THE ERIE WAR.

Grand Field Day in the United States Circuit Court.

AFFIDAVITS AND COUNTER AFFIDAVITS.

The Case of the People vs. The Erie Ring.

The Directors Temporarily Suspended.

Rumored Flight of Several of the Erie Directors to Parts Unknown.

UNITED STATES CIRCUIT COURT.

The Campaign in the United States Courts—The Opposing Parties Rally in Great Force—Charges and Counter-Charges—The Fight Still Going On.

Before Judge Nelson.

Henry D. Whelpley vs. The Erie Railroad Company.—This interminable legal contest was carried into the United States Circuit Court yesterday morning. The court room was crowded long before the venerable judge took his seat on the bench. The opposing counsel, with their followers, bearing plethoric law bags, arrived early and arrayed themselves for the coming action at opposite tables, with a good space between them. When these bags were opened there was an alarming amount of red taped and red sealed papers and documents drawn therefrom, which soon covered the tables and gave an indication of the extensive field which the operations of the day would cover.

First among the great chieftains of the Erie war appearing in the arena was the legal Saul among all his compeers, the hero and victor of a thousand legal jousts, the indomitable and energetic Charles O'Conor. Then followed on the same side the other leaders in the tournament. On the side of Belmont and Davies—Edwards Pierrepont, Henry C. Davies, D. B. Eaton, Judge Noah Davis, C. A. Rapallo and their knights and attendants and men-at-arms.

On the opposite side of the arena, armed and prepared at all points for the encounter and chafing impatiently for the summons to charge, appeared the able and experienced chieftain (taking the post of honor on the part of the Whelpley and Gould faction), Edwin W. Stoughton; next followed in the order of their rank and deeds in legal arms David Dudley Field, Judge Porter, Clarence A. Seward, A. J. Vanderpoel, with their retainers and attendants, the latter being some time busily engaged in selecting from their respective legal arsenals the paper implements of war that were to be wielded in the coming fight by the principal combatants.

The herald of the court having announced with the usual flourish of "oyez, oyez," the approach of the Judge of the combat, that venerable functionary, Judge Nelson, appeared, to whom all the knights on either side courteously bowed. The Court, with the usual inclination of the judicial head, acknowledged the salutation, and at once, without any circumlocution whatever—a thing ignored by Judge Nelson—entered on the proceedings of the day.

The Court said—Now, gentlemen, go on.

Mr. Rapallo said—May it please your Honor, this is a motion for the issuance of an order of this court to set aside an order of the Judge of the United States District Court of this district appointing J. Gould a receiver of the Erie Railroad Company. All the papers have been duly served upon the defendants in the case—in the case of J. Gould, one of the principal defendants, personally. I now ask the Court to allow a hearing to be had in the case.

The Court—Proceed with the case.

Mr. Seward said he appeared for Mr. Whelpley, who denied that Mr. Belmont, as alleged in the complaint in the case, owned any stock of the Erie Railroad Company, of a similar character as that owned by him and in behalf of which he brought his suit. Counsel then asked for an order of reference to determine whether in point of fact Belmont owned any such stock.

Mr. O'Conor—Such a course does not belong to a preliminary proceeding, but would go into the merits of the case.

The Court—Yes; I agree with counsel that that would be going into the merits of the case.

OPENING BY MR. RAPALLO.

Mr. Rapallo then proceeded to address the Court, charging upon counsel, on behalf of Whelpley, with having procured the order appointing J. Gould receiver over eight millions of the property of the Erie Railroad Company granted by Judge Blatchford in fraud of a proceeding then pending in the Supreme Court of this State. The whole proceeding was in violation of an injunction previously issued by the Supreme Court of the State, and which forbade the company to allow any disposition to be made of the funds of the company except through the regular channel and through the hands of the treasurer or as the courts might direct. This order had been granted by Judge Sutherland, but in opposition to this the order appointing J. Gould was obtained, and that party appointed such receiver was the last person in the world that should have been selected by any court having a knowledge of the circumstances of the case; that, in fact, the motion had been made in the United States Court with a view and was a contrivance to throw around this man, then being proceeded against in a State court for his misconduct, the mantel and protection of this court and to wrest from him the property of the company, which he was misappropriating. The mode by which Gould was appointed a receiver by a Judge of the United States courts is but one of a series of frauds on the part of those men who are seeking control of the company in the matter. The facts are that on the 18th of November Belmont & Co. commenced an action in the Supreme Court of the State against J. Gould, James Fisk, Jr., Frederick R. Lane and other directors of the Railroad Company; that Gould being president and treasurer of the company, the complaint in that case set forth that an illegitimate issue of stock was made, and that by certain contrivances and devices J. Gould, James Fisk, Jr., and Frederick R. Lane had obtained absolute control of the affairs of the Erie Railroad Company. There was a bylaw which vested all the power of the Board of Directors in an Executive Committee, which was composed of five persons, two of whom, with the president, could act as such board; that these three men had gone on managing the affairs of the company as they pleased, controlling its assets and not calling meetings of the Board of Directors, and that no such meeting had been held since the election of the Board of Directors, but that everything had been under the control of these three men, Gould, Fisk and Lane; that they had issued $18,000,000 of stock illegally previous to the year 1868, and that they had since then continued to issue stock; that they had accumulated vast sums of money, gathered from these sales, to the amount of $16,000,000, which they hold in their hands; that it was notorious that by locking up these $16,000,000 and at times using it as a means of procuring other large sums of money it was notorious that the whole commercial business of the State was paralyzed—its agricultural interests suffered severely and its railroad interests sacrificed, and, in fact, every interest that required the use of money, was for a time under a severe pressure. And it is charged that these three men (Gould, Fisk and Lane) used all the money and funds of the company for their own private ends, and to their private advantage. That by causing a stringency in the money market and continuing vast issues of stock they depreciated the stock of the company till the same fell to a low figure, when they would purchase it and then raise the price again. It is also generally charged that they (Gould, Fisk and Lane) had been engaged in making purchases of property not legitimate for railroad purposes—purchases of real estate and other property to the amount of millions; that they were interested in these purchases, receiving bonuses therefor, and charging them with various other acts of misconduct. It was enough, counsel said, to show the general character of the charges made against them in the State court, and on which it might be said they were on trial, on a motion for injunction then pending, when that night, near the close of the argument, when the learned and upright Judge who was hearing the case was compelled by the enormity of the frauds exhibited to give an order and who was at the time unable to conceal the feeling these frauds made upon him. Then counsel seeing the case was desperate rushed over here and induced the Judge of the Court to throw his mantle around them and to defeat an order granted the same evening by Judge Sutherland. That Judge Blatchford was unaware of the acts for which his interference was asked was undoubted, for it could not be presumed that any Judge, knowing these facts, would willingly sign any such order.

It may perhaps be necessary that I should briefly state to your Honor a little of the history of the contrivances by which the stock of the company has been manipulated.

Mr. Stoughton—Excuse me interrupting you. What you say here with regard to the company we do not propose to accept as the ground on which your motion is made, nor to act on the statements or arguments of counsel. Nor do we intend to ask the Court to receive our statements or arguments in reply. We intend to read affidavits in answer to affidavits with which we have been served. We suppose the regular course to be to read the affidavits on which counsel rely, leaving it to them to state the contents of such papers as they are willing to state without reading; we are willing to meet the case by the affidavits and papers, and which will probably disappoint the imagination of the gentleman who is stating, so newly loosely, I think, facts which will be found do not belong to the case.

Mr. O'Conor—I agree with the counsel on the other side. Our papers have all been served upon them, and instead of wearying your Honor we will state our case from them.

Judge Nelson—If papers are to be read in addition to the rule to show cause it is proper that they be read before the case is opened.

Mr. O'Conor—We have no objection to that.

Mr. Stoughton—If the Court understands that we are to read our answering papers without having papers read on the other side, but the contents stated, we are ready to go on.

Judge Nelson—The regular course on the motion is to bring the papers before the Court and the counsel may read them or refer to them.

Mr. Pierrepont—This is what counsel is now doing; merely giving the contents of the papers.

Judge Nelson—So I suppose; but inasmuch as the papers have been served on the other side in opposition to the rule, it is not necessary to read them till the argument is opened.

Mr. O'Conor—Your Honor ought to have a brief statement of what our papers contain, perhaps.

Judge Nelson—No; that is usually given in the argument, and it is necessary that it should be given in advance.

Mr. O'Conor—If it is not necessary to your Honor it is not necessary to us, and counsel can go on.

Judge Nelson—Counsel can produce affidavits in opposition to the rule before argument opens.

Mr. Stoughton—I will add that it is usual for moving counsel, on a motion like this, either to read the papers on which the motion is to be made or to state them without interspersing them with reflections on any body or any tribunal. I thought counsel was misapprehending the usual course by previous argument and therefore I interrupted him.

Judge Nelson—It is proper that counsel on behalf of the rule should have before them the opposition papers before argument opens, and if you have them let them be produced.

Mr. Seward—As solicitor and counsel for Whelpley I should have no further interest in the case beyond having your Honor decide the question already presented—whether Mr. Belmont is or is not the owner of similar stock as that owned by Mr. Whelpley—were it not for the fact that in the moving papers and in the language used by the other side there is a specific charge of collusion on the part of this plaintiff touching something or somebody which has been improperly, as I take it, brought into the case, which I shall read, and read the affidavit in answer thereto.

AFFIDAVIT OF HENRY B. WHELPLEY—ANSWER TO THE CHARGE OF COLLUSION.

Mr. Seward then read the following affidavit:—

Henry B. Whelpley vs. The Erie Railway Company.—Henry B. Whelpley, being duly sworn, says:—That this suit was brought in this court, under the advice of his counsel, for the purpose of having the question decided by this court, and in this action, if possible, whether the stock in said bill mentioned was the genuine stock of the defendant, or whether the same was illegal, and conferred upon the holders of the certificates thereof no equal rights as stockholders in said company; that the proceedings which have taken place in this cause have not been, so far as he is concerned, collusive, and that they were not intended to deprive either Belmont or Lucke, or other stockholders of said company, or any other persons of their remedies either against Mr. Jay Gould or any other person, but that the same were taken with the intent of procuring from this court by as speedy a decision as possible a determination of the question presented by the bill herein, for the benefit of all parties interested in the decision thereof; that if the said Belmont and Lucke are holders of the same kind of stock as that held by this deponent, then this action was brought as much for the protection of their said stock as that of this deponent or any other holder.

This deponent further says that it is true that at one time he was a clerk in the employment of Messrs. Fisk, Belden & Co., but he denies that he has been so in their employ for the last six months; he avers that for the last six months he has been engaged, and is now engaged, in business on his own account, and he denies that he has ever purchased, or that he now holds, any stock of any kind—including that mentioned in the bill herein—for the purpose of aiding Messrs. Fisk & Gould, or either of them, or any other person, in the perpetration of any fraud or to aid them in doing any improper act whatsoever.

Sworn to this 30th day of November, 1868.

Mr. Rapallo—Are these all the papers to be read?

Mr. Stoughton—No; have a little patience. There are many more to be read.

Judge Nelson—There are the affidavits of Gould, Fiske and others.

Mr. Stoughton—Your Honor, before proceeding to read the affidavits that will be presented to your Honor on behalf of the Erie Railroad Company—for which company Mr. Field and myself appear—I will state that the papers on which this motion is made—the motion having a twofold purpose: to remove Gould from the receivership and interpolate in his place Mr. Henry E. Davies—the papers, your Honor, were served last Saturday afternoon; and the parties, knowing perfectly well from the history of this controversy, with which they were all familiar, that any suggestion of delay for the purpose of making the charges would be stigmatized as an effort to postpone and put off judicial action, have prepared, no matter within what hours, such affidavits as for the first time since this controversy opened will present to judicial notice the facts involved in this case. For while three of the directors of the company were charged in the complaint in the Supreme Court, and which is part of the motion and on the papers here, with acts of misconduct of the gravest character, they had no opportunity either to meet them, the order to show cause being returnable on the 23d of November, on which day a receiver was appointed of the entire effects of the property of the company. Their names being entered on the printed order no time was allowed for the reading of the affidavits in reply to the papers there. But now, your Honor, we have affidavits here which we shall present, and which will dispose of these atmospheric currents of rumor which have been so prevalent, and although we hope to have one or two more ready before the reading can be concluded we shall ask for no delay.

Judge Nelson—Go on with the reading of your affidavits.

Mr. Stoughton—Will your Honor, before taking a note of the affidavits, mark the fact that on page *twenty-six of the complaint* served on this motion—the complaint in the Supreme Court of the State—will be found a statement of the directors who were elected in October.

Judge Nelson—Which do you refer to?

Mr. Stoughton—The complaint of Belmont & Lucke against the Erie Railroad Company and others, and on which the order for the receiver was made. It is a part of the moving papers. Your Honor will understand the affidavits better by having your attention called to the fact that while the complaint charges that Gould, Fiske and Lane, three of the directors, controlled the election of directors, held October, 1868, and caused themselves to be elected, there was also elected with them a number of other gentlemen, to the number of ten or eleven, and it is alleged that these gentlemen personally obtained the election of directors by fraud. Now it appears that there was only one ticket proposed for directors; that not one vote was given for others on this election, and from this it will also appear that these so-called conspirators met with the approval of the stockholders of the company.

Mr. Pierrepont—Do the affidavits state that the parties referred to were present and voted or whether they voted by proxy?

Mr. Stoughton—Look at the affidavits and you will find that they were all in the city at the time.

Mr. Pierrepont—We simply want to know what the affidavits set forth.

Mr. Stoughton—You will find that out presently.

Judge Nelson—State the substance of the affidavits.

Mr. Stoughton—Yes, your Honor; but I do not wish counsel to misunderstand me. Here are the names of the parties who voted and the number of shares they represented.

Ex-Judge Porter proceeded with the reading of the affidavits.

AFFIDAVIT OF JAY GOULD—DENIAL OF CHARGES CONTAINED IN THE BELMONT AFFIDAVITS.

Henry B. Whelpley vs. The Erie Railway Company.—Jay Gould, being sworn, says that since the present Board of Directors was elected, which was on the 13th day of October, 1868, no bonds, convertible or otherwise, have been issued by the defendant; that all of the bonds issued by the defendant were so issued by it prior to the said 13th day of October, 1868; that since the date of said election there has been no stock issued by the defendant, except such as was issued on the conversion of bonds so as aforesaid issued prior to the said election and in pursuance of the agreement contained in said bonds, that the same would be converted into stock at the option of the holder.

I further say that the moneys arising from the issuing of the said convertible bonds were not kept separate, distinct and apart from the other moneys and funds of the said company, but the same were mingled with the general funds of the company, and were kept as such other funds were kept, and could not, after the receipt thereof by the company, be traced as the proceeds of any particular bond or bonds, or otherwise identified; the company, however, kept on its books proper accounts showing receipts and expenditures as required by law.

I further say that an affidavit was made by me in the action in the Supreme Court, in which said August Belmont and Ernest R. Lucke were plaintiffs, and that in said affidavit I met and controverted many of the allegations in the complaint in said action. That the said affidavit was not then completed for want of an opportunity and sufficient time therefor. The court in which the action on the argument of which the said affidavit was intended to be used having at the earnest solicitation of the counsel for said Belmont refused to grant any postponement of the said motion to procure said affidavit to be completed. That I have as yet had no opportunity to meet the charges made in the complaint of said Belmont against myself and my associates in the board of directors of said company, and which charges, so far as they impute to me or my co-directors any official misconduct, I declare to be untrue. Since the hearing of said motion in the Supreme Court I have been engaged in preparing an additional affidavit to be used in the said action in the State court, and have not yet fully completed the same. That copies of said affidavits are hereto annexed, and I reaffirm the several statements therein, and in addition thereto say:—

As to the allegation in the complaint of said Belmont that in order to provide against the contingency of not securing a sufficient number of votes at the election in October, 1868, a certificate or certificates for 200,000 new or additional shares of stock were prepared or issued as a pretended conversion of convertible bonds of the said company, I deny the same and say that the same is wholly untrue, and no such certificate or certificates and no such share or shares were made or issued, or was or were prepared or issued, and that no such pretended conversion was made for the purposes alleged in the said complaint or for any other purpose, or at all, and that I know of no shares or certificate to which, by any possibility, the said allegations in the said complaint could refer.

I further say that all the votes cast at the said election in October, 1868, were cast in favor of the present board, and that said board was unanimously elected, as will appear more fully by the affidavit of Mr. Peck, one of the inspectors of said election; and in regard to the charge covertly intimated in the complaint that stockholders residing abroad who could not attend to the election in person were, or may be, prevented from voting at the elections by the adoption of a by-law providing that stock shall be voted on only by the stockholders in person, I deny the same, and I aver that no such by-law has ever been adopted or contemplated; and I deny that any alien stockholder has been or can be prevented from voting at the elections of said company by any action of the board of directors thereof, and at the last election a large amount of stock, which I believe and which was claimed to be property of non-residents, was voted on by proxy.

I further say that the allegation in the petition of August Belmont herein, that the shares mentioned in the bill herein was put or caused to be put into the name of the complainant by me is untrue. I further deny that any convertible bonds of the company have been issued, or any shares of stock of the company issued in exchange therefor, or otherwise, for the purpose of obtaining the possession and control of money and of withdrawing the same from circulation or diverting the same from the ordinary channels of business, or of creating a scarcity of money or of depriving the public of the facilities of loans from banks or moneyed institutions or of creating a depreciation in moneyed securities, and I say that the allegation in that behalf made in the said complaint are untrue. I deny the allegations in the complaint of said Belmont in regard to the amount of money received by the firm from the earnings of the company and other sources, and deny the said amount as are in said complaint correctly stated, or that the said moneys have not been kept in the treasury of the company, or have not stood to its credit, or that they have been under the control of Mr. Fisk and myself as individuals; but I say that all the moneys received by me for and on account of the said company have been held by me as treasurer and in the manner stated in my former affidavit.

I deny that any portion of the money of the company has been secreted, concealed or removed to Canada or elsewhere beyond the jurisdiction of the court, or that the same have been used in the private speculations of Fisk and myself, or of either of us.

As to the allegation of the complaint, that by making issues of stock and locking up the proceeds thereof and rendering money scarce the price of the stock has been reduced, as in the complaint mentioned I deny the same and say it is untrue; and also deny the allegation that Fisk and myself have been enabled to, or have in fact by the means in the complaint charged obtained speculative contracts for the delivery of stock of the company, or rendered the stock scarce, or raised the price on the market temporarily and fictitiously, or that I have intended or designed to secure the results or objects in the behalf charged in the said complaint.

The allegations in the said complaint in regard to the pecuniary means and responsibility of Mr. Fisk and myself are untrue, and I deny the same of my own knowledge, and I believe the same to be untrue so far as respects Mr. Lane.

I was advised that this suit would be commenced by the complainant, and being assured in my own mind that my own conduct as the President and as a director and as the treasurer of the defendant has been in all respects just and correct, and believing that the action of my associates in said Board had also been in all respects just and correct, I expressed my willingness that such suit should be commenced in this court for the purpose of presenting to this court for its determination the question whether the stock mentioned in the bill herein was properly issued; and such was the only question which I understood to be presented in said suit.

When the details of the relief to be demanded in the action came under discussion, after—as I understood—the bill had been nearly completed, I claimed and asserted that I, as the treasurer, was the party entrusted by the stockholders and their representatives with all the moneys of the defendants, and that I should be continued in the custody thereof, and that I should not be interfered with therein, and that I was willing to give any reasonable security which the Court might require. This, I believe, was faithfully communicated to the court, and I have given the security required by the order.
JAY GOULD.

Sworn this 30th day of November, 1868.

JOINT AFFIDAVIT OF JAMES FISK, JR., AND FREDERICK A. LANE—THE ISSUE OF CONVERTIBLE BONDS AS CHARGED DENIED.

James Fisk, Jr., and Frederick A. Lane, being severally sworn, say, and each for himself says, that no convertible bonds of the said company defendant above named have been issued since the election of the present Board of Directors, in October, 1868, and that no stock of the said company has been issued since such election, except in exchange for and conversion of such bonds so previously issued as aforesaid.
JAMES FISK, JR.
FREDERICK A. LANE.

AFFIDAVIT OF JAMES FISK, JR.—THE BELMONT ACTIONS.

James Fisk, Jr., being sworn, says:—I have heard read the affidavits prepared for Jay Gould to be used in the State court in the action in which August Belmont is plaintiff, and have heard read two affidavits prepared for Jay Gould to be used in the above cause in this court, and the same are true to my own knowledge so far as the same relate to myself, and that so far as the same relate to my co-directors I believe the same to be true. And I also say that annexed hereto is an affidavit made by me in the aforesaid action, in which said Belmont is plaintiff, and I reaffirm the same. Since said last mentioned affidavit I have been informed and believe that the said action of Belmont is prosecuted under an arrangement whereby one-half of the expense of the proceedings is to be paid by Daniel Drew and the other half by Frank Work and Richard Schell in equal portions. I deny that I put or caused to be put in the name of the plaintiff herein the shares of the stock by him mentioned in his bill herein. I deny the allegations in the said complaint and petition of Belmont in regard to my pecuniary responsibility of my own knowledge, and so far as respects Mr. Gould and Mr. Lane I believe them to be untrue.

I deny the charge of combination and confederacy in the said complaint and petition of said Belmont, and I deny all the allegations therein, charging me with any wrongful or improper conduct or with any official misconduct.
JAMES FISK, JR.

AFFIDAVIT OF JOHN A. HILTON—THE TRANSFER BOOKS.

John A. Hilton, being duly sworn, deposes and says:—I am now, and have been since its organization, the transfer clerk of the Erie Railway Company, and have had and now have charge of its transfer books. None of the 4,000 shares of stock mentioned and referred to in the complaint in the action of August Belmont and Ernest R. Lucke, as owned by them, and for which certificates were issued July 17, 1868, and October 27, 1868, form any part of stock issued in exchange for the convertible bonds referred to in the bill of action. These certificates so issued as aforesaid were issued on the surrender of other certificates, all of which had been issued prior to the first day of September, 1868.

I further say I made up the list of the stockholders of the Erie Railway Company furnished to the inspectors of election on the 13th day of October, 1868, and the same were in all respects correct and in accordance with the books of said company.
JOHN A. HILTON.

AFFIDAVIT OF CHARLES A. PECK—THE ELECTION OF DIRECTORS.

Charles A. Peck, being duly sworn, says that he was one of the inspectors of election at the last election of directors of the Erie Railway Company, held on the 13th day of October, 1868; that at said election the present Board of Directors of said company received the votes of [illegible] shares of the common stock of said company; that in addition thereto all the votes which were at that election cast on the preferred stock of said company were cast in favor of said Board; that all of the shares, votes on which were so cast in favor of said Board of Directors stood on the books of the company at the time of the said election, and had so stood for thirty days prior thereto, in the names of the parties who either in person or by proxy cast said votes. That for the purposes of said election a poll list, as is usual at corporate elections, was furnished to the inspectors, stating the names of all parties appearing by the books of the company to be the owners and holders of the said stock thereof, which said list was duly certified by the transfer clerk of said company. That by said poll list it appeared that the whole number of shares of common stock of said company entitled to be voted upon at said election was 377,613.

That at the said election no opposition was made to the election of the present Board of Directors, nor was any opposition ticket presented at said election; that the existing Board of Directors was unanimously elected.

That annexed hereto is a list of the persons who voted at said election, together with the number of shares of stock on which their votes were cast.

That this deponent has been and has acted as inspector of elections at elections for directors of corporations for the last twenty years, and is familiar with the mode in which such elections are conducted, and as they are required by law to be conducted, and is familiar with the provisions of law regulating and governing the same, and that the election of directors of the said Erie Railway Company abovementioned was conducted honestly and fairly, and in accordance with such usage and custom and such provisions of law.
CHARLES A. PECK.

AFFIDAVIT OF HENRY B. WHELPLEY—THE APPOINTMENT OF GOULD AS RECEIVER.

Henry B. Whelpley vs. The Erie Railway Company.—Henry B. Whelpley, being duly sworn, says that this suit was brought in this court under the advice of his counsel, for the purpose of having the question decided by this court, and in this action, if possible, whether the stock in said bill mentioned was the genuine stock of the defendant, or whether the same was illegal, and conferred upon the holders of the certificates thereof no legal rights as stockholders in said company; that the proceedings which have taken place in this cause have not been, so far as he is concerned, collusive, and that they were not intended to deprive either Belmont or Lucke, or other stockholders of said company, or any other person, of their remedies, either against Mr. Jay Gould or any other person, but that the same were taken with the intent of procuring from this court, by as speedy a decision as possible, a determination of the question presented by the bill herein, for the benefit of all parties interested in the decision thereof. That if the said Belmont and Lucke are holders of the same kind of stock as that held by this deponent, then this said action was brought as much for the protection of their said stock as that of this deponent or any other holder. This deponent further says that it is true that at one time he was a clerk in the employment of Messrs. Fisk, Belden & Co.; but he denies that he has been so in their employ for the last six months. He avers that for about the last three months he has been engaged and is now engaged in business on his own account, and he denies that he has ever purchased or that he now holds any stock of any kind, including that mentioned in the bill herein, for the purpose of aiding Messrs. Fisk and Gould, or either of them, or any other person, in the perpetration of any frauds, or to aid them in doing any improper act whatsoever.
HENRY B. WHELPLEY.

ANOTHER AFFIDAVIT BY JAY GOULD—THE $25,000 OF THE SPECIAL FUND.

The following affidavit was also read by the counsel for Gould and Fisk:—

Jay Gould, being sworn, says that he is President of the Erie Railway Company; that the $25,000 paid out of the special fund authorized by the act of the Legislature passed the 21st day of April, 1868, was paid either to Henry E. Davies or Charles A. Rapallo, who were counsel for what is known as the Vanderbilt party in the litigation of July last, and a large sum was paid to the other of said counsel out of the $429,250 paid by said company to Richard Schell in settlement of his suit.
JAY GOULD.

AFFIDAVIT OF THE CASHIER OF THE ERIE COMPANY—DISPOSITION OF THE $25,000.

Justin D. White, being sworn, deposed—I am cashier in the office of the Erie Railway Company and have been so for twelve months; I am acquainted with the history of what is commonly known as the litigation, commencing in February, 1868, and ending in July or August of that year; in the course of that litigation Henry E. Davies and Charles A. Rapallo appeared as counsel of Richard Schell and others, comprising what was called the Vanderbilt party, to the best knowledge and belief of deponent; on or about the 2d of July, 1868, a settlement was effected in the presence of the counsel, Daniel Drew, John S. Eldridge, Richard Schell and Charles A. Rapallo, on deponent's best knowledge and belief; hereto are annexed copies of receipts taken for payments made by the Erie Railroad Company, in pursuance of such settlement, which rates, as deponent is informed and believes, are in the handwriting of said Rapallo; the special fund out of which the $25,000 mentioned in one of the said receipts was paid was the fund mentioned in the act of the Legislature of the State of New York, passed April 21, 1868, entitled "An act in relation to the Erie, New York Central and Hudson River and Harlem Railroad Companies." (Here is copied a letter from Mr. Pierrepont to the President of the Erie Railway Company.) An action has been brought by the Erie Railway Company and is now pending to recover from said Richard Schell and others the money thus paid to him. Annexed is a copy of the complaint in said action, and I believe all the allegations therein to be true.
J. D. WHITE.

THE RECEIPT FOR THE MONEY.

Received, New York, July 2, 1868, of the Erie Railway Company, the sum of $25,000, being the amount mentioned in the order made in this action, dated this day, as payable for the costs, counsel fees and expenses of the plaintiff in this action and in the proceedings for the appointment of a receiver herein.
RICHARD SCHELL.
$25,000.
(Two cent stamp.)

THE ORDER OF JUDGE CARDOZO.

Judge Porter then proceeded to read the order of the Supreme Court, issued by Judge Cardozo at Special Term, on November 25, 1868, in the case of August Belmont et al. vs. Erie Railroad Company et al. staying proceedings, and the accompanying affidavits of Aaron J. Vanderpoel, Frederick A. Lane and Augustus L. Brown.

MOTION TO EXPUNGE STATEMENTS FROM THE AFFIDAVITS.

Mr. O'Conor moved to suppress from the affidavits statements with regard to the connection of Judge Davies with the former suits. Jay Gould makes an affidavit, not upon information or belief, but point blank, that the $25,000 was paid out of the special fund authorized by the act of April 21, 1868—a fund which could not have been drawn upon by any person knowingly without committing a felony, and that the $25,000 was paid either to Henry E. Davies or Charles A. Rapallo, counsel for what is known as the Vanderbilt party in the litigation of July last, and a large sum was paid to the said counsel out of the $429,000 paid by the said company to Richard Schell. When a witness swears that it is paid "either to Henry E. Davies or Charles A. Rapallo," it is plain that he knows nothing about it, and there is no propriety in making such an affidavit, because it is intended for a sinister purpose to reflect upon the gentleman who happens to have been named as receiver in the Supreme Court. The affidavit of Justin D. White refers to the Erie litigation commencing in February last, and says that in the course of that litigation Henry E. Davies and Charles A. Rapallo appeared as counsel for Richard Schell and others, comprising what was called the Vanderbilt party, to the best knowledge and belief of the deponent. A man who undertakes to swear to a fact as existing to the best of his knowledge and belief swears to nothing. He swears to no knowledge. He does not pretend to know anything. He has no right to swear to a belief unless he can swear to some fact on which to base it, as information. In responsive affidavits of this kind, matters of mere belief are not receivable at all. The object of this introducing the name of Judge Davies is quite apparent. It is to throw some sort of imputation upon him, if it be an imputation that he was counsel for somebody and that he received pay as such counsel. It is no imputation; but it is introduced here for a sinister purpose. If it was a direct affidavit of anything that anybody knew it would be a fair matter of argument by and by whether that had any relevancy or relation to this matter, and I would not move the matter as a preliminary motion in this way. We wish to have it wholly suppressed, for the reason that it is matter introduced in the form of an affidavit which is not under oath, strictly speaking, and not verified so as to be at all receivable. I have an affidavit of Mr. Davies contradicting the whole of it; but I do not think it ought to be read.

Mr. Field—Let me see it.

Mr. O'Conor—If I am to read it.

The Court—It cannot be read without the consent of the other party.

Mr. Field—We will consent.

The Court—Read it then.

Mr. Stoughton—I shall wish to answer the motion.

Mr. O'Conor read the affidavit of Henry E. Davies that he was employed as counsel in the controversy referred to, by the firm of John Bloodgood & Co., on behalf of said company and of Messrs. Stewart, bankers, and the compensation he received was paid by the firm of John Bloodgood & Co.; that deponent never received any money on account of such services from any other person or persons, firm, company or corporation whatever, and that deponent never was retained or employed by the said Schell in such proceeding.

Mr. Stoughton replied—The suit prosecuted by Schell and Frank Work had been compromised for the sum of $429,000, distributed by Schell to various parties. It would be interesting to learn whether the compensation received by Judge Davies was not the exact sum of $25,000 mentioned as having been paid from this $429,000. The affidavit might be termed a negative pregnant with an affirmative. There were two aspects to this motion. August Belmont seeks to obtain a position substantially as co-complainant here, although in fact he asks to be let in as defendant; because, as his petition states——

Mr. O'Conor objected that the argument was irrelevant.

The Court—I rather think I will make a note of the objection and let it stand on that, and take it into consideration hereafter.

Judge Noah Davis—Your honor ought to understand that Bloodgood was in point of fact a party to this suit.

ARGUMENT OF MR. RAPALLO RESUMED.

Mr. Rapallo resumed his opening:—At the time my opening was suspended for the purpose of enabling our friends to read their affidavits I was about to give your Honor a brief and succinct history of this company and its operations and of the litigations which have arisen concerning it. They are set forth in the papers on which this motion is founded. In the course of that history I shall have opportunity, I think, to say all that is necessary to be said with regard to all the various affidavits that have been read. There are one or two general observations which I wish to make at this stage of the argument. In the first place, as to any affidavit which has been read in which my name has been introduced my friends upon the other side know that I am sensitive on such a subject, and perhaps they thought it might interrupt the thread of my presentation of this case. I shall not, however, permit that experiment to succeed. Your Honor will be entirely satisfied that nothing has occurred in this case which will render me at all reluctant to have my connection with it fully investigated. In regard to Mr. Drew's affidavit, the other side have endeavored to degrade this controversy by giving it the aspect of a stock speculation carried on in connection with Mr. Drew. I thought that the answer of Mr. Belmont under oath would have silenced them on that subject.

Mr. Stoughton inquired how many counsel would be allowed on each side, and after some conference The Court said he would not limit counsel as to time, but would allow one counsel to open in the Belmont case, another to open in the Davies case, two counsel to reply and Mr. O'Conor to close the argument.

Mr. Rapallo resumed. So far as there has been any intimation, here or elsewhere, that Mr. Drew is in any manner concerned in this litigation, I beg leave to disavow it in the most positive manner. The fact that we have obtained this affidavit is but an illustration of the old adage that when a certain class of persons fall out honest men stand a chance to get their rights. It was under these circumstances that we succeeded in obtaining this affidavit from Mr. Drew. Mr. Belmont had been in preparation for weeks before this "corner" which brought Mr. Drew out of his corner to make this affidavit—this "corner," got up by Fisk & Gould, as alleged, with the money of the company, and from which Wall street was suffering. Mr. Drew was then co-operating with them, as appears by his own affidavit, in locking up money. It appears they got him short. They turned on one of their own number and tried to extort money from him. That brought up a quarrel, in which, as he threatened to do, he went over to the enemy, because he has been an enemy from the beginning to the end of this litigation, and always will be so far as regards the frauds developed in the course of this investigation. A great deal has been said of convertible bonds and their conversion into stock which ought to be explained. The Erie Railway Company is a reorganization of the old New York and Erie Railroad Company. That company becoming insolvent and having mortgaged its road the mortgage was foreclosed and the company reorganized under the sanction of an act of the Legislature of New York. One of the provisions of that act was that the purchaser of the road might associate with him enough to form a corporation, with seventeen directors, under the name of the Erie Railway Company, the capital stock of which company should not exceed in the aggregate the amount of the capital stock of the old company and the amount of the debts of that company which were not secured by mortgage. Various acts were passed in 1862 and 1863 carrying out the scheme, and the stock was to be limited by certificates to be filed in the office of the Secretary of State. The debts which were authorized to be converted into stock were authorized to be converted into preferred stock while the old stock of the New York and Erie Railroad Company was authorized to be converted into common stock. The debts were ascertained to amount to about $8,500,000, for which preferred stock was authorized to be issued. That was a fixed amount, which has never since been changed and cannot be changed. The common stock of the old company was about $11,500,000, and that was all the common stock the new company had power to issue. But in 1864 the company was allowed by act of the Legislature to increase their common stock $5,000,000 for certain purposes, making it about $16,500,000. By two subsequent acts they were authorized to issue fifty-four shares more. But this was all that they were ever allowed to issue. In the early part of 1866 Mr. Daniel Drew, who was then a director of the company, and who has also been charged with doing what we now charge Jay Gould, his successor, with doing, made an arrangement with the company by which he got possession of $3,000,000 of its stock on an advance of sixty per cent; and here for the first time arose the question of the conversion of bonds. He got that stock and was using it in Wall street to elevate or depress the market price of Erie stock as his speculations might dictate. In October, 1867, there was an election in the Board of Directors and Mr. Frank Work and Mr. Drew were elected directors. Mr. Work found that Mr. Drew was still using this stock in the market and he filed a bill against Mr. Drew to compel him to cancel that stock, on the ground that the company had no power to issue it and that Mr. Drew was instrumental as an officer of the company in issuing it illegally, and therefore ought to surrender it to the company to be cancelled. That was the first litigation that took place. At the same time the Attorney General instituted proceedings for the suspension and removal of Mr. Drew as director, and an order was made suspending him as such director. That was what was called the Work litigation. Mr. Work and some of his friends were opposed by Mr. Drew, Mr. Gould and Mr. Fisk. The combination which is now Gould, Fisk & Lane was then Gould, Fisk & Drew. They, supposing that Mr. Work was loaded up with Erie stock, thought perhaps they could squelch the litigation by issuing further stock, and they issued $6,000,000 in stock of the Erie Railway Company. They did it in this wise. They got the Board of Directors to pass the resolution of the 19th of February, which is set forth in the bill of complaint in this case, which authorized the Executive Committee to raise such money as they might think necessary for the road, and use such means as should be necessary to obtain it. Under that resolution the Executive Committee resolved to issue $10,000,000 of convertible bonds of the company. By the tenth subdivision of the twenty-eighth section of the General Railroad law of 1850 railroad corporations are authorized to borrow money which may be necessary for the completion and operation of their roads and to issue bonds therefor, secured by mortgage upon their road. They have an unlimited power to borrow money so far as necessary for the completion and operation of their road, and they may secure these bonds by mortgage and may give to the holder of any bonds thus issued the right to convert such bonds into the stock of the company. In another section the law provides that the capital of the company shall be fixed and limited; and that if they want to increase their stock they shall call a meeting of the stockholders and obtain a vote of two-thirds in amount of all the stockholders to authorize the increase in the capital stock of the company. The construction given to that act has always been, upon our side, that the power to convert bonds into stock is subordinate and subject to the limitation of the amount of stock of the company; that it was intended only to be used to obtain money to complete and to equip a road. When the parties have been unable by the sale of their stock to raise a sufficient amount they may borrow it and give to the holder of the bond the option of being a bondholder or a stockholder as he may please. There is nothing in that section to authorize the increase of the stock, but assumes that there is stock existing which can be used for this purpose, and this is the construction which the Supreme Court of this State has given to these sections.

The Court—Where is that decision?

Mr. Rapallo—That decision was made in this very case. The Court did not write an opinion, but it was made in this very issue—in the Schell litigation—that this section of the act did not authorize an increase of the amount of stock.

Mr. Stoughton—I never saw such an opinion.

Mr. Rapallo—I presume not; but I am stating exactly the fact. The next point was that none of this issue was *bona fide* (an issue of stock is the conversion of bonds issued for money borrowed); that the bonds were a mere pretext; that they were in sums of $500,000 each, entirely different from any railroad bond ever issued; that no money was advanced upon them; that the company did not receive a dollar of money, except what came from the stock. Mr. Drew, combined with Fisk and Gould, made this issue of $5,000,000 between the 19th of February and the 3d of March. It alarmed everybody. On the 3d of March the Attorney General of this State filed a bill. I conducted the proceedings by his authority against this company and some of the directors to restrain any further issues of stock of this description on the ground of want of power. In that complaint the Attorney General obtained an injunction restraining the company from issuing any further stock, or issuing any further convertible bonds, or converting into stock any convertible bonds theretofore issued. The injunction covered other matters; but I will try to leave out all that is extraneous in this case. On the 3d of March that injunction was served on Messrs. Drew, Fisk and Gould, Eldridge, the president, and some of the directors; and it so happened that they were just on the point of issuing another $5,000,000, and the injunction caught them by half an hour. Mr. Drew swears that he had got the bonds and was about to convert them into stock when he was served with this injunction. While that injunction was pending and in force Mr. Fisk took from the office of the company two books of certificates of stock which had been prepared for issue, containing $2,500,000 each. Of these, $2,500,000 were made out to Mr. Gould's firm—Smith, Gould, Martin & Co.—and the other $2,500,000 were made out to Mr. Fisk's firm—Fisk, Belden, & Co. [Mr. R. proceeded to read at length from the affidavit of Mr. Drew.] Attachments were obtained and placed in the hands of the officers, and these parties fled in the night—and your Honor may hear of that being done again—they fled at night to Jersey City, where they remained for weeks and weeks, until negotiations for a settlement brought them within the jurisdiction of this court. Mr. Drew testified that he understood from Fisk that about $23,000,000 had been issued since the October election. Your Honor will bear in mind that in one of these affidavits there is a denial that any convertible bonds have been issued since the October election, and also that there has been any stock issued since that time, except in the conversion of bonds issued before October 13. Your Honor will see how evasive that is. They had issued the bonds between July and October, and did not convert them into stock until October. That explains it, and there is no contradiction. They are charged in the complaint with having in their control upwards of $16,000,000. It is alleged that that money is not deposited in any bank to the credit of the company. In their denial they say they have not got so much money, but do not inform the Court how much money they have, or what they have done with it. They deal in generalities. But if the truth were told your Honor would find that it is loaned to the firm of Smith, Gould, Morton & Co. I have now reached the point where the Attorney General issued his injunction against this last issue and where they violated it and fled to New Jersey. All that took place in the early part of March. The fact that they had thus, in violation of the orders of the Court, persisted in the issue of stock alarmed the stockholders. Mr. Richard Schell, a large stockholder, and Mr. Bloodgood, the client then of one of my present associates commenced suits as stockholders, thinking, perhaps, they might succeed a little better than the Attorney General in keeping these people within bounds. They were largely interested in the stock of this company and every issue of stock thrown upon the market depreciated the stock they held and was ruinous to them. When this controversy commenced the stock was selling on March 9 at 83 per cent. The charge was that Fisk, Gould and Drew were interested in short speculations. On the morning of that day Mr. Fisk brings down these $5,000,000 of stock, and in one day the whole of that stock was sold. The stock which in the morning was at 83 would not bring 70 in the afternoon. The suit of Mr. Schell was filed on that very day, a short bill, to try and stop the issue of this stock. But that was disregarded also. Then the attachments were issued and these parties fled to New Jersey. Detectives were employed and we finally succeeded in catching Mr. Gould in Albany, where he had gone for the purpose of getting some relief from the Legislature. As time went on the other defendants came in and the proceedings went on in this contempt proceeding. Immediately after these parties had fled Mr. Schell in his suit made application to the Supreme Court to appoint a receiver of the money which had been realized from the sale of this stock; a very similar application to the one made by the bill in this cause. He alleged that these moneys were in the hands of Fisk and Gould, and not in the hands of the company. After a good deal of litigation a receiver was appointed. His proceedings were stayed by orders, and an appeal was taken to the General Term; and, finally, the General Term, after argument, affirmed the appointment of that receiver. In the meantime motions were made on behalf of the railway company and these directors to dissolve the injunctions which had been granted prohibiting further issues of stock and further conversion into stock of the outstanding convertible bonds of the company. Those motions were brought on before Justice Sutherland, and ten or twelve days were occupied in their discussion. They were very thoroughly argued, and he finally denied the motions to dissolve the injunctions in the clearest manner possible, basing his opinion upon the want of power in the company to issue that stock. An appeal was taken from that decision to the General Term. When that was reached upon the calendar our adversaries asked leave of the Court to withdraw that appeal. It was denied. We insisted that there should be an affirmance or a reversal and the Court sustained us. The other side declined to argue and the decision was affirmed. Therefore, so far as there is any law settled in this case, I submit that the law of the Supreme Court of New York is adverse to this power. It was under these circumstances that negotiations were opened with Mr. Schell for settlement, in which I took no part until its final consummation. This was the position of the parties which coerced such a settlement. On the side of the plaintiffs we had nothing to depend upon for redress except such fine as the Court might impose in the contempt proceedings. On their side they were anxious to settle it, in order that they might regain the free use of this fund after the receiver's appointment had been confirmed. Mr. Peter B. Sweeny, now one of their directors, whom they have taken into their fold, was the receiver. Our client's property was at the mercy of these men. Causes which it will not do here to mention led us to fear we could not get ample redress.

Mr. Stoughton—Mr. Sweeny was your receiver. You mean no reflection against him?

Mr. Rapallo—Certainly not. But we did not nominate any receiver. The first receiver nominated was certainly one I never should have assented to. The second receiver I had no instrumentality in selecting. He was the nominee of the Court. Mr. Schell, under these circumstances, negotiated with some of the directors a settlement of his claims. The Court required, as a condition of discharging this receivership, that the defendants should pay the receiver's fees, and also pay the counsel fees of Mr. Schell in the suit. The company assented to these terms, and an order was made to that effect—that the receiver should be discharged on the payment of the fees and expenses, which were very heavy in this case.

Mr. Stoughton—They were $150,000.

Mr. Rapallo—I believe they were; but that was no benefit to any of us. Nothing that was paid the receiver benefited us, directly or indirectly. The counsel fees were fixed at $25,000, as has been stated to your Honor. That money was embraced in the amount paid to Mr. Schell. The order directed it should not be paid to me, but to Mr. Schell. I never received that sum specifically from any person; but I received payment for my services from Mr. Schell. From what fund I was paid, or whether from a fund "from which the money could not be taken without committing a felony," I have no means of knowing. While I could have wished these proceeding to punish for contempt to be prosecuted to the very end, I had to submit to the settlement of the case. The interests of my client were under his own control, and he chose to settle for a pecuniary compensation. Perhaps he was not bound to prosecute when the parties who injured him offered to pay him his losses. As to settlements with any other parties I had nothing to do with it, and know not what settlements were made. Mr. Schell was my only client. That settlement was consummated on the 3d or 4th of July. On the 10th Mr. Drew resigned and paid over these $5,000,000 or $6,000,000 to Mr. Gould, who was appointed treasurer. But he could not control the committee without making himself president. Then Mr. Eldridge resigned his office and Mr. Gould was put in his place as president. Mr. Eldridge walked out of the office with $4,000,000 of the Erie Railway Company's money. It is for your Honor to say whether he would have given up his position if he had not got that money. What right had they to expend $4,000,000 of the money of the company, belonging to the stockholders, in buying bonds in the road in Massachusetts of which Mr. Eldridge was president?

Mr. Stoughton—There is no allegation in the bill nor in the affidavit affecting the integrity, intelligence or official action of any director excepting these.

Mr. Rapallo—As to the other directors, there are several gentlemen of high character among them, men whom I would not impeach; but they were powerless. But the fact is alleged that they have suffered this Executive Committee to manage the affairs of this company, and that fact is not only admitted but sworn to on the other side. Eldridge walks out with four millions or its equivalent in his pocket. The two places made vacant by Drew and Eldridge were filled by Fisk and Lane. Mr. Fisk was made Comptroller of the company, and the Board of Audit, formerly consisting of three respectable gentlemen, was abolished, so that Mr. Fisk alone could say what money should be paid out. When Mr. Schell let this contest drop they had gained their point, that this company had no power to issue further stock, and they had a right to suppose they might with safety rest there. They had a right to suppose that the question being decided the power would be exercised no more. There was some excuse in their not carrying the litigation further for the benefit of the other stockholders. But what happens? That decision was again violated. But no one complained until the new issues of this stock appeared in the market. From $16,000,000 of common stock they had increased the amount to $34,000,000 by these illegal issues. I will pause here a moment and call attention to the act of the Legislature. These affidavits are very singular, for some swear to things which the witnesses could not know and others to the law. A bill was presented in the Legislature legalizing the issue of stock. It was referred to a committee in the Assembly, which reported—I think unanimously—against it, and there it dropped. Another bill, originating in the Senate, was afterwards passed. It is chapter [illegible] of the laws of 1868, dated April 21, and refuses to legalize that stock. (Mr. R. read the act.) It is evident that the Legislature intended to stop with the issue of the bonds. The company had sold Mr. Drew and Mr. Drew's agent ten millions of dollars of convertible bonds. It was a transaction he could be held to; but he could not have held the company to it, he being their trustee. We do not complain of the issue of the bonds. It is the increase of the stock, the converting of the bonds into stock that we complain of. They have got the money, and we say that they shall apply it to the road. That is our construction of the law, and the only construction consistent with Judge Sutherland's decision. The litigation respecting that terminated with Mr. Schell's suit; but Mr. Belmont, who was not a party to that litigation, has still the right to show that these very persons are unfit to be receivers for that corporation. After the settlement no one was anxious to reopen the controversy until these parties recommenced the same operations. Very shortly after the election in October last it became apparent that large amounts of new stock were being issued, and the New York Stock Exchange appointed a committee to inquire of the Erie Railroad Company about these issues of stock. This committee consisted of Mr. Christian S. Sloan and two other gentlemen. (Mr. R. read Mr. Sloan's affidavit.) This was evidently a new issue, and this bill of complaint alleges that it amounted to $20,000,000. This alarmed Mr. Belmont, who still had his 4,000 shares of stock. He had thought that perhaps Mr. Gould was managing the road for the best interests of the stockholders. Yet you find he receives $6,000,000 of Daniel Drew, issues another million of sterling bonds, gets all the earnings (amounting to more than $1,000,000 a month), and yet is in danger of bankruptcy unless they can issue more stock to pay Mr. Eldridge, of Boston, for Erie bonds. When Mr. Belmont learned these facts it was time for him to make some attempt to vindicate his property. Is a man who comes into court under such circumstances to be driven out by sneers and taunts that he is in stock speculations? Is he to be met with slurs because he undertakes to meet this moneyed monopoly and the desperate men managing these immense resources? I ask if we are not entitled to all the protection the Court can give us?

But that is not all, your Honor. They next go to work and get an order in Chambers in the Supreme Court of the State appointing Gould receiver of all the money of the company without notice to us. And they obtain further, what your Honor will no doubt think an extraordinary thing, an injunction against everybody they suspect might bring a suit against them to rip up these transactions, enjoining any party against bringing a suit or making an application for the appointment of a receiver. These papers are even verified on the same day the Belmont order was verified, showing that they were running a race to see who should get a receiver appointed first. In the affidavits of Fisk, published and read here, he tells you his conversation with Drew, when Drew said he knew what was doing and that he would go over to the enemy, meaning us, and make an affidavit if they did not agree to his terms, and give him some facility in carrying on his stock dealings and speculations.

Your Honor can see from the affidavits whether there was any ground for the charge made against us that we were in complicity with Drew, who was, in fact, trying to use both parties for his own benefit, trying to hold either party as a rod over the other.

Counsel then quoted a passage from the order made by Judge Barnard, signed by him, but not an order of the court, authorizing "that during the pendency of the order the parties should be restrained from commencing all proceedings or suits with regard to the issue of stock claimed to be in excess of the number of shares the company was authorized to issue, and to restrain them from applying for an order from the courts on ex parte applications or otherwise that might hinder or embarrass the company, &c., or applying for the appointment of a receiver," and then concludes, "And it is ordered that Jay Gould be and is hereby appointed to take charge and control of said moneys of the company."

What moneys? The moneys of the Erie Railroad Company. We say that from beginning to end, in court and out of court, the whole struggle on the part of Jay Gould is to keep in his clutches—in the clutches of himself and Fisk together—the moneys of the Erie Railroad Company. Your Honor will see how consistently with every act of his is this charge we make against him.

Counsel then read further from the order of Judge Barnard, as follows:—"Or of an executive committee who may have authority under the constitution or charter of the company."

Your Honor sees that that throws the mantle of Judge Barnard around these parties to secure them in the management of the funds of which as such executive committee they were the custodians. And further, your Honor will bear in mind that we charge these parties with using the moneys of the company in speculations to corner the railroad stock of the company—we charge them in the complaint in almost these very words. Now we do not object to the price of stock going up, not by any means; but we object to the moneys of the company being jeopardized and hazarded by their issuing illegitimate stock, using the company's money to purchase it at any price to serve their own ends and put money in their pockets at the expense of the company. That was our charge before we had seen their petition, and I venture to say that had they seen those charges and our affidavits they would not have instituted these proceedings for they would have been a cognovit to these charges in the matter.

Counsel then quoted the order granted on petition, dated November 18, 1868, in the case of McIntosh against the Erie Railroad Company and others, which order was modified to read as follows:—"That the said Jay Gould be authorized to apply so much of the moneys of the company as are now in his hand or that may come into his hands that may be necessary to purchase or withdraw the 200,000 shares mentioned and specified in said petition, provided such purchase be made at a reasonable market price and not above par."

That Chamber order, your Honor, authorizes the president of the company to do the very act we accuse him with trying to do without an order—that is, investing the railroad company's money in speculation to the amount of twenty millions. That order stayed our proceedings in the Belmont suit also, and restrained us from prosecuting any suit for the appointment of a receiver. A copy of that order was served on Mr. Belmont after he had caused the complaint on his suit to be served upon them and necessarily tied his hands. We were anxious to go on with our motion for a receivership, but this order stayed from taking any action in the matter. Mr. Belmont filed his answer, denying in the most explicit manner that he had any interest in stock speculations connected with Erie, with the exception of those four thousand shares referred to; and that he never had any other interest in the stock of the company; that he was not interested in cornering or otherwise depressing its value, but on the contrary that he was interested in enhancing its value. He (Mr. Belmont) denied emphatically, also, that he had any connection with any person so interested in stock operations. On these papers was obtained an order from Judge Sutherland to show cause, returnable on Monday, why all the proceedings should not be set aside. Counsel at that time argued that there was no power on a judge outside of the court to issue an order under the circumstances presented in the case. He argued that the order appointing a receiver was one which should be made in open court, except in special proceedings, which were not presented in this case. But everything was done on the other side for the purpose of delay. We were not to be charged and could not be charged with delay. We pressed the motion with all the vigor we could, and Judge Sutherland decided to hear the whole case between two and three o'clock that afternoon, after he had decided to vacate the order in the McIntosh proceedings. While counsel was arguing the case before Judge Sutherland one of the counsel on the other side came over to this court and signs a consent in the name of the railroad company waiving notice of motion and accepting appearance—waiving notice of motion for a receiver; and in this waiving notice of [illegible] the order obtained for the way the bill is filed and the receiver. Our first charge is that this was a collusive proceeding. Whelpley does not deny the collusion; he denies that he colluded for a fraudulent purpose. Gould himself swears that when the bill was being drafted he suggested that he was the proper person to be appointed receiver.

Mr. Pierrepont—He (Gould) specifically says that he was the proper person to be the receiver in his affidavit.

Mr. Rapallo—If your Honor please, can it be denied that the whole object of the proceedings in this case was to frustrate the proceedings and action of the Supreme Court of the State, the Court that had already obtained jurisdiction in the matter, and which was about appointing a receiver? Judge Sunderland, after hearing the motion, determined that it was a case in which imperatively demanded a receiver, and he thought he would name a receiver against whom the shadow of suspicion or reproach could not be found, a gentleman who had recently left the highest position on the bench of the State—the late presiding Judge of the Court of Appeals—and that he (Judge Sutherland) would make such a nomination of a receiver that the world might say that whatever had heretofore transpired with regard to the road the property of the company should at least be secure. All this was frustrated by the action of the other side obtaining an order in this court. It was to set aside that order the present motion and proceedings were had.

Counsel having concluded, Judge Nelson informed counsel that they must conclude the case to-morrow; that to enable them to do so he would prolong the session of the court. Counsel agreed that they would be able to finish. The court then adjourned till eleven o'clock this morning.

SUPREME COURT—ALBANY COUNTY.

Still Another Suit Against the Erie "Ring"—The Attorney General "Ringing In"—Action for the Removal of the Directors—They are Temporarily Suspended.

Before Judge Rufus W. Peckham.

The People of the State of New York vs. The Erie Railway Company, Jay Gould, James Fisk, Jr., Frederick A. Lane, William M. Tweed, Peter B. Sweeny and others.—This is another action in the already severely complicated series of litigation in relation to Erie Railway stock, and is brought in behalf of the State on the application of the Attorney General. The complaint, which is verified [illegible], is exceedingly voluminous, covering forty printed pages, and is signed by James C. Spencer, of the firm of Rapallo & Spencer, as the counsel of the plaintiffs in this action at the request and by authority of the Attorney General.

It sets out the organization of the Erie Railway Company; that it is possessed of valuable franchises and properties, and capable when properly managed of yielding large profits and revenues to its stockholders; that upwards of $60,000,000 have been expended upon its road and equipments, this amount being represented by capital stock, a funded debt of $22,000,000 and other indebtedness; that by subsequent acts of the Legislature the corporation was empowered to increase its stock; that on December 31, 1866, the total amount of capital stock of the company was 251,058 shares, making a total in par valuation of $25,105,800, and that the company had