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*Mary O'Sullivan*

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## A Fine Failure: Relationship Lending, Moses Taylor, and the Joliet Iron & Steel Company, 1869–1888

In this study of lending in the emergence of a modern steel industry in the United States, I analyze the evolving interaction between borrowers and lenders in historical context. I show how “relationship lending” (that is, credit allocation in which personal contacts play a major role) can go wrong, despite good intentions at the outset, and that institutional conditions exert an important influence on how lenders and borrowers negotiate conflicts. Particularly important in the case of Moses Taylor and Joliet Iron & Steel Company were the uncertain jurisdictions and political maneuvering that stemmed from structural peculiarities of the U.S. legal system, peculiarities that belie claims of its efficacy for protecting creditor interests. Although this failure of relationship lending might seem to imply negative consequences for economic development, I show that, at least in this case, the opposite interpretation is more compelling.

Over the last twenty-five years, economists and historians have renewed their interest in the long-standing question of the relationship between finance and economic development. While some research has focused on the role of securities markets in providing “arm’s-length” finance, scholars have also addressed “relationship lending” in which personal contacts play an important role in the allocation of credit. Some economists emphasize that relationship lending allows

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lenders privileged access to information about borrowers that may be useful in credit allocation and monitoring.<sup>1</sup> Others are preoccupied with the possible disadvantages of relationship lending and, in particular, with the scope it provides for lenders to extract rents from their privileged positions through looting and tunneling.<sup>2</sup>

Historians have brought new perspective to this debate by insisting that the impact of relationship lending on economic development is a historical question, depending on "the context of the particular social and cultural environment in which it is imbedded."<sup>3</sup> Naomi Lamoreaux argues that relationship lending, as early-nineteenth-century New England banks practiced it, served as an "engine of economic development" because bank directors had incentives to monitor each other's borrowings carefully.<sup>4</sup> In a similar vein, Noel Maurer and Stephen Haber claim that relationship lending was widespread in Mexican banking from 1888 to 1913, but did not result in looting and credit misallocation because "strong institutions of corporate governance" constrained lenders.<sup>5</sup>

What studies by economists and historians have in common is an implicit assumption that lenders' incentives and behavior determine the outcome of relationship lending. That assumption represents an unfortunate reductionism since, by definition, there are two sides to relationship lending, with the interaction between borrowers and lenders constituting the essence of the phenomenon. It seems important, therefore, to extend the literature with new studies that analyze how the interaction between lender and borrower evolves over time and is structured by the historical context in which it is embedded.

<sup>1</sup> See, for example, Masahiko Aoki, Hugh Patrick, and Paul Sheard, "The Japanese Main Banking System: An Introductory Overview," in *The Japanese Main Banking System*, ed. Masahiko Aoki and Hugh Patrick (Oxford, 1994), 3–50; Charles Calomiris, "The Costs of Rejecting Universal Banking: American Finance in the German Mirror, 1870–1914," in *Historical Perspectives on the Organization of Enterprise*, ed. Naomi Lamoreaux and Daniel Raff (Chicago, 1995), 257–322; for an introduction to this topic in the context of German industrialization, see Carsten Burhop, "Did Banks Cause the German Industrialization?" *Explorations in Economic History* 43 (Jan. 2006): 39–63.

<sup>2</sup> See, for example, Raghuram Rajan, "Insiders and Outsiders: The Choice between Informed and Arm's-Length Debt," *Journal of Finance* 47 (Sept. 1992): 1367–1400; Rafael La Porta, Florencio López-de-Silanes, and Guillermo Zamarripa, "Related Lending," *Quarterly Journal of Economics* 118 (Feb. 2003): 231–68; Carola Schenone, "Lending Relationships and Information Rents: Do Banks Exploit Their Information Advantages?" *Review of Financial Studies* 23 (Mar. 2010): 1149–99. These economists build on more general discussions of looting (George Akerlof et al., "Looting: The Economic Underworld of Bankruptcy for Profit," *Brookings Papers on Economic Activity* 2 [1993]: 1–73) and tunneling (Simon Johnson et al., "Tunneling," *American Economic Review* 90, no. 2 [2000]: 22–27).

<sup>3</sup> Naomi Lamoreaux, *Insider Lending: Banks, Personal Connections, and Economic Development in Industrial New England* (New York, 1994), 9.

<sup>4</sup> See, in particular, *ibid.*, 52–83.

<sup>5</sup> Noel Maurer and Stephen Haber, "Related Lending and Economic Performance: Evidence from Mexico," *Journal of Economic History* 67 (Sept. 2007): 553.

My study focuses on relationship lending in the emergence of a modern steel industry in the United States after the Civil War. Although there was limited development of markets for steel securities in the post-bellum United States, the relationships that linked financiers to steel entrepreneurs allowed for the supply of external finance in substantial amounts. One prominent financier of the emerging steel industry was Moses Taylor. As the major stockholder in, and president of, the National City Bank of New York City, Taylor had strong incentives to make profitable investments for his bank, and he established an impressive track record in doing so. His success in financing one pioneering steel enterprise, the Lackawanna Iron and Coal Company, is well known, but in this article I focus on Taylor's much less successful experience of lending to another steel pioneer, the Joliet Iron & Steel Company.<sup>6</sup>

Recently, a number of economic and business historians have emphasized the importance of studying failure, with Patrick Fridenson suggesting that we make it one of our "central targets."<sup>7</sup> In the context of relationship lending, studying failure seems particularly well suited to bringing the interaction between lender and borrower into sharp focus. For analyzing the early U.S. steel industry, Peter Temin singles out the Joliet Iron & Steel Company as a potentially interesting case of failure since it was a "first mover" in the mass production of steel; however, significant financial difficulties marred its early history.<sup>8</sup>

Until now, the historical literature has had little to say about Joliet's financial problems largely because of a lack of available sources. In this article, I reconstruct the essential elements of the early financial history of the Joliet Iron & Steel Company by drawing on a variety of sources not previously used. My account is based, in part, on the reports of mercantile credit agency R. G. Dun & Co., which are housed in Baker Library at Harvard Business School. It also relies on correspondence between Moses Taylor and his associates about the Joliet Iron & Steel Company, which can be found primarily in the papers of James F. Joy in the Burton Historical Collection at the Detroit Public Library.<sup>9</sup>

<sup>6</sup> Taylor began investing in Lackawanna in 1853 and, through a series of maneuvers, became the company's largest stockholder prior to the Civil War. See Daniel Hodas, *The Business Career of Moses Taylor* (New York, 1976), 106, 275–76. Hodas's reference to Taylor's involvement in Joliet Iron & Steel is limited, but it did allow me to identify James Frederick Joy's papers as one of the crucial sources for this article (337n46).

<sup>7</sup> Patrick Fridenson, "Business Failure and the Agenda of Business History," *Enterprise and Society* 5 (2004): 578.

<sup>8</sup> Peter Temin, *Iron and Steel in Nineteenth-Century America, an Economic Inquiry* (Cambridge, Mass., 1964), 172–73.

<sup>9</sup> James F. Joy was a railroad manager and financier who made a career as a lawyer before becoming counsel for the Michigan Central Railroad in 1846 and its president in 1865. He played a prominent role in the management and organization of many other railroads including the Illinois Central and the Chicago, Burlington, and Quincy railroads. I consulted Moses

Finally, and with a view to complementing creditor perspectives, I draw on reports on the Joliet Iron & Steel Company that appeared in the Chicago newspapers and tended to favor local economic interests.<sup>10</sup>

The story that emerges is a turbulent and rollicking one, characterized by trust and subterfuge, which provides significant new insights into the possibilities and problems of relationship lending. In section 1, I describe how unprecedented capital requirements and volatile demand conditions created major financing challenges for emergent steel enterprises. In section 2, I show that relationship lending allowed for a financial flexibility that was crucial, given the uncertainties that confronted pioneering steel enterprises. However, as I explain in section 3, when A. B. Meeker, the founder of the Joliet Iron & Steel Company, betrayed the trust of Moses Taylor and his associates, they turned to the legal system to make good on their claims. As section 4 describes, recourse to legal protection presented major challenges for the Taylor group, turning into a messy process wracked by jurisdictional uncertainty and political maneuvering. In the denouement, described in section 5, the Joliet Iron & Steel Company was restored to a financial stability that favored local interests and forced Taylor, and the bondholders he represented, to accept a significant haircut.

This case study of the Joliet Iron & Steel Company shows how crucial it is to understand the interaction between debtors and creditors. Here we have an example of relationship lending gone wrong, but not, it would appear, because of any problematic incentives on the part of the lender. It was a breakdown of trust between lender and borrower that set the ball rolling in the extraordinary struggle over the Joliet Iron & Steel Company. In the course of that struggle, even a lender as powerful and experienced as Moses Taylor was dependent on, and then outwitted by, local men who were always a step ahead of him. Above all else, the U.S. legal system, celebrated in the recent literature on law and finance as a guarantor of creditor rights, permitted a striking degree of legal uncertainty and political maneuvering about this financially distressed enterprise.<sup>11</sup> Provocatively, although such failures of relationship lending might seem to imply negative consequences for economic

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Taylor's own papers in the New York Public Library but found them to be of only limited use for this project.

<sup>10</sup> Of particular importance are articles from the *Chicago Daily Tribune*, which was controlled by Joseph Medill and known for its opinionated editorial line. In the context of this study, the most striking feature of the newspaper's commentary was its antipathy to easterners, especially eastern creditors, and its concern with the local economy. See Wyatt Rushton, "Joseph Medill and the Chicago Tribune," PhD diss., University of Wisconsin-Madison, 1916, 37-42.

<sup>11</sup> Rafael La Porta et al., "Legal Determinants of External Finance," *Journal of Finance* 52 (July 1997): 1131-50, and "Law and Finance," *Journal of Political Economy* 106 (Dec. 1998): 1113-55.

development, I suggest that the opposite interpretation is more compelling, at least for this case.

### Financing the Emerging U.S. Steel Industry, 1864–1888

In the immediate aftermath of the Civil War, steel production was of minor importance in the United States, being produced in small quantities for specialized applications. Bessemer steel was produced for the first time in September 1864, and the country's first steel rails were rolled in May 1865.<sup>12</sup> Yet, even by 1869, a cumulative total of only 17,000 tons of Bessemer steel rails had been rolled in the United States, only one-third of the total tonnage sold there by the leading British exporter.<sup>13</sup> The limited development of the indigenous steel industry meant that European producers continued to dominate the U.S. market despite high tariffs on iron and steel imports.<sup>14</sup>

Disputes about the application of the Bessemer patents slowed the emergence of a modern steel industry in the United States, but, in 1866, they were resolved by the formation of the Bessemer Association, which licensed the patents needed to build a modern steel works to U.S. firms.<sup>15</sup> Over the ensuing two decades, these Bessemer firms were responsible for the massive increase in steel production that occurred in the United States and that allowed it to rival Britain as the largest steel producer in the world by the late 1880s (see [Figure 1](#)). Bessemer production was dominant in the emergent phase of the U.S. steel industry because it generated a cheap steel of medium quality that was well suited to the production of rails, by far the most important product made by U.S. steelmakers until the late 1880s.<sup>16</sup>

Taken together, the characteristics of supply and demand for the emerging U.S. steel industry meant that the Joliet Iron & Steel Company and other pioneering steel enterprises faced an extremely challenging environment in which to do business. The adoption of the Bessemer process in the U.S. required higher levels of capital investment than had been necessary in the iron industry. In his still-definitive book,

<sup>12</sup> Kenneth Warren, *The American Steel Industry, 1850–1970: A Geographical Interpretation* (Pittsburgh, 1973), 93.

<sup>13</sup> Temin, *Iron and Steel in Nineteenth-Century America*, 274; Warren, *The American Steel Industry*, 93.

<sup>14</sup> Temin, *Iron and Steel in Nineteenth-Century America*, 173.

<sup>15</sup> Thomas Misa, *A Nation of Steel: The Making of Modern America, 1865–1925* (Baltimore, 1995), 22; Temin, *Iron and Steel in Nineteenth-Century America*, 185.

<sup>16</sup> Bessemer production accounted for 87 percent of the cumulative volume of steel produced in the United States between 1867 and 1888, representing 70 percent or more of total steel output in every year between 1872 and 1887, and more than 90 percent in the early 1880s. See Temin, *Iron and Steel in Nineteenth-Century America*, 274–75; Table C.7, 276–78.

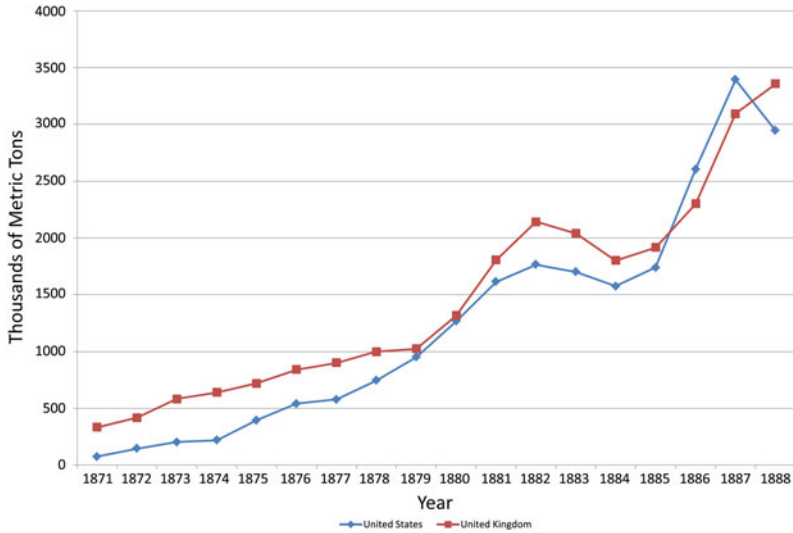


Figure 1. Output of crude steel in the United States and the United Kingdom, 1871–1888. (Source: *Historical Statistics of the United States*, Millennial Edition Online [Cambridge, U.K., 2006].)

*Iron and Steel in Nineteenth-Century America, an Economic Inquiry* (1964), Peter Temin estimated that, between 1869 and 1889, the average capital invested in a blast furnace in the United States increased from \$145,000 to \$426,000 and from \$156,000 to \$661,000 for steelworks and rolling mills.<sup>17</sup> However, as Temin recognized, these estimates understate the amount of capital invested by the largest steel companies, which tended to build two or three Bessemer converters and to integrate blast furnaces with their steelworks.<sup>18</sup> Indeed, my calculations in Table 1 show that, by 1888, pioneering steel enterprises' capital investments were much larger than Temin's estimates suggest and contributed to a growing concentration of the U.S. steel industry into a loose oligopoly dominated by eight similarly sized steel makers.

The scale of these enterprises' investments seemed justifiable since U.S. steel producers benefited not only from the replacement market for existing iron rails but especially from the huge expansion of the railroad network that took place in the United States in the years after the Civil War.<sup>19</sup> However, railroad construction was subject to dramatic

<sup>17</sup> Temin, *Iron and Steel in Nineteenth-Century America*, Table 7.1, 166.

<sup>18</sup> *Ibid.*, 166.

<sup>19</sup> *Historical Statistics of the United States*, Millennial Edition Online (Cambridge, U.K., 2006), Series Df874.

*Table 1*  
Capital Paid into Leading U.S. Steel Enterprises by December  
1888 (\$ millions)

<i>Company</i>	<i>Share Capital</i>	<i>Bonded Debt</i>	<i>Total Paid- in Capital</i>
Bethlehem Iron	4.00	1.50	5.50
Lackawanna Iron and Coal	3.75	0	3.75
Pennsylvania Steel	4.50	0	4.50
Cambria Iron	4.00	0	4.00
Carnegie Bros. *	5.00	*	5.00
North Chicago Rolling Mill	6.00	0	6.00
Joliet Steel	2.80	0.45	3.25
Union Iron & Steel	4.60	1.20	5.80

Sources: Henry E. Wallace, ed., *Manual of Statistics* (New York, 1889); J. P. Crittenden and Charles B. Helffrich, eds., *New York Securities: A Descriptive and Statistical Manual*, part 2, *Financial, Industrial, and Miscellaneous Corporations* (New York, 1893).

\*Does not include Carnegie, Phipps & Co., which was formed to assume ownership of the Homestead works, which Andrew Carnegie and his partners purchased in 1882–83. Its capitalization was also \$5 million, although how much of this capital was paid-in is unclear.

\* not available.

booms and busts that generated high volatility for steel makers in terms of the quantities and prices of rails demanded (see [Figure 2](#)).<sup>20</sup> As a result, fledgling steel makers enjoyed periods of dizzying prosperity followed by veritable depressions that created major financial challenges.

Markets for iron and steel securities were limited in the postbellum United States, so America's fledgling steel enterprises had little recourse to market-based finance. Economic historian Lance Davis claimed that, as a result, a shortage of external finance constrained the emergence of a modern U.S. steel industry.<sup>21</sup> A crucial exception, he argued, was Andrew Carnegie, who exploited a distinctive talent for using informal channels to bring together men and finance to secure capital for steelmaking.<sup>22</sup> In fact, there was nothing unusual in Andrew Carnegie's reliance on his personal contacts to fund his early investments in the Bessemer process. Relationship lending—financing arrangements in which relationships rather than markets were essential to the allocation of credit—seems to have been widespread among pioneering steel enterprises in the early phases of development of the U.S. steel industry.

<sup>20</sup> Ibid., Series Df884 and Df882.

<sup>21</sup> Lance Davis, "The Capital Markets and Industrial Concentration: The U.S. and U.K., a Comparative Study," *Economic History Review* 19 (1966): 264.

<sup>22</sup> Ibid.



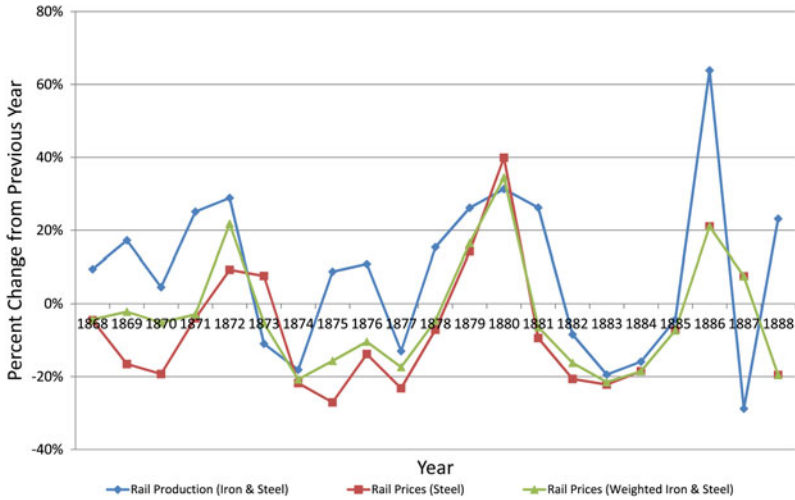


Figure 2. Annual changes in U.S. rail production and prices, 1868–1888. (Source: *Historical Statistics of the United States*, Millennial Edition Online [Cambridge, U.K., 2006].)

I have already mentioned the important role played by financier Moses Taylor as an early investor in both the Lackawanna Iron and Coal Company and the Joliet Iron & Steel Company. Taylor had accumulated a substantial fortune from his business of importing Cuban sugar, produced largely by slaves.<sup>23</sup> Between the 1840s and the 1870s, he diversified his capital to build “a personal business empire, with interests in commerce, public utilities, transportation, iron, coal, and telecommunications.”<sup>24</sup>

Taylor exercised control over his business empire through a group of financial institutions that he dominated. He became president of City Bank in 1856 (which became National City Bank in 1865), acquiring a controlling interest in the bank’s stock.<sup>25</sup> His biographer Daniel Hodas noted,

Taylor’s policy in running the National City Bank was not governed primarily by a desire for growth. Rather, he and his associates in the bank—many of whom were also involved with him in other industrial and transportation enterprises—appear to have operated this

<sup>23</sup> Harold van B. Cleveland and Thomas F. Huertas, *Citibank, 1812–1970* (Cambridge, Mass., 1985), 17; Roland T. Ely, “The Old Cuba Trade: Highlights and Case Studies of Cuban-American Interdependence during the Nineteenth Century,” *Business History Review* 38 (Winter 1964): 458–63; Cesar J. Ayala, *American Sugar Kingdom: The Plantation Economy of the Spanish Caribbean, 1898–1934* (Chapel Hill, 1999), 83.

<sup>24</sup> Cleveland and Huertas, *Citibank*, 22.

<sup>25</sup> When it converted to a national charter under the National Banking Act of 1864. Cleveland and Huertas, *Citibank*, 25.

commercial bank as an adjunct and complement to their personal investments.<sup>26</sup>

Taylor also dominated the Farmers' Loan and Trust Company, holding a substantial portion of its stock and chairing its executive committee; its growing role as trustee for railroad and industrial mortgages in the 1870s gave Taylor access to another instrument for controlling his investments.<sup>27</sup>

In general, Taylor seems to have managed his investments well, and, by the time of his death in 1882, he had accumulated a personal fortune of \$35 million. That fortune amounted to three times the assets of the National City Bank, but the bank also did well under Taylor's leadership.<sup>28</sup> Indeed, Harold van B. Cleveland and Thomas F. Huertas consider that the National City Bank was "one of the strongest banks, and very possibly *the* strongest bank, in New York City during the second half of the nineteenth century."<sup>29</sup> Little wonder then that Naomi Lamoreaux points to Moses Taylor as an important example of relationship lending in the second half of the nineteenth century.<sup>30</sup>

Even if Moses Taylor is a particularly prominent example, he was far from the only financier who extended funds to the emergent steel industry on the basis of his relationships with steel entrepreneurs and their associates.<sup>31</sup> In some cases, the interactions between financiers and steel men evolved in a way that suggests the kind of productive role for relationship finance that some scholars have evoked. Yet, as the case of Joliet Iron & Steel shows, relationship lending could get extremely messy even for a lender as motivated and capable as Moses Taylor.<sup>32</sup>

<sup>26</sup> Hodas, *The Business Career of Moses Taylor*, 274.

<sup>27</sup> *Ibid.*, 216, 274; Cleveland and Huertas, *Citibank*, 22–23.

<sup>28</sup> Cleveland and Huertas, *Citibank*, 25.

<sup>29</sup> *Ibid.*, 28.

<sup>30</sup> Lamoreaux, *Insider Lending*, 7.

<sup>31</sup> The financing of Carnegie's steel venture, as well as of Bethlehem Steel, was based on relationships between steel entrepreneurs and financiers. See James Howard Bridge, *The Inside History of the Carnegie Steel Company: A Romance of Millions* (New York, 1903), 71–78; David Nasaw, *Andrew Carnegie* (New York, 2006), 141–53; and Kenneth Warren, *Bethlehem Steel: Builder and Arsenal of America* (Pittsburgh, 2008), 15–31. Much the same can be said for the North Chicago Rolling Mill Company, which was funded by Nathaniel Thayer, Sidney Bartlett, John Forbes, and other powerful New England investors, often known as the "Forbes group," which was actively involved in North Chicago's operations for years. See "Progress in Western Iron Manufactures," *Chicago Daily Tribune* [hereafter *CDT*], 31 July 1869, 0–2; "The Big Steel Combine," *CDT*, 5 May 1889, 9; "English Syndicate After It," *CDT*, 23 Oct. 1890, 1. So too another Chicago-based steel pioneer, the Union Iron & Steel Company, relied heavily on the financial resources of its president and his brother, the Cleveland financiers A. B. and Amasa Stone. "A Huge Business Transaction," *New York Times*, 24 Oct. 1879, 1.

<sup>32</sup> Nor was this company's sorry experience unique among pioneering steel enterprises, with the finances of the Union Iron & Steel Company also taking a melodramatic turn. The company was declared bankrupt, its leading financier Amasa Stone committed suicide in

Thus, it is important to reflect on the possibilities and pitfalls of relationship lending, and, as we shall see, the case of Joliet Iron & Steel provides an excellent foundation for doing so.

### The Value of Relationship Lending, 1869–1876

The Joliet Iron & Steel Company was incorporated in 1869 in Joliet, a small town in Illinois, located about forty miles southwest of Chicago.<sup>33</sup> Its founder and president, A. B. Meeker, was a Chicago iron-ore merchant who had close ties to several Chicago railroads. The company was incorporated with a capital of \$200,000, and Meeker was joined in his new venture by Francis E. Hinckley, a railroad constructor and financier, who had business dealings with other prominent railroad men, notably James Frederick Joy.<sup>34</sup>

The early story of the Joliet Iron & Steel Company was one of considerable success in generating profits and in securing capital for its expansion.<sup>35</sup> Its initial years were prosperous ones for the fledgling U.S. steel industry, as Figure 2 shows, and the company “returned a handsome dividend the first year.”<sup>36</sup> R. G. Dun estimated the company’s profits on its capital invested at 40 and 50 percent for 1871 and 1872, respectively, and explained, “These profits were continued in the business and new subscriptions taken up, which made their capital in 1873 amount to \$2,000,000.”<sup>37</sup> Joliet Iron & Steel raised additional equity capital from founding shareholders, like Hinckley, who were close enough to Meeker to forego dividends for the sake of further investment. By August 1873, as Table 2 shows, shareholders had invested more than \$3 million in equity capital in the company.

Farther-flung investors also financed Joliet Iron & Steel, specifically through two bond issues the company undertook in 1871 and 1873, which

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the face of his financial troubles, and the company’s mills remained closed for years while claims on its assets were the subject of complicated legal disputes.

<sup>33</sup> Its original name was the Union Cast Iron and Transportation Company, but that was changed to the Joliet name in 1871. See entry for 15 Mar. 1875, Joliet Iron & Steel Company, Illinois, vol. 37, Chicago (Cook Co.) 11 (hereafter Joliet Iron & Steel), 367, R. G. Dun & Company Collection, Baker Library, Harvard Business School, Boston, Mass. (hereafter RGD). The company was one of only eleven firms licensed to commercially exploit patents related to the Bessemer process in the United States between 1866 and 1876. Misa, *A Nation of Steel*, 22.

<sup>34</sup> Entry for 15 Mar. 1875, Joliet Iron & Steel, 367, RGD; Temin, *Iron and Steel in Nineteenth-Century America*; 174; Blaine Brooks Gernon, “Hinckley’s Railroad Empire,” *Journal of the Illinois State Historical Society* 47 (Winter 1954): 361–72; Hodas, *The Business Career of Moses Taylor*, 203–4.

<sup>35</sup> Entries for 21 Nov. 1871, 5 Aug. 1872, Joliet Iron & Steel, 321, RGD.

<sup>36</sup> “Iron and Steel: Description of A. B. Meeker & Co.’s Works at Joliet,” *CDT*, 20 Apr. 1872, 5.

<sup>37</sup> Entry for 15 Mar. 1875, Joliet Iron & Steel, 367, RGD.

*Table 2*  
Capital History of the Joliet Iron & Steel Company (\$ millions)

<i>Date</i>	<i>Paid-in Share Capital</i>	<i>Surplus</i>	<i>Bonded Debt</i>	<i>Total Capital</i>
1869	0.200	*	0	>0.200
November 1871	1.000	*	0	>1.000
Early 1873	2.000	*	0.500	>2.500
August 1873	2.000	*	0.942	*
October 1876	2.000	*	0.942	*
July 1877	2.000	*	0.942	*
<i>The Joliet Steel Company (from June 3, 1879)</i>				
June 1879	1.000	0	0.458	1.458
1881	2.000	*	0.458	>2.458
October 1886	2.666	0.739	0.510	3.915
1888	2.804	*	0.450	*

Source: Author's estimates based on R. G. Dun and Company Collection, Baker Library, Harvard Business School, Boston, Mass.

\* not available.

brought its total invested capital to about \$4 million. New York-based financier Moses Taylor played a central role in these bond issues. When Joliet Iron & Steel issued a first tranche of bonds in August 1871, Taylor bought \$100,000 of the total issue of \$500,000 for himself. He used his personal network to market the remainder of the company's bonds and agreed to serve as trustee of the mortgage that guaranteed them.<sup>38</sup> Two years later, in August 1873, the company issued another tranche of bonds, backed by a second mortgage on its property, to raise a further \$1 million in bonds.<sup>39</sup> Once again, Taylor bought some of these bonds himself, helped to market the others, and this time named the Farmers' Loan and Trust Company as trustee on the second mortgage.<sup>40</sup>

It was almost certainly Francis E. Hinckley who persuaded Taylor to lend money to Joliet Iron & Steel. In 1870, their mutual business associate James F. Joy had recommended Hinckley to Taylor, when Hinckley was seeking financial support for railroad construction in the Chicago area. Joy assured Taylor of Hinckley's honesty, and Taylor agreed to

<sup>38</sup> Hodas, *The Business Career of Moses Taylor*, 275. Taylor sold these bonds to other investors. Joliet Iron & Steel Co., Bond Register, 1871–1874, Papers of Moses Taylor, volume 791, New York Public Library, New York, N.Y.

<sup>39</sup> "The Joliet Iron & Steel Co.," *CDT*, 10 June 1881, 6.

<sup>40</sup> Francis E. Hinckley to Moses Taylor, 9 Aug. 1877, Box 184, James Frederick Joy Papers, Burton Historical Collection, Detroit Public Library, Detroit, Mich. (hereafter JFJP); Hodas, *The Business Career of Moses Taylor*, 275.

fund him.<sup>41</sup> From subsequent correspondence between Hinckley and Joy, it is clear that Hinckley considered himself to be acting not only on his own behalf as a stockholder in the Joliet Iron & Steel Company, but also in the interests of Taylor, whom he described to Joy as “our mutual friend.”<sup>42</sup> Hinckley kept Taylor apprised of developments at the Joliet Iron & Steel Company and suggested steps that Taylor might take to protect his interests.

However, the security for bondholders' claims was not based exclusively on Taylor's confidence in the company's management team. Both bond issues were backed by mortgages and the first mortgage was described as “an iron-clad arrangement” that covered “every article of property held by the Company.”<sup>43</sup> Moreover, Taylor controlled, either directly or indirectly, the trusteeships of both mortgages. Clearly, he was a man who sought to protect the credit he extended and, as it turned out, he was soon called upon to do just that.

If its establishment had caused few problems, Joliet Iron & Steel Company, like other fledgling steel enterprises, was soon to confront major financing challenges. On September 18, 1873, the failure of the prominent bank Jay Cooke & Company set off the panic of 1873. Cooke had been centrally involved in the financing of railroad construction, and the collapse of his bank prompted an implosion of railroad building and a sharp decline in rail prices that, as [Figure 2](#) shows, lasted for several years. The implications for U.S. iron and steel makers were devastating.<sup>44</sup>

For Joliet Iron & Steel Company, the panic resulted in the accumulation of a sizeable floating indebtedness and made it impossible to complete its August 1873 bond issue.<sup>45</sup> By January 1874, the company secretary “admits the company is hard up for ready money” but “does not care to state its liabilities.”<sup>46</sup> Still, R. G. Dun reported, “Bankers and others here [in Chicago] think the company is solvent and that it will be a successful one if it can raise sufficient monies for its requirements.”<sup>47</sup> The company president A. B. Meeker was reportedly in Europe trying to do just that.<sup>48</sup>

<sup>41</sup> Hodas, *The Business Career of Moses Taylor*, 206–7.

<sup>42</sup> Francis E. Hinckley to James F. Joy, 27 Sept. 1877, Box 185, JFJP; Hinckley to Joy, 20 Aug. 1877, Box 184, JFJP.

<sup>43</sup> “Joliet: Affairs of the Iron and Steel Works,” *CDT*, 3 Apr. 1874, 5; see also Hinckley to Taylor, 9 Aug. 1877, Box 184, JFJP.

<sup>44</sup> American Iron and Steel Association, *Bulletin*, 15 Oct. 1873.

<sup>45</sup> Entries for 28 Oct. 1873, 25 Nov. 1873, Joliet Iron & Steel, 321, RGD.

<sup>46</sup> Entry for 30 Jan. 1874, Joliet Iron & Steel, 321, RGD.

<sup>47</sup> *Ibid.*

<sup>48</sup> “The Financial Condition of the Iron and Steel Company,” *CDT*, 31 Mar. 1874.

When Meeker proved unsuccessful, news of his failure prompted the company's bondholders to action. In late March 1874, "the bondholders of the Joliet Iron & Steel Company put in an appearance here and took possession of the works. To-day the works are held by them under guard."<sup>49</sup> It soon became known that the company had voluntarily resigned its property to the possession of Moses Taylor, who was described as being in "the active charge and management" of the company.<sup>50</sup> The bondholders led by Taylor threatened to foreclose on the property after thirty days' default and then to advertise the property for sale.<sup>51</sup>

The threat sowed fear in the hearts of the company's unsecured creditors, given the strength of bondholders' security, and one of the unsecured creditors, Thomas Blakey of Philadelphia, protested its unfairness.<sup>52</sup> Blakey argued that the company was worth much more than the bonds secured by the trust deed and that "[a] forced sale . . . will sacrifice this fine property and necessitate loss of all unsecured claims." By then, the company was reported to have a floating debt of between \$500,000 and \$700,000 with the vast majority owed to out-of-state creditors.<sup>53</sup> To defend their interests, Blakey filed a bankruptcy claim against the company on April 9, 1874, in the United States District Court.<sup>54</sup>

The federal bankruptcy law in place in the United States from 1867 to 1878—one of the few periods in the nineteenth century when such a law existed—was important for unsecured "foreign" creditors like Blakey, since, as Bradley Hansen notes, state laws "often discriminated against creditors from outside the state."<sup>55</sup> For secured creditors like Moses Taylor and the other bondholders, however, the situation looked different. Even before the passage of the federal bankruptcy act, they had the option of seeking legal recourse, or threatening it, through foreclosure. Bankruptcy proceedings were not necessarily a

<sup>49</sup> Ibid.

<sup>50</sup> "The Joliet Iron & Steel Company—How They Manufactured More Bonds than Steel," *Daily Inter-Ocean*, 4 May 1874, 3.

<sup>51</sup> Ibid.

<sup>52</sup> "Joliet: Affairs of the Iron and Steel Works," *CDT*, 3 Apr. 1874, 5.

<sup>53</sup> "Joliet: The Financial Condition of the Iron and Steel Company," *CDT*, 31 Mar. 1874, 5.

<sup>54</sup> "Joliet: Affairs of the Iron and Steel Works," *CDT*, 3 Apr. 1874, 5. The claim was filed in the United States District Court, Northern District of Illinois, where the presiding federal judge was Judge Henry Williams Blodgett.

<sup>55</sup> The U.S. Congress passed only three federal bankruptcy laws prior to 1898: the 1800 Act, which was repealed three years later; the 1841 Act, which was in force only until 1843; and the 1867 Act, which, following its amendment in 1874, lasted until 1878. David A. Skeel, *Debt's Dominion: A History of Bankruptcy Law in America* (Princeton, 2001), 25; Bradley Hansen, "Commercial Associations and the Creation of a National Economy: The Demand for Federal Bankruptcy Law," *Business History Review* 72 (Spring 1998): 90. For a detailed discussion of what happened when the 1841 law was in force, see Edward Balleisen, *Navigating Failure: Bankruptcy and Commercial Society in Antebellum America* (Chapel Hill, 2001).

boon to secured creditors, since they superseded foreclosure in the short term and, in the long term, might weaken their legal position to the extent that they did not accord them as privileged a position as they held under state laws.

When the Bankruptcy Act of 1867 came into force, it was already a compromise between creditor and debtor interests, and the panic of 1873 generated pressure for greater leniency for debtors.<sup>56</sup> Indeed, as Charles Warren explained, federal bankruptcy legislation survived the panic only because it was substantially amended to include a series of provisions that favored debtors.<sup>57</sup> When it was repealed a few years later, "Its unpopularity was not due to its harshness toward debtors, but its excessive cost to creditors through unbearable fees and delays."<sup>58</sup> Moreover, given the limited rules for, and supervision of, U.S. courts in the administration of bankruptcy law, there were few constraints on federal judges in determining how to conduct bankruptcy proceedings. Therefore, there was considerable uncertainty about what might happen and it is hardly surprising that secured creditors did not want to risk bankruptcy proceedings if they could avoid them.<sup>59</sup>

Certainly, that was Taylor's attitude in the case of Joliet Iron & Steel and so, with his approval, Meeker and his team denied the bankruptcy claim against the company and asked for a trial. A few weeks later, it was reported that the company's officers were removing any property they could from the company's premises to "parts unknown" to place it beyond the federal court's jurisdiction. Clearly, possession seemed a more effective basis for defending bondholders' claims than fighting it out in bankruptcy court. Unsecured creditors took a different view of the situation, of course, since they were sure to lose in any out-of-court negotiation with secured creditors, and Blakey asked for an injunction from the federal court to restrain company officers from removing any more property.<sup>60</sup>

<sup>56</sup> Capturing the spirit of the times, President Grant declared on December 1, 1873, that he had become convinced that the Act of 1867 "is productive of more evil than good at this time," essentially, as he explained, because it privileged creditors over debtors. President Ulysses S. Grant, Message of December 1, 1873, <http://millercenter.org/president/speeches/detail/3744>; see also Charles Warren, *Bankruptcy in United States History* (Cambridge, Mass., 1935), 103.

<sup>57</sup> Warren, *Bankruptcy in United States History*, 120; see also Lawrence Friedman, *A History of American Law* (New York, 2005), 416.

<sup>58</sup> Warren, *Bankruptcy in United States History*, 127.

<sup>59</sup> Compared, for example, to the situation in England where, especially with the passage of its Bankruptcy Act of 1883, rules governing the bankruptcy process were more explicitly defined. Skeel, *Debt's Dominion*, 37–38.

<sup>60</sup> Two injunctions were granted—one restraining Moses Taylor, the Farmers' Loan and Trust Company, and their attorneys or agents from removing any property, and the other restraining the company's officers from so doing. "The Joliet Iron & Steel Company—How They Manufactured More Bonds than Steel," 3.

The court granted his request, and, in a stormy meeting the following month, there was a public airing of the vehement disagreement between unsecured creditors and incumbent management about bankruptcy as a solution to the company's woes. Blakey, representing the unsecured creditors, claimed that the company's bankruptcy was inevitable and desirable. In contrast, in a telegram read at the meeting, A. B. Meeker expressed his unqualified opposition to such a move, describing Blakey as "the worst enemy that the Joliet Iron and Steel Company had" and calling on other creditors to "make it hot for him." The *Chicago Daily Tribune* described "the sense of the meeting" as being with Blakey, presumably because, as R. G. Dun & Co. noted, there was a view that the company's difficulties were the fault of incumbent managers who had "spent their earnings and subscriptions rather injudiciously in extending their works and making premature improvements."<sup>61</sup>

Nevertheless, the incumbent management remained in place because, despite the company's financial embarrassment, Meeker and his team retained the confidence of Moses Taylor and its secured creditors.<sup>62</sup> In the ensuing months, the company was able to negotiate a resolution with the vast majority of its unsecured creditors as well as the dismissal of the bankruptcy claims against it.<sup>63</sup> The deal required unsecured creditors to accept preferred stock in return for their claims that, by then, amounted to about \$800,000, and existing shareholders also agreed to surrender \$1 million of their capital stock.<sup>64</sup> Newspaper reports highlighted the company's good fortune, relative to "most corporations of the kind," in being able to pay its unsecured debts with preferred stock. However, the outcome had little to do with luck, reflecting rather the realities of having claims that were subordinate to an ironclad mortgage. Little surprise then if the bondholders were the only creditors to escape without a haircut.

If their relationship with incumbent management allowed Taylor and the bondholders to protect their interests, it also had benefits for Meeker and his team, since it allowed them the financial flexibility the company needed to survive. With Taylor's support, they negotiated better terms from unsecured creditors so that the company was left with no floating indebtedness of importance, "owing but little aside from the old secured indebtedness."<sup>65</sup> Joliet Iron & Steel was soon "in full running condition and

<sup>61</sup> Entry for 15 Mar. 1875, Joliet Iron & Steel, 367, RGD; "The Joliet Iron Works," *CDT*, 31 May 1874, 16.

<sup>62</sup> "The Joliet Iron Works," *Daily Inter-Ocean*, 26 Aug. 1874, 8.

<sup>63</sup> 27 Oct. 1874, 15 Mar. 1875, Joliet Iron & Steel, 321, RGD.

<sup>64</sup> 27 Oct. 1874, Joliet Iron & Steel, 321, RGD; "Joliet Iron & Steel Company," *CDT*, 17 Sept. 1874, 7.

<sup>65</sup> 27 Oct. 1874, Joliet Iron & Steel, 321, RGD.



able to meet its ordinary current bills satisfactorily." Still, as R. G. Dun reported, "The company was not strong financially" and, indeed, by then some of the company's first-mortgage bonds had fallen due—\$50,000 on August 1, 1875, and a further \$50,000 on August 1, 1876—and it was unable to meet these payments.<sup>66</sup> However, once again Moses Taylor came to the rescue, this time putting his own money on the line, opting to redeem the bonds himself rather than foreclose on the first mortgage.<sup>67</sup>

### From Confidence to Contract, 1877–1878

Notwithstanding the financial flexibility that Taylor's continuing support afforded the Joliet Iron & Steel Company, the challenge of putting the company back on a paying basis still remained. A "committee of five" was appointed to represent all major financial interests in the company in seeking a resolution to its problems. The committee settled on a plan that reveals how integral Meeker was to the success of the Joliet Iron & Steel Company. In early 1877, his company, Messrs. A. B. Meeker & Co., proposed to lease the works of the Joliet Iron & Steel Company for five years for an annual payment of \$150,000, which included monies for the payment of taxes and maintenance, as well as an additional capital investment of \$15,000 per year.<sup>68</sup> Perhaps the biggest advantage of the lease was that it solved a major financial problem that had just emerged for the company.

In 1866, as I noted above, the Bessemer Association had been established to license the patents needed to build a modern steel works in the United States. In early 1877, the association converted to a limited partnership, the Bessemer Steel Company, with participating steel companies required to pay \$75,000 for their share in the new entity.<sup>69</sup> Lacking the ready funds to pay for its interest, Joliet risked losing its rights to exploit the Bessemer technology. The lease proposed by A. B. Meeker & Co. promised a way out of this dilemma, providing not just for the payment of Joliet's interest but also for the acquired shares to be registered in the name of the Joliet Iron & Steel Company and to "belong to it without any payment at the end of the lease."<sup>70</sup>

<sup>66</sup> 19 Oct. 1876, 19 Feb. 1876, 29 June 1876, Joliet Iron & Steel, RGD.

<sup>67</sup> Newbold et al. versus the Bessemer Steel Company (filed in late Dec. 1877), based on Moses Taylor to James F. Joy, 29 Dec. 1877, reporting that a bill had been served on him the day before, Box 187, JFJP.

<sup>68</sup> "Joliet: Lease of the Iron and Steel Works," *CDT*, 15 Mar. 1877, 7.

<sup>69</sup> At the same time, it raised the royalty to be paid on the manufacture of a ton of Bessemer steel from 75 cents to \$3 with the funds accumulated from this royalty to be distributed to the partners in the Bessemer Steel Company. Taylor to Joy, 28 Aug. 1877, Box 184, JFJP.

<sup>70</sup> Extract from Proposition for Lease of the Works of the Joliet Iron and Steel Co. to A. B. Meeker and others, no date, Box 185, JFJP.

The committee of five accepted Meeker's proposal "as probably the best arrangement practicable under the circumstances."<sup>71</sup> The *Chicago Daily Tribune* was more enthusiastic, celebrating the new arrangement as a "triumph" for the city of Joliet and one that was achieved through the "untiring efforts" of men like Meeker and Hinckley of Chicago. Revealing its local sympathies, the newspaper enthused that, with the works backed by Messrs. Meeker & Co., "The future progress and prosperity of this city is now assured." Had they "fallen into the hands" of the eastern capitalists, the newspaper claimed, "They would have been closed for an indefinite period."<sup>72</sup> Ironically, only a few months later, in July 1877, the bankruptcy of A. B. Meeker & Co. forced the Joliet Iron & Steel Company to close.

The problem, as Hinckley later explained to Moses Taylor, was that the steel company had become inextricably "entangled and interwoven" in an intricate web of companies that Meeker had built. It transpired that Meeker, in a complicated series of transactions, had used claims on rails manufactured by Joliet to obtain bank loans. When A. B. Meeker & Co. failed, its creditors claimed these rails in payment for their loans. Unfortunately, the Joliet Iron & Steel Company depended on the revenues from selling these rails for its survival.<sup>73</sup>

Thus, seven of the Joliet Iron & Steel Company's stockholders filed a bill against the company, charging that it was insolvent and "that its affairs ought to be closed up in a Court of Chancery, so as to give all the creditors an equal chance."<sup>74</sup> The president of the company immediately admitted all claims against the company, and, on July 26, 1877, Judge Josiah McRoberts of the Circuit Court of Will County, Illinois, appointed Alexander J. Leith as receiver, directing him to wind up the business and dissolve the company.<sup>75</sup>

The Will County Court was a state court, and its jurisdiction in this case derived from state insolvency laws. Historians typically acknowledge the importance of these laws during periods when federal

<sup>71</sup> Report of the Committee of Five, signed by H. E. Bigelow, secretary, no date (filed under Aug. 1877), Box 184, JFJP.

<sup>72</sup> "Joliet: Lease of the Iron and Steel Works," 7.

<sup>73</sup> Hinckley to Taylor, 9 Aug. 1877, Box 184, JFJP.

<sup>74</sup> Copy of papers in *Filley et al. versus Joliet Iron & Steel Co.*, sent to James F. Joy by court on 29 Aug. 1877, Box 184, JFJP.

<sup>75</sup> Assignment to Alex J. Leith, Receiver, by Joliet Iron & Steel Co., July 1877, Box 184, JFJP; "The Joliet Iron and Steel Company," *CDT*, 10 June 1881, 6; entry for 10 Nov. 1875, Joliet Iron & Steel, 367, RGD. Leith was already involved in the affairs of the Joliet Iron & Steel Company prior to his appointment as receiver, having been appointed to the board of Joliet Iron & Steel Company in February 1877, and then to the committee of five, to represent the interests of one of the company's main trade creditors, the Missouri Furnace Company of St. Louis.

bankruptcy legislation was not in force.<sup>76</sup> However, as this example shows, state insolvency laws had a role to play in adjudicating financial distress even in the presence of a national bankruptcy act. Unfortunately, the exact nature of that role was unclear at the time, resulting in jurisdictional conflicts between state and federal courts, as this case soon showed.<sup>77</sup>

Problems of jurisdictional conflict arose in an indirect way through claims made against A. B. Meeker & Co. for monies loaned on rails manufactured by Joliet Iron & Steel.<sup>78</sup> They then became an issue with respect to the legal administration of Joliet Iron & Steel's own financial distress. Specifically, the filing of a petition of involuntary bankruptcy by some creditors of the Joliet Iron & Steel Company raised the question of whether the case against the company would be removed from the state court to the federal bankruptcy court.<sup>79</sup>

Battles between federal and state courts over jurisdiction in financial distress were not unusual in the United States at this time.<sup>80</sup> From a legal perspective, whether the state court had a legitimate claim to jurisdiction with regard to the Joliet case depended on the extent to which one could construe insolvency and bankruptcy as distinct.<sup>81</sup> The question of how to define these terms, and the relationship between them, was debated throughout the nineteenth century in the United States. In 1871, the Supreme Court had construed insolvency in broad terms, not only as a lack of assets to cover debts, but also as an inability to pay those debts as they fell due.<sup>82</sup> In principle, therefore, insolvency could be understood as having a broader meaning than bankruptcy but there was still ambiguity about whether certain specific types of insolvency, such as those

<sup>76</sup> See, for example, Friedman, *A History of American Law*, 416; Hansen, "Commercial Associations and the Creation of a National Economy," 93–95.

<sup>77</sup> Indeed, as late as 1909, Samuel Willotson noted, "The powers of the states when Congress has passed a bankruptcy law are by no means so clear." Samuel Willotson, "The Effect of a National Bankruptcy Law upon State Laws," *Harvard Law Review* 22 (June 1909): 547–63. As another observer noted, it was clear that "the State laws were superseded and suspended so far as they were in conflict with the Federal legislation," but "the difficulty has been in determining when there was such conflict." E. H., "The Federal Bankruptcy Act and Its Effect on State Insolvency Laws," *Michigan Law Review* 16 (May 1918): 540–43.

<sup>78</sup> The conflict arose because these claims were made in the federal court administering A. B. Meeker & Co.'s bankruptcy, but the Will County Circuit Court had jurisdiction over the steel company's property. *Hinckley to Joy*, 24 Sept. 1877, Box 185, JFJP.

<sup>79</sup> *Hinckley to Joy*, 2 Sept. 1877, Box 185, JFJP.

<sup>80</sup> Charles Warren, "Federal and State Court Interference," *Harvard Law Review* 43 (Jan. 1930): 345–78.

<sup>81</sup> If so, then it was likely, given the Supreme Court's rulings at the time, that the Will County Court would retain jurisdiction on the grounds that it had initially taken "possession of the controversy." Warren, "Federal and State Court Interference," 363.

<sup>82</sup> Friedman, *A History of American Law*, 416.

in which a receiver was appointed, might constitute “acts of bankruptcy” and thus justify the transfer of the case to a federal court.<sup>83</sup>

The result was considerable uncertainty about legal jurisdictions in the Joliet case, which is clear from Hinckley’s assessment of the legal situation. Although he told Joy that he expected the local court’s jurisdiction to prevail, he advised that a bill for foreclosure be prepared “ready to be filed in the Will Co[unty] Court if it is decided to go on there and if not to file in the Federal Court.”<sup>84</sup> The outcome was hard to judge not only because it depended on legal interpretation, but also on how influence was brought to bear on the courts.

Hinckley claimed the movement for bankruptcy was “undoubtedly instigated by A. B. Meeker & Co. as I notice the creditors who filed the petition are Creditors of A. B. Meeker & Co.” Behind them was A. B. Meeker himself, who reportedly believed the bankruptcy of the Joliet Iron & Steel Company to be his only escape, given the depth of his financial debacle. In what he described as a “confidential report” to Taylor, Hinckley described Meeker as “entirely discouraged as to his ability to pull through.” He had “scarcely slept” recently and “not at all except under the influence of narcotics,” and Hinckley considered that he had “lost his ambition and pluck and does not see any bright side.”<sup>85</sup>

Hinckley assured Taylor that if he wanted the case to go to a federal bankruptcy court, there was no doubt that the local judge would accede to his request. However, he told Taylor that he was “apprehensive that the firm will be compelled to settle through the Bankruptcy Court” and suggested it was preferable for the local court to retain jurisdiction. In making these arguments, Hinckley emphasized that Taylor’s interests were no longer aligned with those of Meeker. Notwithstanding Meeker’s distress, and his own “intimate” relations with him, Hinckley believed that “situated as I am, expected to watch the interests of our mutual friend Mr. Taylor,” he could no longer trust Meeker to do likewise. Instead, Meeker was “a man that looks out for his own interests and will do everything in his power to serve them.” Recognizing the importance of the rupture he was advocating in the Taylor group’s relationship with A. B. Meeker, Hinckley noted that this “is confidential and I would not like to have it repeated.”<sup>86</sup>

<sup>83</sup> The conflict was only resolved in 1903, through an amendment to the 1898 Bankruptcy Act, which declared it to be an act of bankruptcy for an insolvent corporation to have applied for, or been put in the charge of, a receiver or trustee under state laws. Had that been the case in 1877, then Joliet Iron & Steel Company would have been adjudged bankrupt, but the law was nowhere near as clear as that at the time.

<sup>84</sup> Hinckley to Joy, 2 Sept. 1877, Box 185, JFJP.

<sup>85</sup> Hinckley to Taylor, 9 Aug. 1877, Box 184, JFJP.

<sup>86</sup> *Ibid.*; see also Hinckley to Joy, 24 Sept. 1877, Box 185, JFJP.

Since Meeker could no longer be trusted, Hinckley advised Taylor to look to his mortgage for protection—since “I am disposed to suggest that your interests would be better protected if you were in possession under the Mortgage.”<sup>87</sup> Hinckley’s advice proved persuasive to Taylor, inducing him to fall back on his ironclad mortgage to defend his claims against Joliet Iron & Steel Company. Moreover, given the increasing legal complexity of the case, Taylor asked James F. Joy, the man who had brought Taylor and Hinckley together, to step in and act as his counsel in the matter. Hinckley continued to serve as the Taylor group’s primary source of inside information on the company, but now he interacted with Joy as well as Taylor about Joliet.<sup>88</sup> After some debate within the Taylor group about which mortgage to use, Moses Taylor filed a bill against the Joliet Iron & Steel Company to foreclose as trustee on the first mortgage.<sup>89</sup>

Meeker, it seems, understood only too well that he had betrayed the trust of the Taylor group and offered his help in defending Taylor’s legal claims. In a letter to Joy, G. W. Kretzinger, the Chicago attorney acting for Taylor, reported that Meeker “fully realizes the perilous position he occupies in consequence of his conduct towards Mr. Taylor.” Kretzinger assured Joy that nobody would offer more help than Meeker in securing the full amount of Taylor’s judgment: “He is forced to aid us in order to relieve himself from the charge and effect of bad faith.”<sup>90</sup> However, the Taylor group had little time for Meeker by then, not only because it was seeking legal recourse, but also due to growing concerns about a new threat from inside the Joliet Iron & Steel Company.

That threat came not from A. B. Meeker but from Alexander J. Leith, the receiver who had replaced Meeker at the helm of the Joliet Iron & Steel Company. Despite early signs of concern from the Taylor group about Leith’s trustworthiness, Taylor and his associates could not avoid dealing with him.<sup>91</sup> Of particular importance was Leith’s plea for help from the Taylor group to avert the potentially disastrous implication of the company’s failure to pay for its interest in the Bessemer Steel

<sup>87</sup> Hinckley to Taylor, 9 Aug. 1877, Box 184, JFJP; see also Hinckley to Joy, 24 Sept. 1877, Box 185, JFJP. In addition, Hinckley, along with some other major stockholders, submitted a petition to the Will County Court requesting a modification of the decree in the Joliet insolvency case and, in particular, that “the Corporation shall not be declared dissolved.” Hinckley to Joy, 8 Sept. 1877, Box 185, JFJP. That change was almost certainly designed to prevent the company’s insolvency being interpreted as an act of bankruptcy and, in so doing, to bolster the state court’s jurisdiction in the case.

<sup>88</sup> Hinckley to Joy, 20 Aug. 1877, Box 184, JFJP.

<sup>89</sup> Hinckley to Joy, 8 Sept. 1877, Box 185, JFJP.

<sup>90</sup> G. W. Kretzinger to Joy, 30 Oct. 1877, Box 186, JFJP.

<sup>91</sup> In filing for a modification of the insolvency decree to put aside the company’s dissolution (see note 87), Hinckley took the additional precaution of requesting “that the Receiver shall not be authorized to run the works.” Hinckley to Joy, 8 Sept. 1877, Box 185, JFJP.

Company. Notwithstanding his misgivings about Leith, Hinckley wrote to Taylor, as well as to Joy, asking them either to support the receiver's request for funds or to ask the trustees of the Bessemer Steel Company for forbearance in pressing their claims.<sup>92</sup>

Moses Taylor understood the risks of nonpayment, having explained to Joy that "any mill defaulting, either in payment of its royalties, or of its notes given in part payment of cost of patents, became liable to have its interest sold and forfeit its right to make steel by the Bessemer process."<sup>93</sup> Taylor agreed to contact the trustees, but he resisted being drawn further into the Joliet Iron & Steel Company's messy affairs:

I do not like the idea of mixing up in this thing more than I can help to secure my own interest. I do not see as Trustee that I am bound to do it, and, having mixed myself up in so many affairs that have proved very disadvantageous to me, have concluded to let others look out for their interests as well as myself.<sup>94</sup>

In an addendum to the same letter, he added in a tone that was clearly disapproving of the receiver: "I have just heard that Mr. Leith, the Receiver of the Joliet Co., was here all of last week up to Friday. He did not call on me." Both men, it seems, wanted to keep their distance.

The Taylor group became increasingly suspicious of Leith's motives and eventually took legal steps to have him removed as receiver. Hinckley played a central role in stirring up opposition to Leith, telling Joy, "Leith is a resident of St. Louis, that he has declared that he is a British subject, and other statements which he has made which are very derogatory either to his character as a man or his qualifications as a Receiver."<sup>95</sup> Initially, Joy was unconvinced of the merits of requesting Leith's removal, not least because of the difficulties of identifying a competent successor who was independent of Meeker, so he pushed Hinckley to justify his criticism of him.<sup>96</sup> Hinckley followed up with a detailed memorandum in which he listed thirteen "Reasons why Alexander J. Leith should not be Receiver of the Joliet Iron & Steel Company." In particular, he emphasized that "Said Leith manifests great interest to retain the Receivership and it is believed he has some personal interest to protect by doing so."<sup>97</sup>

<sup>92</sup> Telegram from Hinckley to Joy, 31 Aug. 1877, Box 184, JFJP; telegram from Hinckley to Joy, 5 Sept. 1877, Box 185, JFJP.

<sup>93</sup> Taylor to Joy, 28 Aug. 1877, Box 184, JFJP.

<sup>94</sup> Taylor to Joy, 3 Sept. 1877, Box 185, JFJP.

<sup>95</sup> Hinckley to Joy, 20 Nov. 1877, Box 187, JFJP; telegram from Hinckley to Joy, 29 Oct. 1877, Box 186, JFJP.

<sup>96</sup> Telegram from Hinckley to Joy, 29 Oct. 1877, Box 186, JFJP.

<sup>97</sup> Reasons why Alexander J. Leith should not be Receiver of the Joliet Iron & Steel Company, approximate date 21 Nov. 1877 (based on Hinckley to Joy, 27 Nov. 1877: "I also

Hinckley then circulated his memorandum to Moses Taylor and R. G. Rolston of Farmers' Loan and Trust. In addition, he made his case against Leith to Andrew Boardman, a New York lawyer who had contacted Moses Taylor and Farmers' Loan and Trust in his capacity as counsel for the "great body of the English bondholders" who represented the "greater part" of the second-mortgage bondholders of the Joliet company.<sup>98</sup> In addition, Hinckley urged Joy to move forward in requesting that the Will County Court remove Leith as receiver since the time was ripe to act:

I have got a long string of affidavits as to Leith's residence in St. Louis. I have procured a signing of a petition by nearly all of the former workmen in the works asking Judge McRoberts to remove Leith. There are also other and political influences outside being brought against Leith to which Judge McRoberts will undoubtedly listen as he is a candidate for re-election.

Lest the tone of Hinckley's criticisms suggest a personal vendetta against Leith, it should be said that he was not alone in his opposition to Leith. Kretzinger, Joy's Chicago-based counsel, told Joy, "I regard it as absolutely necessary to the interest of Mr. Taylor both personal and as Trustee, that Mr. Leith be removed. I consider him both an unsafe and unreliable man." By then, Leith had reportedly become "a little frightened" about the Taylor group's efforts to remove him, and Kretzinger described him as being prepared to "move all powers within his control to be retained."<sup>99</sup> Echoing Hinckley's view, Kretzinger told Joy that he was confident that McRoberts would remove Leith "at the instance of the interest you represent."<sup>100</sup>

### The Ties that Bind, 1877–1878

However, the Taylor group was soon to learn that their interests were not a priority for the Will County Court. Notwithstanding the confidence expressed by Hinckley and Kretzinger in Judge McRoberts's willingness to do as the Taylor group bid, the judge opted instead to deny the motion to have Leith removed as receiver.<sup>101</sup> Even more controversially, McRoberts took steps to increase Leith's influence over the Joliet Iron &

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sent you last week a statement of reasons why Leith should not be Receiver of the Joliet Iron & Steel Company"), filed under July 1877, Box 184, JFJP.

<sup>98</sup> Andrew Boardman to Taylor, 15 Aug. 1877, and Boardman to Rolston, 15 Aug. 1877, Box 184, JFJP.

<sup>99</sup> *Ibid.*

<sup>100</sup> Kretzinger to Joy, 23 Oct. 1877, Box 186, JFJP.

<sup>101</sup> Boardman to Joy, 27 Dec. 1877, Box 187, JFJP.

Steel Company in a way that the Taylor group considered to be completely illegitimate.

Leith had continued to work on a solution for paying for Joliet's share in the Bessemer Steel Company after Taylor had proven less than forthcoming with his assistance. He had gone to Philadelphia to negotiate directly with the Bessemer Steel Company and had succeeded in winning a temporary reprieve for the Joliet Iron & Steel Company by issuing his own notes as receiver in payment for the company's interest in the Bessemer Steel Company. However, with these notes falling due in early 1878, a more permanent solution was needed. Leith had come up with a plan. Through their participation in the Bessemer Steel Company, partner steel companies were entitled to royalties on the sale of Bessemer steel by other manufacturers. As a result, the trustees of the Bessemer Steel Company had "ample funds on hand to the credit of the Joliet Iron and Steel Co.," and Leith proposed that these monies be used to pay for its stake in the Bessemer Steel Company.<sup>102</sup>

The trustees of the Bessemer Steel Company, themselves prominent men in the U.S. steel industry, favored Leith's plan.<sup>103</sup> However, in a move that shows the extent of Taylor's influence, their lawyer wrote to the financier to see if the proceedings instituted by him as trustee under the first mortgage were such "as to make it improper that the money be paid over to the Receiver of the latter company or on his order."<sup>104</sup> A few weeks later, the Bessemer trustees followed up with a personal visit to Taylor's office in New York to call his attention "to the importance of your giving authority and of withdrawing opposition to the payment of the Receivers' certificates of the Joliet Iron & Steel Company." They emphasized the potential risks for the Joliet Iron & Steel Company of a failure to pay, but said that they were hesitant to follow the receiver's orders in the matter without Taylor's approval.<sup>105</sup>

Taylor asked them to write him a letter outlining the situation, which he forwarded to Joy for a decision, but the issue was soon taken out of their hands. On January 15, 1878, the Will County Court gave the receiver authority to implement his scheme and pay off the company's

<sup>102</sup> Taylor to Joy, 1 Dec. 1877, and D. J. Morrell and Chester Griswold to Taylor, 30 Nov. 1877, Box 187, JFJP.

<sup>103</sup> The Bessemer Steel Company brought together all the major producers of Bessemer steel in the United States and was represented by men like Daniel Morrell and Chester Griswold who were prominent in the industry. For a lively discussion of its activities, see Joseph Frazier Wall, *Andrew Carnegie* (New York, 1970), 330–49; see also Misa, *A Nation of Steel*, 15–21.

<sup>104</sup> Robert Wilson (acting for the Bessemer Steel Company Limited) to Taylor, 6 Nov. 1877, Box 187, JFJP.

<sup>105</sup> Taylor to Joy, 1 Dec. 1877, and D. J. Morrell and Chester Griswold to Taylor, 30 Nov. 1877, Box 187, JFJP.



obligations to the Bessemer Steel Company.<sup>106</sup> The implication of its decision was clear: the local court's priority was to secure the Joliet mill's future, even if it meant allowing the receiver to divert monies that might otherwise have been used to pay off secured bondholders.

With Leith firmly in charge of the Joliet Iron & Steel Company, the Taylor group attempted to move forward on other fronts. No decree had been entered as to the first mortgage, so Joy considered using the second mortgage to request that Farmers' Loan and Trust foreclose on and sell the property. He began talking with Andrew Boardman, as representative of the English second-mortgage bondholders, about a "plan of operation."<sup>107</sup> However, growing concerns that Boardman was working with Leith induced the Taylor group to move forward on its own. Moses Taylor owned a substantial number of the second-mortgage bonds, so he could take advantage of a clause in the mortgage that allowed the holders of one-tenth of the bonds to request a foreclosure.<sup>108</sup> Taylor's plan seemed to be working when it prompted Boardman and Leith, now openly working together, to ask that he drop the foreclosure suit in return for a deal on his bonds.<sup>109</sup>

However, these negotiations were jeopardized by a further startling announcement that the Will County Court had given Leith approval to open and run the Joliet mills. On April 18, 1878, the *Chicago Daily Tribune* announced that the company had signed large contracts for the manufacture of steel rails that were sufficient to keep its mills running for a year. It praised the efforts of the company's receiver, and Judge McRoberts, to get the mills working again and reported that Alexander Leith had "satisfactorily arranged matters with the first and second bondholders."<sup>110</sup>

The truth is that Leith and the local court had once again blindsided the Taylor group. Moses Taylor was shocked and furious at the news that the mills were going to work again, and he fired off letters to Joy and Hinckley, asking them to explain what was going on. He was sure that Leith's action would prejudice the interests of the first-mortgage bondholders: "I cannot understand why they should want to start at the present low prices and probably lose money instead of continuing to receive dividends from the Association for remaining idle."<sup>111</sup>

Prompted to action by Taylor's fury, Joy sent a threatening letter to Leith, "on behalf of all bond-holders," protesting his decision to reopen

<sup>106</sup> Order of Will County Court, 15 Jan. 1878, Box 188, JFJP.

<sup>107</sup> Boardman to Joy, 27 Dec. 1877, Box 187, JFJP.

<sup>108</sup> Hinckley to Joy and Hinckley to Taylor, 19 Jan. 1878, Box 188, JFJP.

<sup>109</sup> Telegram from Leith to Joy, 3 Mar. 1878, Box 189, JFJP.

<sup>110</sup> "Joliet Iron Works," *CDT*, 18 Apr. 1878, 7.

<sup>111</sup> Taylor to Joy, 17 Apr. 1878, Box 190, JFJP.

the works. He asserted, "It is what you have no right to do, and will result in misfortune to you."<sup>112</sup> He threatened Leith that he would "take such measures as remain in my power to protect their interests against you." Leith responded in no uncertain terms, stating his entire disagreement with Joy "as to the disaster to your 1<sup>st</sup> mortgage interest (or any other) by the operating of the mills." He claimed to have done his duty "towards all interests" and was "sorry that you should think, the interests which you represent so harmed, that it should call forth from you a protest and threat."<sup>113</sup> It was no idle threat since, following an exchange of letters with Joy on the matter, Taylor sent him the following telegram: "Have your letters agree with you full—Receiver should be removed."<sup>114</sup>

However, it turned out to be too late to seize control from the hands of Alexander Leith; as Hinckley put it, "We have sinned away our day of grace." In a letter to Joy, he explained, "You must understand that Judge McRoberts lives at Joliet, that there is strong local pressure brought to bear upon him to start the mills, that the merchants and everybody else in Joliet are clamorous to have the mills started and to have money expended in the town." He considered, "To attempt to remove Mr. Leith now, in the face of a prospect of starting the mills, would undoubtedly meet with very hostile opposition from the people of Joliet who surround the Judge."<sup>115</sup> The fact that Judge McRoberts, who had resided in Joliet since 1850, was so attuned to local concerns was not surprising; like most state judges in the United States at this time, he was elected to his office and was coming up for reelection.<sup>116</sup> The popular election of state judges was a structural peculiarity of the U.S. legal system; as William H. Taft put it, "In every country of the world, except for the Cantons of Switzerland and the United States, judges are appointed and not elected."<sup>117</sup>

<sup>112</sup> Joy to Leith, 19 Apr. 1878, Box 190, JFJP.

<sup>113</sup> Leith to Joy, 22 Apr. 1878, Box 190, JFJP.

<sup>114</sup> Telegram from Taylor to Joy, 22 Apr. 1878, Box 190, JFJP.

<sup>115</sup> Hinckley to Joy, 19 Apr. 1878, Box 190, JFJP. Kretzinger echoed his analysis of the situation, claiming, "It would be much more difficult to remove Leith now than it would have been a month or six months ago, as the public in Joliet are strongly in favor of starting the works." Kretzinger to Joy, 20 Apr. 1878, Box 190, JFJP.

<sup>116</sup> Although early in the nineteenth century state judges tended to be appointed, as Friedman notes, "After the middle of the century, the popular election of judges was more and more accepted as normal." States where judges were appointed, like Maine and Massachusetts, were the exception; the state of Illinois was not one of them. Friedman, *A History of American Law*, 279; Jed Handelsman Shugerman, "The Twist of Long Terms: Judicial Elections, Role Fidelity, and American Tort Law," *Georgetown Law Journal* 98 (2010): 1408.

<sup>117</sup> And this was for good reason, in Taft's view, since "principles of right and justice and honesty and morality are not merely conventional and have a higher source than a plebiscite." William H. Taft, "The Selection and Tenure of Judges," presented at the meeting of the American Bar Association, Montreal, Canada, 1–3 Sept. 1913; see also Shugerman, "The Twist of Long Terms," 3.

Given McRoberts's focus on local concerns, his preference for Leith made sense, since the receiver promised to get the mills up and running again. In contrast, if the Taylor group had its way in pressing its claims, there would be nothing left over for anyone else. As R. G. Dun reported in late 1877, the works, which had cost about \$3 million to build, "could not be sold now for enough to pay the bonded debt which is estimated at \$1 m."<sup>118</sup> That the works' prospects looked so bleak reflected the fact that rails, which remained the U.S. steel industry's most important product, continued to sell at depressed prices and volumes (see [Figure 2](#)).<sup>119</sup> Under these circumstances, Taylor clearly preferred to keep the mills shut since, with money coming in from the Bessemer Steel Company, he thought it a surer way of having his claims met than putting the steelworkers of Joliet back to work.

In allowing Leith to run the mills again, the Will County Court gave him significant powers, so much so that some bondholders greeted them with disbelief. Following a conversation with Leith, one of Joliet's first-mortgage bondholders, E. Y. Townsend, who was also President of the Cambria Iron Company, reported to Joy that he had been surprised "at the appointment of a Receiver to conduct a hazardous Manufacturing business, but had no thought of the extent of his powers re under the order of court." Noting that any sale of the property would be "subject to all contracts of the Receiver," he considered that "if Bond Holders have to submit to such contingencies and liabilities, the creation of Mortgages as a Security is a farce; and I can not believe but that there are Laws that will protect the rights of Creditors?"<sup>120</sup>

In principle, given their failure in the local court, the Taylor group could have sought legal protection under federal bankruptcy legislation. Indeed, during the summer of 1878, Joy discussed the possibility of filing an affidavit to have the case removed to a federal court, but he soon abandoned this plan of action.<sup>121</sup> On the one hand, he worried that the fact that "both Trustees were residents of New York" might prove to be an obstacle to any request for a change in jurisdiction, a concern that highlighted once again the extraordinary jurisdictional complexities of the U.S. legal system.<sup>122</sup> In addition, he had been concerned for some time about another potential legal problem, one that reflects a more general problem of writing contracts under uncertainty; it was unclear whether the first mortgage covered

<sup>118</sup> Entry for 9 Oct. 1877, Joliet Iron & Steel, 367, RGD.

<sup>119</sup> Which reflected, in turn, a continued depression in U.S. railroad construction. With the panic of 1873, it declined to a low point in 1875, then increased in 1876, before declining again in 1877 and 1878. *Historical Statistics of the United States*, Series Df884 and Df882.

<sup>120</sup> E. Y. Townsend to Joy, 6 Sept. 1878, Box 193, JFJP, Underlined in the original.

<sup>121</sup> Kretzinger to Joy, 17 June 1878, Box 191, JFJP.

<sup>122</sup> Charles D. Hinchman to Joy, 15 July 1878, Box 191, JFJP.

Joliet's stake in the Bessemer Steel Company, since the latter had been formed after the mortgage was written.<sup>123</sup>

Rather than seeking legal recourse in a federal court, the Taylor group therefore decided to negotiate an out-of-court settlement by dealing with men it did not trust. By then, Alexander J. Leith and his brother-in-law Jesse January had succeeded in buying up a substantial number of the second-mortgage bonds, presumably at a low price. Acting in concert with Andrew Boardman, Leith and January asked that "the second bondholders or trustees representing them purchase the property under the decree of foreclosure and sale to be entered the last of this or first of next week" and whether the first bondholders would "accept seven percent interest instead of ten percent interest from the date of default and take new issue of bonds for the principal at seven percent interest." To sweeten the deal, Leith and Boardman offered a truly ironclad mortgage for the new bond issue that would include the company's share of the Bessemer Steel Company.<sup>124</sup>

Once the offer had been made, the various parties went back and forth without reaching any clear agreement. Initially, Taylor seemed to give his assent to the plan, but he then became concerned that he was giving his adversaries "an opportunity to speculate on me."<sup>125</sup> These adversaries included Boardman and Leith, of course, but Taylor also began to suspect a plot against him that involved members of the Bessemer Steel Company—"some of the Philadelphia parties in whom we have no confidence"—that was designed to "get control of the property at a low cost and make a handsome profit out of it."<sup>126</sup>

Taylor called Joy's attention to "the revenue the property can be made to yield," pointing out that "the Vulcan Works of St. Louis have agreed with the Bessemer Steel Co., to keep their Steel Department out of operation one year for the consideration of Seventy Thousand Dollars besides their share of the royalties which together it is estimated will yield them \$125,000 for the year." Taylor thought that the Bessemer Steel Company would "probably be willing to make a similar arrangement with the Joliet Works, for at least one year if not for a term of years." If so, he estimated that the "Boardman party" would make "a large profit," and he wondered, "whether the present Bondholders should not receive a larger amount in any reorganization, as the Works can be made so remunerative even by standing still."<sup>127</sup> Based on this

<sup>123</sup> Hinckley to Joy, 10 Jan. 1878; Kretzinger to Joy, 25 Feb. 1878, Box 188, JFJP.

<sup>124</sup> Hinckley to Joy, 18 Sept. 1878, Box 193, JFJP.

<sup>125</sup> Taylor to Joy, 7 Nov. 1878, Box 193, JFJP.

<sup>126</sup> Taylor to Joy, 30 Oct. 1878, Box 193, JFJP.

<sup>127</sup> Taylor to Joy, 26 Oct. 1878, Box 193, JFJP, underlined in original. Andrew Carnegie arranged the payment from the Bessemer Steel Company to the Vulcan Iron Works, and a copy of

analysis, Taylor instructed Joy, "Please withdraw my assent to the Boardman proposition," prompting a fiery response from Boardman who wrote to say that he trusted Mr. Taylor would not "violate the honorable understanding that was entered into between us, less legally binding to be sure, but more personally and honorably obligatory than if it had been under his hand and seal."<sup>128</sup>

### An Audacious Stability, 1879–1889

Negotiations dragged on for a few months, but eventually a deal to foreclose on, and sell, the property of the Joliet Iron & Steel Company was concluded. In April 1879, Andrew Boardman and Jesse January, who by then represented \$400,000 of the company's second-mortgage bonds, filed a petition in the 1877 Taylor suit, "declaring their option to call the second mortgage due, and asking that the Trustee, the Farmers' Loan and Trust Company, be compelled to go on and foreclose the second mortgage and sell the property under the mortgage." The Will County Court immediately issued an order requiring the trustee to advertise and sell the property, despite the fact that the court was not even in session.<sup>129</sup> In May 1879, the company's works were sold by the Farmers' Loan and Trust Company as trustee for the holders of its second-mortgage bonds.<sup>130</sup>

The sale was "an exceedingly tame affair" with only one bid submitted for the company and accepted "in less time than it takes to write it."<sup>131</sup> It came from Andrew Boardman and W. F. Whitehouse, who had been appointed to bid the property in for the second bondholders. They offered only a nominal amount for the property, a sum of \$54,200, but they agreed to purchase the company subject to its first mortgage of \$458,000, the two and a half years of unpaid interest on the first-mortgage bonds, and an unknown amount of receivers' certificates.<sup>132</sup> Thus, the sale valued the total capital of \$3.7 million invested in the company at virtually zero and wiped out all other liens and debts on the property.<sup>133</sup>

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his agreement with Vulcan, dated September 28, 1878, was attached to a further letter from Taylor to Joy on November 21, 1878. Memorandum of Agreement, Andrew Carnegie of New York City and Vulcan Iron Works, State of Missouri, 28 Sept. 1878, Box 194, JFJP.

<sup>128</sup> Boardman to Joy, 13 Nov. 1878, Box 194, JFJP.

<sup>129</sup> "The Joliet Iron and Steel Company's Works," *CDT*, 10 June 1881, 6. Raising the question of whether Judge McRoberts even had the power to make that order.

<sup>130</sup> *Ibid.*

<sup>131</sup> *Ibid.*

<sup>132</sup> *Ibid.*; entry for 19 June 1879, Joliet Iron & Steel, 421, RGD.

<sup>133</sup> "The Joliet Iron and Steel Company's Works," *CDT*, 25 May 1879, 8.

It was already understood in the press at the time of the sale that Alexander Leith would remain responsible for the management of the company and that a new organization would be formed to carry out the business, "putting in new capital and improvements."<sup>134</sup> Sure enough, a few weeks later, Jesse L. January submitted a bid to Leith, the company's receiver and his brother-in-law, to purchase all of the property of the Joliet Iron & Steel Company, subject to the first mortgage, on behalf of the Joliet Steel Company. Leith submitted this bid to the court, and the same day he was authorized to accept it and to transfer the property to the buyer. A few days later, January stepped down as president of the Joliet Steel Company in favor of Leith so that, in effect, the Receiver sold the company to himself.<sup>135</sup>

The new company issued a mortgage to the Central Trust Company of New York, a truly ironclad one that included the company's share of the Bessemer Steel Company to secure a new issue of 7 percent first-mortgage bonds that were exchanged for the old 10 percent first-mortgage bonds of the Joliet Iron & Steel Company.<sup>136</sup> It also issued a second mortgage to Andrew Boardman to secure a further issue of bonds that were given to the second-mortgage bondholders of Joliet Iron & Steel, including Moses Taylor, at a rate of exchange of 50 percent on the dollar. Therefore, the upshot for the Taylor group of the adventure with Joliet Iron & Steel was that the first-mortgage bondholders suffered a loss of 3 percentage points on the interest rate they were paid on their investment, and the second-mortgage bondholders did worse, losing 50 percent of their investment or more.<sup>137</sup>

If this record is less than satisfactory for a financier with the experience and savvy of Moses Taylor, it is nevertheless true that he negotiated a better deal with Leith than anyone else. Not surprisingly, the audacious way in which the denouement of the affair was arranged drew sharp criticism from investors who were less favorably treated. In June 1881, Jerome I. Case, the well-known plough manufacturer and a prominent shareholder in the Joliet Iron & Steel Company, filed a suit to set aside its foreclosure sale. His main objection was that Leith, as receiver of the Joliet Iron & Steel Company, had treated the company as if it were his own and had plotted successfully with Boardman and January to acquire control of it.<sup>138</sup>

Notwithstanding such criticisms, Leith earned plaudits in the local newspapers for his role in resurrecting the company.<sup>139</sup> He moved

<sup>134</sup> Ibid.

<sup>135</sup> Ibid.

<sup>136</sup> Hinckley to Joy, 18 Sept. 1878, Box 193, JFJP.

<sup>137</sup> Ibid.

<sup>138</sup> "The Joliet Iron and Steel Company's Works," *CDT*, 10 June 1881, 6.

<sup>139</sup> "Joliet Iron Works," *CDT*, 18 Apr. 1878, 7.

forward at a rapid pace with plans to develop the business, and, by early 1882, R. G. Dun reported, "The company has been very successful and is in high credit and standing."<sup>140</sup> The credit agency recognized that the circumstances surrounding the reorganization of the company "were commented on rather severely at the time," since Leith came into possession of the company's works "through adroit management and sharp practice," but pointed out "no unjust action could be imputed to him and parties here [are] reticent on this subject."<sup>141</sup> By August 1883, R. G. Dun considered Alexander Leith's reputation to be beyond reproach, noting that he was "a gentleman socially," and that he was generally regarded in business circles as "a man of good ability and business foresight."<sup>142</sup>

### Conclusion

This study of Joliet Iron & Steel shows the importance of analyzing the interaction between lenders and borrowers for understanding how relationship lending works. The existing literature, in privileging an analysis of lenders' incentives and behavior, implicitly assumes that borrowers do not substantially affect how relationship lending evolves. My history of Joliet Iron & Steel's financial distress brings the weakness of that reductionism into sharp focus. In this case, the borrower played a major role in determining what happened, as did the court-appointed receiver who succeeded him in managing the steel company's affairs. The lenders depended on insiders, whether they liked it or not, and were systematically outwitted by them.

There is no reason to think that the vulnerability of Taylor to the maneuvering of Meeker and Leith represents a pattern that is specific to this example. To the contrary, the concept of relationship lending is premised on the existence of asymmetric information between lenders and borrowers. Relationships may overcome such asymmetry to some degree, but they cannot eliminate it. And when relationships break down, as they did in this instance, the asymmetry becomes a potential source of power for those inside the company. How they choose to exercise their influence depends on their objectives, and this case shows just how different the objectives of lenders and borrowers can be.

Of course, lenders are not powerless in these situations, and Taylor never relied on relationships to the exclusion of arm's-length protections. Still, as we have seen, Taylor and his associates had doubts

<sup>140</sup> Entries for 14 Feb. 1882 and 14 Apr. 1882, Joliet Iron & Steel, 421, RGD.

<sup>141</sup> *Ibid.*, 443.

<sup>142</sup> *Ibid.*

about the extent to which they could rely on the U.S. legal system to enforce their claims, leading them to favor cruder instruments such as possession. That there was justification for these concerns is evident in what happened when Taylor felt compelled to pursue legal recourse. The uncertain jurisdictions and political maneuvering of the U.S. legal system created the scope for the extraordinary struggle for control of the Joliet Iron & Steel Company that eventually defeated even a lender of the experience and resources of Moses Taylor.<sup>143</sup>

Thus, we see the importance of institutional conditions in influencing how conflicts between lenders and borrowers are negotiated in situations of relationship lending. The institutional, and especially legal, aspects of this case are not particular to Joliet Iron & Steel Company, reflecting instead peculiar structural characteristics of the U.S. legal system. First, scope for jurisdictional conflicts was created by the ambiguous distinction between insolvency and bankruptcy and the consequent confusion about the circumstances under which state or federal courts had jurisdiction over financial distress. Second, the possibility of applying local pressure to the judicial administration of financial distress stemmed from the election, rather than appointment, of local judges. In highlighting the importance of these features of the U.S. legal system, this article suggests a broadening of our analysis of the judicial administration of financial distress in the United States during the nineteenth century to include insolvency laws and state courts, as well as bankruptcy laws and federal courts. It also reinforces recent critiques of the law and finance literature that caution against predicting creditor rights based only on whether a country has a common or civil law system, since other features of the U.S. legal system seem much more important for determining creditors' fates.<sup>144</sup>

The final issue the Joliet Iron & Steel example raises is with respect to the economic implications of relationship lending. If one focuses on the individual protagonists in this story, there is no doubt that Leith was a winner and Taylor a loser in this story of relationship lending gone awry. One could take the view that this story is a triumph of special interests over creditor protection and that the U.S. legal system's failure to make good on the Taylor group's debts would, in highlighting the risks for secured lenders, serve as a barrier to a well-functioning economy. That suspicion might well be reinforced by the

<sup>143</sup> For a discussion of the limitations of legal sanctions for regulating economic relationships, see Stewart Macauley, "Non-Contractual Relations in Business: A Preliminary Study," *American Sociological Review* 28 (Feb. 1963): 55–67.

<sup>144</sup> See, for example, Jérôme Sgard, "Do Legal Origins Matter? The Case of Bankruptcy Laws in Europe, 1808–1914," *European Review of Economic History* 10 (Dec. 2006): 389–419.



information that Alexander Leith later sold part of his stake in Joliet Steel to purchase Fyvie Castle in his native home of Scotland and established himself there as Alexander Forbes-Leith, the 1st Baron Leith of Fyvie, with Mary January, his American wife, as Lady Forbes-Leith.<sup>145</sup> In that sense, Leith's experience as receiver might seem to echo Edward Balleisen's discussion of "vulture capitalism" in which receivers, as well as assignees and court auctioneers, exploit their favored positions to profit from insolvency and bankruptcy proceedings.<sup>146</sup> Yet, the Joliet case also shows that Taylor sought to profit from the fact that other steel companies were willing to pay their competitors to mothball their plants in order to reduce competition.<sup>147</sup> Had the legal system enforced Taylor's claims, the Joliet works would, therefore, have been closed for reasons that are difficult to defend as being in the interests of economic improvement. Instead, the fact that the local judge stepped in to thwart Taylor's plans allowed the people of Joliet to maintain an essential pillar of their local economy. And, whatever personal gain Leith derived in the process, it was only because he was responsive to the concerns of the local community that he gained the support he needed from the local judge to defeat Taylor.

Leith succeeded in reopening the Joliet steel mill against Taylor's will, and he stabilized its operations over the course of the 1880s. The company was sold to the Illinois Steel Company in 1889 as a going concern, and a steel mill continued to operate for decades afterwards in Joliet, Illinois. In this case, therefore, it would seem that Leith and McRoberts have greater claim to being considered engines of economic development than Moses Taylor, at least for the local economy of Joliet. Certainly, such a conclusion can be drawn only in the context of this case. Still, it does draw attention to an issue of general significance, which is the need to study what economic objectives are being promoted when institutions favor creditors' or debtors' interests in the working out of financial distress.

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<sup>145</sup> Leith bought the castle in 1889, the year Joliet Steel was merged with two of its competitors to form the Illinois Steel Company, and he spent considerable money on the castle's renovation. However, he also remained prominent in the U.S. steel industry for some time, serving as president of the Illinois Steel Company and the Federal Steel Company of America. He was raised to the peerage in 1905. See "Fyvie Castle Reveals All," *Financial Times*, 26 Nov. 1984, 17; "Lord Leith's Estate Valued at \$5,317,425," *New York Times*, 24 Apr. 1926, 20; "Alexander John Forbes-Leith, 1st and last Baron Leith of Fyvie," <http://thepeerage.com/p23660.htm>; "Fyvie Castle," the National Trust for Scotland, <http://www.nts.org.uk/Property/Fyvie-Castle/>.

<sup>146</sup> See Balleisen, *Navigating Failure*.

<sup>147</sup> See note 137 above.

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