NOTES OF CURRENT DECISIONS OF THE UNITED STATES SUPREME COURT.

Action by Stockholder.

HAWES *v.* CONTRA COSTA WATER CO. This case was referred to in the decision of C. J. Sawyer in Dannmeyer v. Coleman,* and was one in which a citizen of New York, a stockholder in the Contra Costa Water-works Company, filed a bill on behalf of himself and other stockholders who might choose to come in and contribute to the costs and expenses of the action against the city of Oakland, the Contra Costa Water-works Company, and others, as trustees and directors of said company.

The foundation of the complaint was that the city of Oakland claimed at the hands of the water-works company water, without compensation, for all municipal purposes whatever, including watering the streets, public squares and parks, flushing sewers, and the like, whereas it was only entitled to receive water free of charge in cases of fire or other great necessity; that the water-works company complied with this demand, to the great loss and injury of the company, and to the diminution of the dividends which should come to himself and other stockholders, and the decreased value of their stock. And he alleged as follows: That "on the tenth day of July, 1878, he applied to the president and board of directors or trustees of said water company, and requested them to desist from their illegal and improper practices aforesaid, and to limit the supply of water free of charge to said city to cases of fire or other great necessity, and that said board should take immediate proceedings to prevent said city from taking water from the works of said company for any other purpose without compensation; but said board of directors and trustees have wholly declined to take any proceedings whatever in the premises, and threaten to go on and

furnish water to the extent of said company's means to said city of Oakland free of charge, for all municipal purposes, as has heretofore been done, and in cases other than cases of fire or other great necessity, except as for family uses hereinbefore referred to; and your orator avers that by reason of the premises said water company and your orator and the other stockholders thereof have suffered, and will, by a continuance of said acts, hereafter suffer, great loss and damage." To this bill the waterworks company and the directors failed to make answer, and the city of Oakland 94 filed a demurrer, which was sustained by the court, and the bill dismissed. Complainants then took this appeal, which was decided at the October term, 1881, where the judgment was affirmed.

Miller, J., on the appeal *held,* in the light of the authorities, both English and American, including Dodge v. Woolsey, 18 How. 331. that in such case there must exist, as foundation for the suit, (1) some action or threatened action of the managing board of directors or trustees of the corporation which is beyond the authority conferred by their charter or other source of organization; or (2) such a fraudulent transaction, completed or threatened by the acting managers, in connection with some other party, or among themselves, or with the other shareholders, as will result in serious injury to the corporation or to the interests of the other shareholders; or (3) where the board of directors, or a majority of them, are acting for their own interests, in a manner destructive of the corporation itself, or of the rights of the other shareholders; or (4) where the majority of shareholders themselves are oppressively and illegally pursuing a course, in the name of the corporation, which is in violation of the rights of the other shareholders, and which can only be restrained by the aid of a court of equity. (5) It must also be made to appear that plaintiff has made an earnest effort to obtain redress

at the hands of the directors and shareholders of the corporation. (6) That he was the owner of the stock on which he claims the right to sue, at the time of the transactions of which the complains, or that it has since devolved on him by operation of law. (7) That the suit is not a collusive one to confer on a court of the United States jurisdiction in a case of which it would otherwise have no cognizance.

The cases cited in the opinion were: Foss v. Harbottle, 2 Hare, Ch. 488; Mozeley v. Alston, 1 Phill. Ch. 790; Gray v. Lewis, L. R. 8 Ch. 1035; McDougall v. Gardiner, L. R. 1 Ch. Div. 21; Atwood v. Merrywether, L. R. 5 Eq. 464, note; Lord v. Copper Mining Co. 2 Phill. 740; March v. Eastern R. Co. 40 N. H. 549; Peabody v. Flint, 6 Allen, 52; Brewer v. Boston Theater, 104 Mass. 378, where the general doctrine and its limitations are well stated. Also Hersey v. Veazie, 24 Me. 9, and Samuels v. Holladay, 1 Wool. 400.

Public Lands—Patents.

ST. LOUIS SMELTING & REFINING Co. *v.* KEMP & NUTTALL. Suit was commenced in one of the state courts in the state of Colorado, and was removed to the circuit court of that district. It was brought by the plaintiff, a corporation created under the laws of Missouri, for the possession of real property under the practice existing in Colorado claimed under a United States patent. The defendants objected to the introduction of the patent in evidence, and offered documentary evidence tending to show irregularity in the proceedings had in obtaining the patent, to the introduction of which evidence the plaintiff objected. The case went to the jury under instructions of the court, which were excepted to by the plaintiff, and the jury found for the defendant, and judgment was entered accordingly. In a review of the case brought up on error to the supreme court of the United States from the circuit court of the district

of Colorado, and decided February, 1882, Mr. Justice *Field,* in delivering the opinion of the court, said as follows:

95

"The patent of the United States is the conveyance by which the nation passes its title to portions of the public domain. The officers of the land department, in hearing testimony as to matters presented for their consideration, and passing upon its competency, credibility, and weight, exercise a judicial function, and, as to these matters, their judgment is conclusive, when brought to notice in a collateral proceeding. It is otherwise if the action was taken in a case where the department had no jurisdiction. A want of jurisdiction may be considered by a court of law, the objection reaching beyond the action of the special tribunal, and going to the subject upon which it acted.

"The words 'location' and 'mining claim' are not synonymous. A mining claim may embrace several locations, while the area that may be embraced in a 'location' is limited; yet, as the interest therein is transferable, and there is no statutory prohibition, a single entry and patent may embrace any number of contiguous locations.

"Labor and improvements, within the meaning of the statute, are deemed to have been had on a mining claim, whether it consists of one location or several, when the labor is performed or improvements made for its development,—that is, to facilitate the extraction of the metals it may contain,—though, in fact, such labor and improvements may be on ground which originally constituted only one of the locations, as in sinking a shaft; or at a distance from the claim itself, as where the labor is performed for the turning of a stream, or the introduction of water, or where the improvement consists in the construction of a flume to carry off the debris or waste material. It would be absurd to require a shaft to be sunk on each location

of a consolidated claim, when one shaft would suffice for all the locations."

Allen G. Thurman, Britton & Gray, and Walter H. Clark, for plaintiff in error.

Markham, Patterson & Thomas, F. P. Cuppy, and T. A. Green, for defendants in error.

The cases cited in the opinion were: Moore v. Wilkinson, 13 Cal. 488; Beard v. Federy, 3 Wall. 492; Polk's Lessee v. Wendal, 9 Cranch, 87; Patterson v. Winn, 11 Wheat. 380; Hoofnagle v. Anderson, 7 Wheat. 212; Boardman v. Reed, 6 Pet. 342; Bagnell v. Broderick, 13 Pet. 448; Johnson v. Towsley, 13 Wall. 72; Moore v. Robbins, 96 U. S. 530; Boggs v. Mercer Mining Co. 14 Cal. 363.

Infringement of Copyright.

MORRELL *v.* TICE, decided in the supreme court of the United States at the October term, 1881, by *Bradley,* J. This was an action at law brought to recover damages for the infringement of a copyright. The declaration contained the proper averments, and the answer a general denial. On the trial, Tice, the plaintiff below, produced a copy of his almanac having on its title page the requisite words, "Entered according to act of congress," etc., and produced the certificate of the librarian of congress certifying to the effect that he had deposited in the office of the librarian of congress the title of a book, the title or description of which is in the following words, reciting the title of the book, and the right whereof he claims as proprietor in conformity with the laws of the United States respecting copyrights; and under this certificate, which was duly signed by the librarian, were written the following: "Two copies of the above publication deposited December 6, 1876." but not signed by the librarian. To the introduction of the latter clause in evidence 96 the defendants below objected on the ground that it was no part of the certificate, which objection was overruled, and under instructions of the

court verdict was rendered for the plaintiff below. Exceptions had been duly taken to the ruling of the court, and the case was brought up on writ of error to the supreme court, where it was held that "two copies of the book sought to be copyrighted is an essential condition of a proprietor's right, and such deposit must be proved in some way in an action for infringement;" and that the evidence offered and objected to was incompetent for any purpose in the case, and that the judgment must be reversed and a new trial granted.

Jurisdiction.

UNITED STATES *v.* McBRATNEY, a case decided in the supreme court of the United States at the October term, 1881, was taken up upon certificate of division of opinion, from the circuit court for the district of Colorado, where defendant, having been indicted and convicted of murder within the boundaries of the Ute reservation in that district, moved in arrest of judgment for want of jurisdiction, the indictment not alleging that either the accused or the deceased was an Indian; and the certificate stating that at the trial it appeared that both were white men, it was *held, Gray, J.:* The circuit court of the United States for the district of Colorado has no jurisdiction of an indictment against a white man for the murder of a white man within the Ute reservation in the state of Colorado.

The Attorney General, for the United States.

Browne & Putnam, for defendant.

The cases cited in the opinion were: U. S. v. Rogers, 4 How. 567; Bates v. Clark, 95 U. S. 204; U. S. v. Ward, 1 Wool. 17; Case of the Cherokee Tobacco, 11 Wall. 616; Case of the Kansas Indians, 5 Wall. 737; U. S. v. Cisna, 1 McLean, 254; Coleman v. Tennessee, 97 U. S. 509; Beatson v. Skene, 5 Hurl. & N. 838; Dawkins v. Lord Rokeby, L. R. 8 Q. B. 255.

*To appear on page 97, poet.