith, that in a very short time after the said suit was discontinued, he was, to his great surprise, served with process to appear before the circuit court of the United States, to be held at Trenton on or about the 1st April, of the same year last aforesaid, to answer to a suit brought again on the said bond for $15,000, on which he had before been prosecuted, with the said Henry Vanderveer, in the supreme court of of this state, and for the abandonment and discontinuance of which he had a short time before paid the costs to the attorney of the said Goold Hoyt.

That he employed one of the attorneys of the said circuit court to enter an appearance, as well for himself as the said Henry Vanderveer, and plead to the said action, and to make the same defence that had been made in the former suit on said bond in the supreme court. That the plea was prepared and filed in the office of the clerk of the said circuit court, prior to the next term of the said court, being the October term; but, owing to some misapprehension of the rules and practice of the said court, on the part of the said attorney, the said plea was not filed exactly in season, according to the requirements of said rules and practice; and the attorney of the plaintiff, who is now the complainant, taking advantage of such misapprehension, took judgment by default against this defendant and the said Henry Vanderveer for the penalty of said bond, issued execution thereon, and placed the same in the hands of the marshal, to levy and make the debt and costs of suit, who levied the same on the property of this defendant. That application was made to the said court, at the next stated term in October, to open the said judgment and set aside the execution, and permit the defendants in said suit to plead, or that the plea which they had prepared and filed should be received; which application was strenuously resisted on the part of the said Goold Hoyt, by his attorney; that the court did not grant the said application, although supported by the affidavit of this defendant's attorney as to the misapprehension above set forth, but doubted and took time to advise. That this defendant, alarmed by the ruinous consequences that threatened him in case the application should be denied, was advised, by way of relief, to submit to the following terms, that is to say, that the execution should be withdrawn, and one year's indulgence be given this defendant on the said suit, in consideration that this defendant would withdraw the plea of usury, and cause a new mortgage to be given for the said sum of $65,000, and the interest due thereon, in the place of the one given in October, 1830, as heretofore stated. With this advice the defendant reluctantly complied, not knowing in what other way to relieve himself from

impending ruin; and by such means the complainant escaped from a legal defence he was afraid to meet, and this defendant was placed in his power with a judgment fastened upon him of upwards of $15,000, for which he had received no just or valuable consideration, such as he had reason to expect when the said bond was given.

And this defendant, in further answering, saith, that some time after the expiration of the year that was allowed him on the judgment in the circuit court, the complainant sued out of said court a writ of *scire facias* against this defendant and the said Henry Vanderveer, requiring them to appear in said court, and show cause why execution should not issue on said judgment; and this defendant being advised by his counsel that no defence could be set up or pleaded thereto, which might have been set up in the original action, such proceedings were thereupon had on the said *scire facias* as that execution was afterwards issued on said judgment, and the property of this defendant levied on, by virtue thereof, and sold.

And this defendant, in further answering, saith, that it was under the pressure of this heavy judgment, thus obtained by the complainant, that the pretended compromise set forth in the bill of the complainant took place. Feeling that he now had power over this defendant, who was then president of the board of directors of the said company (which was merely a nominal office, there being no business carried on by the company), the complainant pressed to obtain a new mortgage at the hands of the company, in place of the old one, which he well knew was tainted with usury and illegal, and which, therefore, was inoperative and void. And this defendant admits that the said second mortgage, as it is called, was executed and given to the said Goold Hoyt by him, this defendant, as president of the board of directors of said company, and under the corporate seal of said company, as the same purports on its face; but he denies that he was at the time acting as agent of the said company, any further than may be implied from the fact of his acting on that occasion as president of the board, or that he had any special authority given him for that purpose; that, situated as he was, he acted, probably, without due consideration in the matter, and intended faithfully to carry out his agreement, and supposed the said company would ratify the act.

And this defendant, in further answering, says, that, speaking from memory and without access to the minutes of the board, he does not recollect when the last election for directors took place, prior to the giving of the last bond and mortgage; but he remembers that from about the month of October, 1830, no mining operations were carried on by the company; the board was merely nominal. Annual elections were not regularly held according to the act of incorporation, and there was little or no business to be transacted, the company not being in possession of the mining premises.

And this defendant, in further answering, saith, that on or about the 17th December, 1836, it being the time set forth in the com-

plainant's bill in that behalf, this defendant, James S. Nevius, James S. Green, and William Thomson, all of whom this defendant believes had been elected directors of said company at some previous time, but when, this defendant cannot answer from recollection, met together in the city of New Brunswick, and the resolution, as set forth in the complainant's bill, was then and there passed and adopted; that the meeting was informal and irregular, the notice of such meeting, as required by the charter and by-laws of said company, not having been given, and the directors who were absent not having been in any way notified of the time and place of said meeting; that the said Goold Hoyt, the complainant, who had previously thereto been president of said board, and was therefore acquainted with the charter and by-laws of said corporation, was present at the time, either personally or by the agency of his son, and must have known from the circumstances, as this defendant supposes, that the said meeting was not convened according to the charter and by-laws.

And this defendant further saith, that he does not know whether the said James S. Green and James S. Nevius, or either of them, were stockholders in said company at the time spoken of when the said bond and mortgage were given, or whether they had been lawfully qualified to act as directors. He believes that the said James S. Green had met with the board on one former occasion, and he thinks the said James S. Nevius never met with the board, or acted before or after; for greater certainty, however, in these particulars, he begs leave to refer to the minutes of the board, to which reference has already been made by the complainant.

And this defendant further saith, that he does not recollect of any previous instance in which business was transacted by the board in such an irregular way; and he denies that it was usual for the board to assemble in this irregular manner for the transaction of business, and that it was done so at this time was owing principally, if not entirely, to the urgency of the complainant to have the mortgage given, and the convenience of getting together the said James S. Green, William Thomson, and James S. Nevius at New Brunswick at that particular time, it being a time when one of the regular courts was sitting in that place, as this defendant believes.

And this defendant, in further answering, saith, that by the resolution, a copy of which is set forth in the complainant's said bill, it is set forth, that upon such settlement (meaning the settlement then made) there was a correction of all errors and mistakes, and a crediting of all payments and claims which the company thought they had a right to make; but this defendant has no recollection of any deductions except for payments and for excess of interest; and yet it is possible other deductions may have been made, but what they were, or to what amount, this defendant does not remember, and cannot answer. His impression is, that the said mortgage was given as a substitute for the first one, deducting therefrom the payments and the excess of interest.

And this defendant, in further answering, says, that he was

elected president of said company in the year 1830, and again in 1838; that the following year he ceased to be president, and is now a director of said company. That, in 1830, he usually attended the meetings of the board, which were few; but he took little part in the transaction of their business, inasmuch as the said company had not possession of the said mines or mining premises at that time, or at any other time previous to the new organization of the board, in 1838. That although this defendant owned considerable stock in said company, he does not recollect of any agency in which he was ever employed by the company, or under its authority, previous to the time last mentioned. That the charge in said complainant's bill, that this defendant, ever since the first organization of the board, has acted as the authorized agent of said company, in the management of its affairs and the making of contracts, is not true.

And this defendant further, in answering, admits, that he, as president of the company, caused the said first mortgage to be cancelled of record; and that a certificate thereupon was procured from the clerk of the county of Somerset, that there were no other mortgages on the said mining property but the last mentioned mortgage of 1836: and such certificate may have been used in Europe and this country to enable the company to procure a loan or to sell the property; but whether the said company have from time to time, or at any time, recognized the validity of said mortgage, or have applied to the complainant not to put the same in suit, and have thereby obtained time, are matters of which this defendant hath no personal knowledge, and he leaves the complainant, therefore, to make such proof thereof as he may be advised, according to the truth of the case and the rules of this honourable court.

And this defendant, in further answering, saith, that, by the resolution set out in the complainant's bill, and heretofore referred to, the second mortgage was to be delivered to the complainant or his attorney on cancelling the said former mortgage and bond; yet that although the said second mortgage was delivered to the said complainant soon after the same was registered, yet the said Goold Hoyt neglected and refused to deliver up the said first mortgage and bond for a long space of time, and, as this defendant believes, for a period of eighteen months, during all which time the same appeared on record as a subsisting encumbrance on the property of said company, as well as the said mortgage so last given as aforesaid—all which was greatly detrimental to the company.

And this defendant, in further answering, saith, that he has no knowledge of any device to change the president and directors of the said company "*to cheat and defraud*" the said complainant out of a just and honourable debt. The change was a natural consequence, as this defendant supposes, of a change in the ownership of stock, which took place prior to the organization of the board in the year 1838.

P. D. Vroom, *Solicitor of defendant.*

To the several answers of the defendants, the complainant put in replications:

WITNESSES EXAMINED ON PART OF THE COMPLAINANT.

William Thomson, of Bridgewater township, Somerset county, a witness called on the part of the complainant, being duly sworn, says—I am acquainted with Peter I. Stryker, of Somerset, and know his handwriting. Know the corporate seal of the Bridgewater Copper Mining Company, and have been secretary of that company; I became secretary in 1830, and continued so until about 1840.

Paper shown witness, marked Exhibit No. 1, he says—I am the subscribing witness; the signature is that of Peter I. Stryker, who was president of the company at that time. The seal is that of the Bridgewater Copper Mining Company. I saw that paper executed, and subscribed my name to it.

Exhibit No. 2 being shown witness, he says—I saw Peter I. Stryker sign it; I am the subscribing witness, and I affixed the seal to it, as the secretary.

Exhibit No. 3 being shown witness, he says—The name thereto subscribed is the signature of Peter I. Stryker, and the seal that of the Bridgewater Copper Mining Company.

Exhibit No. 4 being shown witness, he says—The signature to it is that of Peter I. Stryker; the impression of the seal is faint, but I presume it is that of the Bridgewater Copper Mining Company.

Exhibit No. 5 being shown witness, he says—The signature thereto is that of Peter I. Stryker, and believes the seal to be the corporate seal of the Bridgewater Copper Mining Company.

Exhibit No. 6 being shown witness, he says—The signature is that of Peter I. Stryker, and the seal the corporate seal of the Bridgewater Copper Mining Company.

A paper being shown witness, marked Exhibit No. 7, he says—It is a true copy from the minutes of the proceedings of the president and directors and company of the Bridgewater Copper Mining Company; the whole of it is in my handwriting, and certified by me, as secretary, to be a true copy.

Being cross-examined, says—There were no other directors present at the meeting held the 13th December, 1836, than those mentioned in the paper marked Exhibit No. 7, to wit, Peter I. Stryker, James S. Nevius, James S. Green, and William Thomson. I think that was a special meeting; I think the meeting was during the session of the Middlesex court, but am not certain; I do not recollect whether any notice had been given of that meeting; I was secretary of the company at the time, and do not recollect of any notice being given for this special meeting; I think I was a stockholder at the time, and am yet; I became a stockholder about the time I became a director. It appears to me John Cox and John I. Gaston, and Augustus F. Camman, were directors at the time that meeting was held; I speak from recollection, and am not certain.

Direct examination resumed.—General Stryker attended all the meetings pretty regularly, and was an active member in furnishing money. I think James S. Green, as a member of the board and counsel of the company, attended at the meeting on the 13th, at New Brunswick, and was consulted with by General Stryker; I do not remember whether any notice was given for that meeting, or not.

Cross-examination resumed.—Upon recollection, I recollect that meeting took place during the Middlesex court; I think we were all attending that court, except General Stryker; I have now no recollection of Mr. Green ever meeting with the board before or after that meeting, or Mr. Nevius either. Upon referring to some papers, I now recollect James S. Green attending a meeting, as director, in January 1832; it was during the January court, at my house, in Somerset. I don't remember any thing about any notice of that meeting.

Direct examination resumed.—Mr. Green may have attended other meetings, but I do not now recollect it.

James I. Hoyt, of the city and state of New York, a witness called on the part of the complainant, being duly sworn, says—The paper marked Exhibit No. 8, being shown witness, says, I was acquainted with Thomas W. Hoyt, formerly of the city of New York; he is now deceased. I was acquainted with his handwriting; I have seen him write repeatedly; this is his signature. I was acquainted with Stephen Hoyt, formerly of New York; he is now dead; I believe this signature to be the handwriting of Stephen Hoyt. I was acquainted with David H. Nevins; he is now living in the city of New York. Am acquainted with Peter I. Stryker; think I have seen him write; I believe this is his signature, I mean the signature to the writing on Exhibit No. 8, to which David H. Nevins is the subscribing witness, and all the signatures above mentioned are upon the said paper.

Thomas A. Hartwell, of Somerville, Somerset county, N. J., a witness called on the part of the complainants, being duly sworn, says—I am subscribing witness to two of the endorsements upon Exhibit No. 8; I saw the one signed by Peter I. Stryker and Stephen Hoyt, and the one signed by Stephen Hoyt, alone, executed in my office. I think I have seen the corporate seal of the Bridgewater Copper Mining Company. I believe this is it on the paper marked Exhibit No. 1. I believe this on Exhibit No. 2, to be the corporate seal of said company. These bonds, marked Exhibit No's 3, 4, 5, and 6, I was called upon by Stephen Hoyt, in behalf of Goold Hoyt and Nevins and Townsend, to prepare, together with the mortgage that then accompanied them, for the right and part of the interest of Goold Hoyt, Stephen Hoyt, and Nevins and Townsend, in the Bridgewater Copper Mining Company. I prepared the bonds and mortgage, and attended when they were executed; Goold Hoyt was present, I think Stephen Hoyt, General Stryker, I believe, A. F. Camman, and I believe George Wood, as counsel for Stryker and Camman. I was counsel for the

two Mr. Hoyts. These bonds were given in execution of the contract in endorsement upon Exhibit 8. These bonds were given to secure a part of the purchase money on the sale made by Goold Hoyt and others, as mentioned in the agreement in Exhibit 8, of the Bridgewater Copper Mining Company property. General Stryker and Mr. Hoyt came together when Mr. Hoyt brought Exhibit No. 8 to me, by which to prepare the bonds and mortgage.

The examination was here adjourned until April 25, 1844.

April 25, 1844, in presence of I. H. Williamson, esq., counsel of complainant, and Peter D. Vroom, esq., counsel of defendant, the examination of Thomas A. Hartwell was resumed.

A paper marked Exhibit 9, being a letter from General Stryker to I. H. Williamson, esq., is in the handwriting of Peter I. Stryker. I am acquainted with the handwriting of James S. Green; the letter and signature was in his handwriting in Exhibit marked No. 10. The letter marked Exhibit No. 11, is in James S. Green's handwriting. A paper, marked Exhibit 12, is an exemplified copy of the registry of the original mortgage, bearing date 11th October, 1830; it was compared by me.

By consent of counsel, Isaac H. Williamson and Peter D. Vroom, esq., the examination was here adjourned.

On this 22d August, 1845, at the request of B. Williamson, esq., solicitor of complainant, Thomas A. Hartwell, esq., signed the foregoing examination, no notice having been given by the parties of their intention to take further testimony.

Granville S. Paterson, of the city and state of New York, a witness called on the part of the complainant, being duly sworn according to law, says—He was one of the directors of the Bridgewater Copper Mining Company in 1838. The paper marked Exhibit 14, is a letter dated Philadelphia October 1, 1838, written and sent by me to Goold Hoyt. Paper marked Exhibit 16, is a letter written by me, dated February 1, 1839, and sent to Goold Hoyt; I believe I was a director at that time. Paper marked Exhibit 18, is a letter dated January 10, 1838, written by me, and sent to Henry Hoyt, esq. Paper marked Exhibit 19, is a letter dated January 6, 1838, written by me, and sent to Goold Hoyt. I went, as the agent, to England to endeavour to sell the property; I think it was in 1838. At that time I knew of this mortgage to Mr. Hoyt. I have an indistinct and confused recollection that some paper was sent out to England, in relation to the cancelment of the mortgage.

James S. Nevius, a witness produced and sworn on the part of said defendant, on his oath, says—That he once attended a meeting of the board of the Bridgewater Copper Mining Company at the city of New Brunswick, and at no other time to his recollection and belief. He was notified before, by some person whom he cannot now name, that he had been elected a member of the board, and was, on the occasion above referred to, requested to meet at the city hotel with them. He has no knowledge of being a stockholder in the company; never purchased or paid for any stock in

the company, but supposed that a share had been voluntarily transferred to him, by some one, to make him eligible as a director, but made no inquiries on the subject. Has no knowledge of the fact, that any portion of the stock of said company was ever tranferred to him; has never held any certificate of stock, nor has he ever seen the books of said company. He believes that the only business transacted at the meeting, above referred to, was the execution of a mortgage, by the board, to Goold Hoyt; but for what amount, or upon what property, he does not now know. He took no part in the business then transacted, nor did he, in any way, counsel or advise with the other members of the board in relation to the business, further than to enable them to make a board, and vote on the resolution or resolutions, then introduced, touching the giving and execution of the aforesaid mortgage, as far as he can now recollect. The meeting above mentioned, he thinks, was at or during the Middlesex court, and in the cold season of the year, but cannot say, from memory, in what month or year. William Thomson, James S. Green, and Dr. Peter I. Stryker were present at said meeting, and he believes Mr. Albert Camman was also present. Don't recollect of any other person being present. Does not know that Mr. Albert Camman attended as a member of the board, or whether he was then a member of the board. Does not know whether the meeting above mentioned was convened in pursuance of any regular and legal notice, or that any evidence of such notice was given at the time. He thinks that he was advised of such meeting, the day it took place, by Mr. Green, who communicated it to him verbally, and requested him to attend; don't recollect of receiving any other notice; and don't recollect of ever having received any other notice of said meeting, or of any other meeting of the board, before or since.

Augustus F. Camman, a witness produced by the said defendants, and being by me duly sworn according to law, deposeth and saith—I remember a mortgage given by the Bridgewater Copper Mining Company to Goold Hoyt, somewhere about the 11th October, 1830. I think the amount of the mortgage was about $65,000. This mortgage was given for a loan of money, in the shape of a note, made by Peter I. Stryker to Goold Hoyt, who endorsed it over to the Bridgewater Copper Mining Company. Goold Hoyt agreed to loan to the company the sum of $65,000, and the company agreed to take this note, made by Peter I. Stryker, as cash, and give to Goold Hoyt the mortgage; the company wanted the money to work the mines. At the commencement of the meeting at which the mortgage was given Mr. Goold Hoyt was the president of the company, and one of the directors. I have understood that there was a subsequent mortgage given by the company to Goold Hoyt. I was one of the directors of the company at the time this last mortgage was given. It was some years after the giving of the first mortgage, perhaps five or six years; do not recollect. I heard of the mortgage being given on the very day it was given. I am satisfied that I was at the time

one of the directors. I was not present at the meeting when the mortgage was given; the meeting was held at New Brunswick. I had received no notice of the meeting; did not know that the meeting was to be held. I was at the time a principal stockholder in the company. I would not have agreed to the giving of the mortgage, if I had been present. I had no share or participation in the making of this mortgage, and knew nothing about it, until it had been revealed to me that it had taken place. I was in New Brunswick on the day, but not on that business, and had no know-
10 ledge of the meeting until after I had heard of the execution of the mortgage.

Being cross-examined, says—I am not a stockholder in the company; I have sold all my stock to my children since the execution of the last mortgage. I am not interested in this suit, neither will I gain or lose by the event of this suit. I do not know that the first mortgage has ever been paid. I think that the second mortgage was given in lieu of the first mortgage. At the time of the execution of the last mortgage, it appears to me that I came from Philadelphia to New Brunswick; but of this I am not certain. I
20 was from home somewhere and was on my return, and stopped at New Brunswick, when I was told of the execution of the mortgage. New Brunswick was on my route home; I had not been from home more than a day or two.

In chief.—At the time the second mortgage was given, when I had stopped at New Brunswick, I understood the Middlesex court was in session.

William Thomson, a witness on the part of the defendants, being sworn, says—The book now shown me, marked Exhibit A, on the part of the defendants, is the book of minutes of the Bridgewater
30 Copper Mining Company. I was the secretary of said company, and one of the directors from October 10, 1830, to January 1, 1838. The minutes of the board of directors of said company, during that time, are in my handwriting. I was not a stockholder in the company at the time of my appointment as secretary or director. I became a stockholder on the 14th April, 1831. The meeting of the directors, at which the second mortgage was given by the company to Goold Hoyt, held at New Brunswick, was a special meeting, held without any resolution of the board, or any notice given to the directors, as I know of. The board held occa-
40 sional meetings for the transaction of business, when a quorum could get together, without giving notice to all of the directors.

After argument of the cause, the following decree was made by the chancellor:

This cause coming on to be heard before the chancellor at a regular term of the court of chancery of New Jersey, held at Trenton in March term, 1846, upon the pleadings and proofs in the cause, and the same having been argued by Mr. Williamson, of counsel for and on behalf of the said complainant, and by Mr. Vroom, of counsel for and on behalf of the said defendants, and
50 the chancellor having taken time to consider the same, and at the

request of the said counsel, the opinion of the chancellor having been postponed from time to time until the present term of the court, and the chancellor being of opinion that the said defendants have failed to sustain the several defences, or any of them, set up in their answer to the said complainant's right of recovery upon his said mortgage, and that the said mortgage of the said complainant, and the bond secured thereby, are valid, and that the said complainant is entitled to have the money intended to be secured by the said bond and mortgage out of a sale of the whole or of so much of the said mortgaged premises as may be necessary for that purpose, and the chancellor being further of opinion that the mortgage bearing date 15th December, 1836, for the sum of $86,378, executed by the said defendants, the Bridgewater Copper Mining Company, to Goold Hoyt, the testator of the said complainant, was given to secure the amount due upon the mortgage bearing date 11th October, 1830, for the sum of $65,000, made and executed by the said the Bridgewater Copper Mining Company to the said Goold Hoyt, and which said several mortgages are set forth in the bill, and that in the said first mentioned mortgage, the interest, at the date last aforesaid, due upon the said last mentioned mortgage ought not to have been included therein, as part of the principal thereof; but that the said complainant is entitled to no more than the principal sum of $65,000, and the interest thereupon, at the rate of six per cent. per annum, from 11th October, 1830—

It is thereupon, on this 31st December, 1846, ordered, adjudged, and decreed, by the chancellor, that the said complainant is entitled, upon his second mortgage, to the sum of $65,000, and interest thereon from 11th October, 1830, after deducting therefrom any payments that may have been made upon the same; and that it be referred to Archer Gifford, one of the masters of this court, to take the accounts accordingly, and to report with all convenient speed.

O. S. Halsted, C.

In pursuance of this decretal order, the master reported, on the 12th February, 1847, that there was due to the complainants the sum of $128,710.83; and a final decree was thereupon made for the sale of the mortgaged premises on the 20th of March, 1847.

On the 10th May, 1847, the Bridgewater Copper Mining Company filed their petition of appeal in this court, praying that the said decree may be reversed, for the following reasons:

1. That the said supposed mortgage is not the deed of these appellants.

2. That the same is not a valid and subsisting mortgage.

3. That the sum in the said decree mentioned, or any other sum, is not due thereon, and that the said premises should not be sold to pay and satisfy the same, or any part thereof.

P. D. Vroom, *for appellants,*

Benj. Williamson, *for respondent.*