

sum of one dollar; but it is clear from the testimony that no consideration was in fact paid. This conveyance was, manifestly, made merely for the purpose of putting the title in an alien, in order to enable the action to be prosecuted in the national courts instead of the state courts in the city of San Francisco. The testimony of Cameron is that he had no agreement with the plaintiff, Hamm, in regard to the matter before the conveyance was made; but that he made the conveyance to plaintiff by direction of his attorney, without at the time asking the reason why. Plaintiff himself was not present when the conveyance was made. The attorney—not one of the present attorneys in the case—subsequently, he says, gave, as one reason for the conveyance, his desire to relieve the state judge of the responsibility of deciding against the city. Plaintiff testifies that after the commencement of the action he reconveyed three-fourths to Cameron, (and Cameron admits a reconveyance of a part,) but that he is not certain whether he has conveyed the remainder to any one or not. The attorney, he says, and himself had an interest in it for services to be rendered in recovering the lot. He also testifies that he does not know that he ever saw the deed from Cameron to him; that he does not control the suit; that he does not pay the expenses of the litigation, and does not know who does. I think I am fully justified by the evidence in finding that both Cameron and the plaintiff had ample notice of the condition of the title, and that the action is a mere speculative one, entitled to no more consideration than a court under the strict rules of law is compelled to give it. The stake played for was a very large one, and the parties to the action, ostensible and real, took the chances on the supposed defective title of the city. But if the record title in the defendant is in any particular defective, it is cured by the statute of limitations. The action was clearly barred under the statute long before its commencement.

I have no doubt as to where the title is, and there must be findings and a judgment for the defendant; and it is so ordered.

SIMPSON v. LA PLATA MINING & SMELTING CO.

(Circuit Court, D. Colorado. July 2, 1883.)

1. NEGLIGENCE—PERSONAL INJURY TO MINER.

A complaint in an action to recover damages for personal injuries caused by the negligence of an employer to an employe, should clearly state facts sufficient to make it appear to the court what the act of negligence that caused the injury was.

At Law.

D. J. Haynes, for plaintiff.

Markham, Patterson & Thomas, for defendant.

HALLETT, J., (*orally.*) In the case of William Simpson against the La Plata Mining & Smelting Company, an action to recover damages for injuries received while in the service of the company, the plaintiff avers that the defendant, through its superintendent, brought into the smelting-house certain tanks or jackets, and stacked them up, or placed them on end, near where the plaintiff was required to pass, in the performance of his usual duties, in wheeling out slag, and that while he was passing these tanks some one of them fell upon him and injured him. He has not described with particularity the position of the tanks, and what neglect there was in the superintendent in placing them where they were. He states briefly that the tanks were placed there, and that one of them fell upon him. I think that he should give in detail the position of the tanks, so that it may be seen what the act of negligence was on the part of the superintendent; how the tanks were placed, as evincing carelessness in the superintendent; and in what way they were left so as to be a source of danger to those who should pass by them. Certainly it is not enough to aver that the tanks were put there, and that one of them fell down. It may have been some extraordinary circumstance that caused the falling. If they were so placed that it might be reasonably expected they would topple over, he ought to state that fact—describe the position so clearly that we may see from the complaint that the superintendent was careless in leaving them in the way in which they were left.

Demurrer to complaint sustained, with leave to plaintiff to amend in 30 days.

MANVILLE v. BATTLE MOUNTAIN SMELTING CO.

(Circuit Court, D. Colorado. June 27, 1883.)

1. PRACTICE—FORM OF PROCESS—CONSTITUTIONAL PROVISION NOT FOLLOWED BY STATUTE.

The legislature of a state may prescribe the form of process, but in so doing the provisions of the constitution must be observed; and where the constitution provides that every summons shall run in the name of the people, a summons in the form given in the statute, but not in the name of the people, is deficient.

2. SAME—SUMMONS RETURNABLE—GARNISHMENT.

A garnishee in Colorado is entitled to 10 days in which to appear and answer, "as in other summons in courts of record:" and when the summons is made returnable *within* 10 days from the date of service, it is a fatal defect.

At Law.

Mr. Campbell, for plaintiff.

Henry T. Rogers, for garnishee.

HALLETT, J., (*orally.*) Manville recovered a judgment against the Battle Mountain Company in the district court of Lake county, and took out execution, and procured the Belden Mining Company to be