SUPREME COURT DECISIONS.

[Filed March 3, 1891.]

DEPARTMENT ONE.

WOODROOF ET AL., Appellants, vs. HOWES ET AL., Respondents. } No. 13,939.

This was a suit in equity by three stockholders of the Semi-Tropic Land and Water Company, for relief against certain transactions of the company with the defendants F. C. Howes, George H. Bonebrake and Samuel Merrill. The trial court gave final judgment for the defendants upon demurrer to the complaint, and the plaintiffs appeal. The complaint consists of seventy-five printed pages, and is exceedingly prolix and involved. It contains three causes of action separately stated. The demurrer was to the whole complaint and to each separate cause of action.

1. The substance of the material facts alleged in the first division of the complaint is as follows:

At the period in question two of the plaintiffs and the defendants Howes, Bonebrake and Merrill were stockholders of the corporation. The third plaintiff acquired his stock somewhat later than the others, but this is not material in the view we have taken. The defendant Howes was a Director of the company, and it is alleged that the other members of the board "were only nominal Directors thereof for the purpose of carrying out the plans and subserving the individual interests of defendants Howes, Bonebrake and Merrill, and had no interest in the management and conduct of its affairs, except as the implements and representatives of the interests and wills of the defendants Howes, Bonebrake and Merrill." (Fols. 18-19.) In this condition of affairs, the "said Board of Directors, disregarding the interests and rights of all stockholders of said company other than said Howes, Bonebrake and Merrill, and for the purpose of defrauding such stockholders, and through the connivance of said Howes, Bonebrake and Merrill, and for the purpose of subserving the individual interests of said Howes, Bonebrake and Merrill," sold to them for the price of $30 per acre certain specifically described lands, which "carried with them as incident or appurtenant thereto, their pro rata proportion of all the waters owned by the Semi-Tropic Land and Water Company." At the time of this transaction the land sold was worth the sum of $300 per acre, which was known to all the parties. (Fols. 23 to 28.) Subsequently the three defendants named became Directors of the company, and were so at the commencement of the suit. The plaintiffs demanded that a suit be commenced in the name of the corporation. But this demand not having been complied with, the plaintiffs brought the present suit on behalf of themselves and the other stockholders, joining the corporation as a defendant.

In addition to the foregoing facts much unnecessary matter is alleged, as, for example, the representations which the defendants made to the plaintiffs at the time the latter acquired their stock. The suit is not for relief against the contract under which they acquired said stock, and hence the representations referred to are immaterial. So, too, it is immaterial to the case stated in this division of the complaint how the corporation acquired its rights to the property—though it may be permissible to state such facts to show that the three causes of action grew out of the same set of transactions.

In support of their demurrer to this part of the complaint the defendants make the following points:

a. It is said that a main foundation of this part of the case is inadequacy of price, and that "inadequacy of price does not even raise a presumption of fraud."

This may be true as to persons who do not stand in a fiduciary relation towards each other. But it is not true as to persons whose relations are fiduciary. A trustee is not ordinarily allowed to make money out of his *cestui que* trust, if he does, the presumption is against him, and he must show affirmatively that the transaction was perfectly fair. Inadequacy of consideration in such a case is one of the facts constituting the fraud. (Golson vs. Dunlap, 73 Cal. 157.) And it is hardly necessary to say that the relation which a director sustains to his corporation is fiduciary within the meaning of the rule. In the present case it is not necessary to consider whether the inadequacy of consideration alleged is sufficient to make a case of constructive fraud, because, as will be shown below, there are other allegations which, in connection with the one mentioned, make a case of actual fraud.

b. It is urged that at this time Howes only was a director; that the other four constituted a majority of the board; that it is not shown that Howes took any part as director in the act complained of, and that the mere fact that the three defendants persuaded the disinterested majority of the board to do the act complained of does not amount to fraud. "Persuasion," say the learned counsel, "is never fraudulent."

In one sense it may be true that persuasion is not fraudulent. In the same sense it may be said that persuasion is not theft; yet, if a man persuades his "implements and representatives" to steal and knowingly shares the booty he is certainly guilty of theft. And so, if he persuades his implements and representatives to commit a fraud, and knowingly takes the fruits thereof, he is guilty of fraud. In the case before us it is admitted for the purposes of the demurrer that the Directors were the implements and representatives of Howes, Bonebrake and Merrill, and acted with their "connivance" for the purpose of defrauding the other stockholders in the interest of said defendants. Such conduct was clearly fraudulent on the part of the Directors, and as said defendants connived at such fraud and received the fruits thereof, they must be held to have participated therein.

c. It is contended that the charges of fraud are too general. All that is necessary for the pleader to do in this regard, however, is to set forth the facts constituting the fraud in ordinary and concise language. Now what are the facts constituting the fraud?

In the first place there is the fact of the relation of the parties, viz.: That the plaintiffs and defendants were stockholders of the corporation, and that the Directors were the implements and representatives of Howes, Bonebrake and Merrill. This is set forth with sufficient particularity. It was not necessary to state the means by which said defendants induced the Directors to act as their implements and representatives. It is sufficient to the cause made by the complaint that they did so act.

In the second place there is the fact that the land was worth $300 per acre, and was sold to said defendants for $30 per acre. It was surely sufficient to allege this in terms. And the criticism made upon it does not seem to be that the fact is not stated with sufficient particularity, but that it is not true. "An allegation," say the learned counsel, "may be so absurd that not even a demurrer will admit it, and in this case the court is presumed by the counsel for the appellants to assume that this property had increased in value from April to August, 1887, something like 2,000 per cent. There are some things that even courts are presumed to know, one of which is that unimproved property in such vast tracts does not increase in value from 4,000 to 5,000 per cent. per annum."

The basis for this position is stated by counsel to be that "the land was purchased from Howes, Bonebrake and Merrill at fifteen dollars per acre in April, 1887." (Reply brief, p. 6.) The allegation of the complaint, however, is that it was purchased for 29,995 shares of stock of the par value of $100 per share. (Fols. 12 and 5.) It does not appear what the actual value of the stock was at said time, nor even what was the price agreed to be paid to the original owners of the property. Nor does this division of the complaint show what was the size of the tract. But aside from all this, the value of the land at the time of the sale complained of is alleged to have been $300 per acre. This is the allegation of a fact, and being such, was admitted by the demurrer; and after having been so admitted, its truth cannot be questioned for the purposes of the demurrer.

Finally, the complaint alleges that this transfer to Howes, Bonebrake and Merrill for one-tenth of the value of the property was made knowingly and for the purposes of defrauding the other stockholders. In Moss vs. Riddle (5 Cranch, 357) Chief Justice Marshall says: "Fraud consists in intention, and that intention is a fact which ought to be averred, for it is the gist of the plea, and would have been traversable." The fraudulent intent or purpose, therefore, is one of the facts constituting actual fraud. And we think that an allegation of such fact in terms is sufficient. No amount of circumlocution or amplification can convey the meaning better than to say that a transfer by the directors of a corporation for one-tenth of the value of the property, was for the purpose, or with the intent, of defrauding the stockholders. It may be necessary to add other facts. But so far as this fact is concerned, the mode of statement is sufficient. All that the code requires is to state the facts in ordinary and concise language.

The foregoing facts, taken together, constituted actual fraud, and were sufficiently alleged.

It may be added that it was not necessary to specify the particular water rights which were attached to the land conveyed. The several tracts were sufficiently described. And it was not material to the case to specify what rights were "carried with them as incident or appurtenant thereto."

2. The second cause of action begins by stating in detail how the corporation acquired its rights to the property, and shows in substance the following facts:

Before the corporation was organized, Howes, Bonebrake and Merrill had a contract of purchase from one Henry Pierce and associates, for 28,414.63-100 acres of land for the sum of $426,219 45. This contract was executed on October 15, 1886, and $50,000 was paid thereon in cash. The remainder of the price was to be paid in annual installments of $50,000 each, bearing interest at 5 per cent. per annum. But it was provided by said contract that "said Howes, Bonebrake and Merrill might pay the whole or any part of the purchase money at any time before maturity." (Fols. 45 to 48.) It is not expressly stated when the conveyance was to be made; but the presumption from what is stated is that it was not to be made until the price was fully paid. The said defendants also acquired a smaller tract known as the Morse place. But it is not necessary to dwell upon that.

In February, 1887, the defendants Howes, Bonebrake and Merrill caused the Semi-Tropic Land and Water Company to be incorporated, and on April 16, 1887, they conveyed to it "the properties" above referred to, and agreed to "pay off and satisfy at maturity the debts then existing against the property * *, such debts being then owing by Howes, Bonebrake and Merrill upon the above described land and water rights, purchased from Pierce and associates, and from Morse, on account of the unpaid purchase price of said properties." In consideration of the foregoing transfer and agreement the corporation transferred 29,995 shares of its stock. But only 19,995 shares were transferred directly to Howes, Bonebrake and Merrill. The remaining 10,000 shares were transferred to one S. B. Hunt, to be held as security for the performance by said Howes, Bonebrake and Merrill of their agreement to pay off said unpaid purchase money. (Fols. 61 to 65).

After this the plaintiffs acquired their stock, and it is alleged that certain representations were made to them by defendants. But we do not consider such representations material to the case.

This division of the complaint goes on to allege that "the directors of said corporation, other than said Howes, owned only one share of the stock of said company, and were only nominal directors thereof, and had no interest in the management and conduct of its affairs, except as the implements and representatives of the interests and wills of defendants Howes, Bonebrake and Merrill." (Fol. 70.)

In this condition of affairs it is alleged that said defendants effected an arrangement with the directors whereby the ten thousand shares, held by the trustee as security for the performance by said defendants of the agreement to pay off the unpaid purchase money above mentioned, was allowed to be withdrawn by them upon condition that the same should be sold at not less than $40 per share, and the proceeds (less 5 per cent. commission) applied "as received" to the extinguishment of the debts affecting the property.

The statement of this agreement or condition is somewhat loose. (See folios 74 to 79.) But the counsel for the defendants have not made any criticism upon it, but have assumed that it is a sufficient statement of the condition or agreement upon which the stock was given up to said defendants; and following the lead of counsel we have so assumed for the purposes of this opinion.

This arrangement was made on August 27, 1887. Previously to that date, Howes, Bonebrake and Merrill had negotiated a sale of said stock at $42 50 per share (fol. 79), and it was finally sold at that price, making an aggregate of $425,000 for the 10,000 shares. Of this sum said defendants received $125,000 in cash on October 15, 1887. (Fol. 80-1.) The remainder was to be paid in installments drawing interest at 8 per cent. per annum. (Fol. 81.) It does not appear whether these installments were ever paid, or what was done with the evidences of the indebtedness.

Howes, Bonebrake and Merrill did not comply with the condition upon which they obtained said stock. Prior to the receipt by them of the $125,000 they had made the following payments on account of the purchase money of the property transferred to the company, viz: $50,000 on the execution of the contract of purchase from Pierce and associates (fols. 36 and 48); $42,000 on August 31, 1887 (fol. 48), and $34,800 on September 19, 1887 (fol. 50-1). On the day of the receipt of the $125,000 they made a further payment of $29,189 48. (Fol. 52.) Now as the first three payments were made before the $125,000 was received, it is manifest that they could not have come out of that sum. And it is expressly alleged that "all of said $125,000 received by said Howes, Bonebrake and Merrill, saving and excepting the said $29,189 48, or thereabouts, has been appropriated and used by said Howes, Bonebrake and Merrill, for their own individual use and benefit, in violation of the rights of said corporation and the stockholders thereof." (Fol. 85-6.) And it is further alleged that "no other or further sums of money than those above mentioned have ever been paid by said Howes, Bonebrake and Merrill, or either of them, to said Pierce and associates on account of the purchase price of said premises." (Fol. 53.)

The plaintiffs further allege the refusal of the corporporation to sue, etc., and that the suit is commenced by them on behalf of all the stockholders.

In support of their demurrer to this division of the complaint the defendants make the following points:

a. It is said that the sums which are admitted to have been paid on account of the purchase money on the property were sufficient to pay the first two annual installments thereof; that it is not alleged that the other installments were due at the time of the commencement of the action; and that the court will not compel the defendants to pay them before maturity.

But the defendants had the privilege of paying all of such installments "at any time before maturity" (fol. 47); and the condition on which they received the stock was that they would apply the proceeds, in the way mentioned, "as received." (Fol. 75.)

b. It is said that the plaintiffs have not alleged that any installment of the purchase money remains unpaid; and that under the rule that pleadings are to be construed against the pleader, it must be presumed that such installments have been paid, or satisfied in some collateral way.

It is to be observed that it does not appear that the corporation was legally bound to pay the unpaid purchase money, although its rights would be impaired by non-payment. And it is to be further observed that Howes, Bonebrake and Merrill were not guaranteeing to pay the debt of another. They were the persons—and the only persons—who were bound to pay said purchase money. They agreed with the corporation, in the first instance, that they would pay *their own* debt, and in the second, that they would apply the proceeds of the stock to such payment. They did not so apply said proceeds, but converted them to their own use; and it is alleged that they did not pay the debt. This is sufficient showing of non-performance of their obligation. The court will not presume that some benevolent third person has paid the debt. And if, on the failure of the defendant to apply the proceeds of the stock to the debt, as agreed, the corporation paid it, that would not relieve said defendants from liability.

Nor will the court presume that there has been any novation or accord and satisfaction by which the debt to the original owners of the property has been satisfied. If any such arrangement has been had it is matter to be set up by way of defense. The presumption against the pleader applies in certain cases, as for example, where the pleading is silent as to an essential fact which must have occurred one way or the other, or where the language used is fairly susceptible of two constructions. But it is not carried to such an extent as to require the pleader to anticipate matters of defense, or to negative the existence of all other facts whatever. Even at common law that was not required. And much less is it required under a system where pleadings are required to be liberally construed with a view to substantial justice. (C. C. P., Sec. 452.)

c. It is said that it does not appear what was done with the evidences of debt representing the balance of the proceeds of the sale of the 10,000 shares of stock; and that it must be presumed either that they were turned over to the persons to whom the debt was due (which is sufficiently answered by what we have just said) or that they were turned over to the corporation itself, and received by it in satisfaction of the agreement of the defendants.

But such agreement was not that the proceeds of the stock were to be turned over *to the corporation*. They were to be applied to the extinguishment of the debt to the original owners. And the court will hardly presume that some entirely new arrangement was made.

d. It is said that it is not shown that the corporation has paid any money on account of said debts, or that it has sustained any damage by reason of the alleged non-performance by said defendants of their agreement. But the payment of the purchase money on the original contracts of purchase is essential to the protection of the corporation's right to the property. And if said defendants have not paid said money as they agreed to do, and have converted the cash proceeds of the stock to their own use, the corporation (or a stockholder in a proper case) has the right to come into equity to compel the defendants to perform their agreement with the corporation.

3. The third division of the complaint contains the substance of the second division, and in addition thereto shows the following facts:

Of the sum due to the original owners of the property (as to which see fols. 103-5), the defendants, Howes, Bonebrake and Merrill, paid no more than $155,989 48 (fols. 156 and 112). But prior to the transaction to be mentioned they had induced the Board of Directors to pay on account of said debt the sum of $25,000, which, it is alleged, "was paid on account of defendants Howes, Bonebrake and Merrill, and at their instance and request" (fols. 156-7), which, if true, entitles the corporation to recover it back. These payments left due to the original owners of the property the sum of $272,441 63, for which said defendants were personally liable. In order to get rid of such liability it is alleged that they induced their creatures in the Board of Directors to have the corporation assume the debt without consideration.

The allegations in this regard are as follows: That the Directors, "for the purpose of defrauding the other stockholders of said company other than said Howes, Bonebrake and Merrill, and for the purpose of encumbering the property of said corporation with debt, without any consideration moving in favor of said corporation, or in favor of any other of the stockholders of said corporation other than said Howes, Bonebrake and Merrill, and with the intent of relieving and releasing Howes, Bonebrake and Merrill from their obligation to pay off and discharge the debts upon the lands and waters of said corporation, did by connivance and collusion with said Howes, Bonebrake and Merrill, and with their consent, and at their request and instigation," issue notes of the company to the original owners of the property in an aggregate sum of $272,441 63, bearing interest at seven per cent. per annum, and mortgaged the property of the corporation to secure the payment of such notes (folios 149 to 155); and that "such notes were given without any consideration in favor of said corporation, or of any of the stockholders thereof other than Howes, Bonebrake and Merrill, and solely for the benefit of Howes, Bonebrake and Merrill, and with the intent to relieve said Howes, Bonebrake and Merrill from their obligations to pay off and satisfy at maturity the indebtedness upon the lands and waters of said corporation, for which debts said Howes, Bonebrake and Merrill were bound and obligated." (Fol. 159-60.) It is further alleged that in and about the above transaction the Directors unlawfully paid an attorney's fee of $5,000, which sum "was paid for the sole benefit of defendants Howes, Bonebrake and Merrill." (Fol. 166-7.)

The complaint goes on to allege that prior to September 20, 1888, Howes, Bonebrake and Merrill bought up the 10,000 shares of stock which they had sold about a year previously (the proceeds of which sale they had converted to their own use), and sold the same to the corporation at a grossly exorbitant price—the consideration being a credit of the $272,444 assumed by the corporation as above set forth, the conveyance by it of $50,000 worth of land, and the issuance of its promissory notes for the remainder of the price.

In relation to this transaction it is alleged: That about four months after the assumption by the corporation of the debt above-mentioned (folios 151 and 172), it was proposed by Merrill at a stockholders' meeting, held September 20, 1888, that the corporation should buy said stock at $37 per share, payment to be made in the manner above stated, viz.: that a credit of $272,444 should be allowed the company for having assumed the debt of Howes, Bonebrake and Merrill; that the company should assume a debt of $14,440, due from said defendants on the Morse property, and another debt of $850; that "the sum of $50,000 be paid in lands of the company to be deeded to three trustees representing the parties to whom the 10,000 shares of stock had been formerly sold;" and that "the balance of said purchase price of $370,000 be paid in notes of the company" (folios 172-6); that this proposal was accepted at said stockholders' meeting, and that a resolution to that effect was passed, said defendants and others voting in favor thereof, (folio 179); and that immediately thereafter the arrangement was carried out by the directors. (Folios 186 to 193).

It is further alleged that "such 10,000 shares of stock were then and there, at the time of such stockholders' and directors' meeting, the property of said Howes, Bonebrake and Merrill, having been obtained by them from the former purchasers thereof" (fol. 179-80), and that "at the time such stockholders' and directors' meeting was held, and such 10,000 shares of stock purchased by said corporation, the said stock was not worth in the open market, and could not have been sold for more than $25 per share, all of which facts were well known to said Howes, Bonebrake and Merrill" (fol. 194); that all of the acts in relation to the transaction above mentioned "were done while said Howes, Bonebrake and Merrill were the owners of a majority of the corporate stock of said corporation, and while said Bonebrake and Merrill were directors of said corporation," and "at the actual instance, request and instigation of defendants Howes, Bonebrake and Merrill, and for their own personal interest and benefit" (fol. 192-3); and that at said stockholders' meeting "1,910 shares of the capital stock of said corporation were not represented either in person or by proxy; that the stock of plaintiffs herein named was not represented or voted at such meeting, and that plaintiffs did not appear or ratify such action of such stockholders' meeting." (Fol. 189-1.)

It is further alleged that the corporation has paid the sum of $17,150 as interest upon the debt assumed by it as above mentioned (fol. 167); and that subsequent to the transactions above set forth, it has borrowed the sum of $250,000 from a third person, and mortgaged its property to secure the payment thereof, and with the moneys so raised, and its note for $50,000, it has paid off the debt to the original owners of the property, assumed by it as above stated. (Fols. 197-201.)

In support of their demurrer to this portion of the complaint the defendants make the following points:

a. They renew the points as to the presumption of payment or satisfaction in some other way, made in relation to the second cause of action. These have been sufficiently considered.

b. They urge that the corporation had power to purchase its own capital stock, and that the resolution at the stockholders meeting was sufficient warrant for the terms of the purchase.

It is not necessary to decide upon this appeal whether the corporation had power to purchase its own stock. Such a power even would not excuse the fraud of the defendants. That they were guilty of fraud is plain, if the allegations of the complaint are true. They were personally liable for the debt to the original owners of the property, and agreed with the corporation that they would pay such debt. They obtained the stock put up as security for their performance of said agreement, upon condition that they would apply the proceeds of such stock "as received" to the extinguishment of said debt. Instead of so doing they converted the cash proceeds to their own use leaving the debt unpaid, and induced their creatures in the board to have the corporation assume the debt without consideration. This action on the part of the board was in the interest of said defendant, "and for the purpose of defrauding the other stockholders." Such conduct on the part of the Directors was unquestionably fraudulent, and the persons who instigated such fraud and reaped the fruits thereof must be held to have participated therein.

In order to cover up this fraud it is alleged that they committed another. About four months after the assumption of the debt by the corporation as above set forth, they bought up the ten thousand shares of stock which they had sold a year previously at $42 50 per share (the cash proceeds of which they had converted to their own use), and by means of their control over the corporation, sold said stock to it at $37 per share—it then being worth only $25 per share. At this time Bonebrake and Merrill were in the board, and the other directors were the mere creatures of the three defendants. We do not think that any argument is required to show that this transaction was fraudulent. It certainly does not help the fraud first mentioned.

Nor is the resolution at the stockholders' meeting of any consequence. For since the defendants held a majority of the stock and voted at the meeting, they controlled the meeting, and the resolution was in effect but their formal consent to their own fraud. It cannot affect the rights of the stockholders who did not consent.

c. It is urged that the transaction was "executed," and therefore cannot be disturbed.

But whatever color of force this might have, if the objection was merely that the transaction was *ultra vires*, it has no application to a case where there is fraud.

d. It is objected that there was no offer to place Howes, Bonebrake and Merrill *in statu quo*.

But the suit is not for a rescission of the contract whereby the plaintiffs acquired their stock, and therefore no such action on their part was required. So far as the 10,000 shares sold to the corporation are concerned, it is sufficient to say that aside from any other reason the three defendants constitute a majority of the board, and must be presumed to have control of such stock. So far as concerns the $300,000 evidences of debt (the balance of the proceeds of the first sale of the 10,000 shares of stock), which the counsel say "have vanished from view," it is sufficient to say that, aside from any other reason, such evidences of debt are not shown to have ever come to the possession of the corporation. If they did they must be under the control of the defendants.

e. It is argued that if the theory of the plaintiffs be correct the result is that the original contract of Howes, Bonebrake & Merrill is still in force, and that it must be presumed that they will perform it—that is to say, it must be presumed that they will pay off the debts to the original owners of the property.

As the corporation has mortgaged its property to raise money to pay off such debts, and has actually paid them off, this position is somewhat singular.

f. It is said that "the whole effect of the transaction mentioned has been that the corporation is vested with a perfect title to the identical stock which it originally regarded as sufficient collateral, and taken by the corporation at a sum far less than the amount of the indebtedness to which it was originally regarded as a sufficient security. There is no damage shown, and there could be no action without damage."

That is to say, that because the corporation originally regarded the 10,000 shares of stock as sufficient security for the performance of the defendants' agreement, they could sell the stock at $42 50 per share, and convert the cash proceeds to their own use in direct violation of their agreement to apply it to the debt affecting the corporation's property, and about a year afterwards buy up the same stock and by fraudulent means induce the corporation to purchsse it at $37 per share when it was only worth $25 per share in the market, and then say to the other stockholders: "Well, the corporation has the stock, which it originally regarded as sufficient collateral. How is it injured?"

g. It is said that "all the parties have permitted the transaction to rest for more than a year, and that to permit a rescission would be to do violence to every principle of law and equity."

But we do not think that the doctrine of laches applies.

4. The demurrer takes the ground that there is a defect of parties defendant, a misjoinder of parties and a misjoinder of causes of action.

The first ground is the only one which is argued. It is said that the other members of the Board of Directors should have been joined as defendants. So far as the corporation's interests are concerned, it is itself a defendant. As to the rest, Howes, Bonebrake and Merrill are the only persons interested in the transactions complained of. The other Directors were only their "implements and representatives," and are not shown to have received or to have any interest in the fruits of said transactions. It was not necessary to join them as defendants.

The other grounds mentioned have not been argued. The fact that there was a demurrer on these grounds is mentioned in the statement of facts. (See respondents' brief, pp. 5 and 10.) But there is not a word of argument in either of the briefs for respondents in relation to the grounds or anything to give rise to the inference that they are relied upon. Under these circumstances the grounds mentioned should be considered as waived.

5. We do not think that it is necessary for the court to determine at this stage of the case the precise measure of equitable relief to be awarded. A court of equity molds its relief according to the particular circumstances of the case. (Heinlen vs. Martin, 53 Cal. 342-3.) And it is better to reserve the question mentioned until all the circumstances shall have been disclosed by the evidence. It is sufficient for the disposition of the demurrer to say that in our opinion each division of the complaint states a cause of action and requires an answer to the charges made.

We, therefore, advise that the judgment be reversed and the cause remanded with directions to overrule the demurrer, with leave to the defendants to answer.

HAYNE, C.

We concur:
VAN CLIEF, C.,
BELCHER, C.,

THE COURT.

For the reasons given in the foregoing opinion the judgment is reversed and the cause remanded with directions to overrule the demurrer, with leave to the defendants to answer.

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Busy Fruit-Growers in a Pretty Yolo Valley—Tancred and Its Adjoining Farms.

IN THE SPRING OF LAST YEAR Robert A. and Neal D. Barker associated themselves with William McKay, all of Oakland, with a view of searching out a suitable location in which to engage in the profitable occupation of fruit-growing. After visiting many localities, they decided on the Capay Valley, Yolo County, and the Rhodes tract at Tancred.

Negotiations were opened with the Capay Valley Land Company, owning the tract in question. With W. H. Mills, the General Agent of that company, they arranged for the purchase of about 220 acres of foothill land. This being more than they had thought of taking for their own use, they spoke to a number of friends about it, with the result that the tract was divided among the following people: B. L. Hickok, 40 acres; W. T. Barnett, 20 acres; N. T. Greathead, 20 acres; Mrs. L. Greathead, 20 acres; W. McKay, 20 acres; N. D. Barker, 20 acres; R. A. Barker, 20 acres; J. P. Brownlee, 20 acres; E. H. Haslett, 10 acres; Joseph Barker, 10 acres; A. W. Kelly, 10 acres, and Frederick Kelly, 10 acres.

So far this had been merely a private venture of the gentlemen above named, but in talking up the question of dividing the land already purchased, it was found that so many more would like to join it than the area of the purchase would admit of, that it was suggested on all hands, "Why not get some more land and divide it up in the same way?" Then followed the idea of a stock company to take hold of a larger tract and arrange for the cultivation of the whole of it, after subdividing it according to the requirements of the subscribers. A provisional board was formed, a prospectus issued, and finally, on the 5th of June, 1890, the Western Co-operative Colonization and Improvement Company was duly registered and proceeded to business, with the following officers: President, William McKay; Vice-President, M. P. Brown; Directors—H. C. Ellis, Charles Brooke and R. A. Barker; Secretary and General Manager, Neal D. Barker; Solicitor, C. E. Snook; Treasurer, First National Bank of Oakland.

The balance of the tract, 373 acres, was purchased. A contract was entered into for the purchase of a large number of fruit trees, vines, etc. This early purchase of trees was the means of saving between $3,000 and $4,000 to the company, the prices in some cases having more than doubled since then.

The ideas which the prospectus set forth have been but slightly modified and the progress of the company has been uninterrupted. Those who went into it doubtingly have become enthusiastic, and almost all the members arranged to set out all their lands in fruit trees, etc., the first year. Consequently in this, the first season, some 40,000 trees and between 20,000 and 30,000 vines will be planted.

The satisfactory working of this scheme has had the effect of attracting considerable attention to the work of the Colony Company, and a number of people are now desirous of joining in with them. An additional 200 acres have been added to the sixty acres originally purchased.

For the company is predicted a very bright future, as well as for the beautiful valley in which their operations are conducted. How this marvelous little garden has come to be so long neglected is a puzzle to every one who has visited it, but one thing is very sure, and that is that this neglect will never again be felt in the valley.

The fruits set out are mostly of the standard varieties—peaches, apricots, Bartlett pears, prunes, figs, raisin grapes, etc., while along both sides of the avenues, throughout the tract, walnuts will throw their graceful shade. A considerable number of citrus trees are also being set out; quite a sufficient number to demonstrate that these fruits can be successfully grown in the valley, about which the colonists appear to have no doubt, provided proper care is given to the young trees. Neal D. Barker, General Manager of the company, resides on the tract, and to his care is to be ascribed much of the success of the venture.

Mention should be made of the town-site, about which there is a pleasant innovation which might with profit be followed by more ambitious places. A small park of some three acres has been laid out right in the center of the town. This park it is proposed to beautify by planting in it from time to time as many of the beauties and curiosities of tree and shrub life as may be obtained by diligent search and a wise expenditure of money. It is not expected that Tancred will ever be a large and busy city, but it is thought that it can be made a very pleasant little place to dwell in.

A petition has been circulated recently and very largely signed, asking the county to accept Island avenue, on the colony tract, as a county road, and to build a bridge across Cache Creek at this point, in order to give the settlers on the east side of the creek access to Tancred Station. The Tancred colonists are quite willing to give the necessary right of way, and are very desirous of having a bridge there, as the colony lands extend along both sides of the stream. It is thought that it would be a very wise expenditure of public money to grant them this very necessary improvement, as the operations of such companies are of widespread benefit to the whole county and State. The attractions and comforts of the cities are well known, but to those who are willing to settle on the land and show that the country also affords attractions and comforts and ways of making money pleasantly, every inducement should be held forth.

The following is a list of the principal members of the Tancred Colony, with the number of acres owned by each, and a fact worthy of mention is that in each contract or deed issued by the Colony Company there is a provision that no intoxicating liquor shall ever be manufactured or sold on the land. The apparent success of the enterprise shows that the ideas and plans of the colony, as set forth in the prospectus some time ago, are not impracticable: C. T. Hull, Berkeley, 5 acres; W. P. Hammon, Oakland, 14 acres; C. S. Kasson, San Francisco, 11 acres; Jos. Barker, 10 acres; A. W. Kelly, Kincardine, Ont., 5 acres; N. T. Greathead, 5 acres; R. G. Greathead, Oakland, 10 acres; R. A. Barker, San Francisco, 10 acres; N. D. Barker, Tancred, 10 acres; Dr. K. Favor, San Francisco, 27 acres; J. P. Brownlee, Kincardine, Ont., 9 acres; W. T. Barnett, Berkeley, 5 acres; M. P. Brown, 10 acres; Chas. Brook, Sr., Oakland, 10 acres; W. C. Boutelle, Berkeley, 20 acres; Mrs. T. A. Crelin, Oakland, 5 acres; C. H. Peach, Tancred, 5 acres; H. C. Ellis, Oakland, 10 acres; J. Vanstone, Winnipeg, 10 acres; E. A. Vanstone, Tancred, 5 acres; E. Wadsworth, Sacramento, 5 acres; M. A. Thomas, Oakland, 6 acres; James Graham, San Francisco, 11 acres; A. Stark, 12 acres; J. Stark, 10 acres; Mrs. M. Vrooman, 5 acres; C. E. Snook, 10 acres; C. T. Greathead, 12 acres; Wm. McKay, 5 acres; Mrs. Wm. McKay, Oakland, 5 acres; Mrs. E. C. Wooley, Brooklyn, N. Y., 10 acres; Mrs. H. Beckley, Oakland, 5 acres; T. A. Marriett, 5 acres; J. C. Harrison, Tancred, 5 acres. The land reserved by the Colony Company, including townsite, consists of 61 acres.

fe15-tfd&w

Edwin K. Alsip & Co., Real Estate Agents.

SOUTH .:. SACRAMENTO!

All Lots Withdrawn From Sale Until After

The Next Auction,

Which will be held as soon as the weather will permit. Y street to be graded and a couple of the blocks to be leveled and graded. We have only a few left.

BARGAINS WILL BE SECURED.

--WE ARE NOW OFFERING--

Half Acres for Sale.

THE TERMS are one-fourth cash, deferred payments in monthly installments of $10, purchaser paying taxes on lots. Remember these prices stand for 15 days only HALF ACRES from $250 to $425 each on same terms.

We will build a dwelling on any lot paid for, and take the cost of dwelling in these payments: One-fifth down, balance in monthly installments of $15, with interest at 7 per cent. per annum.

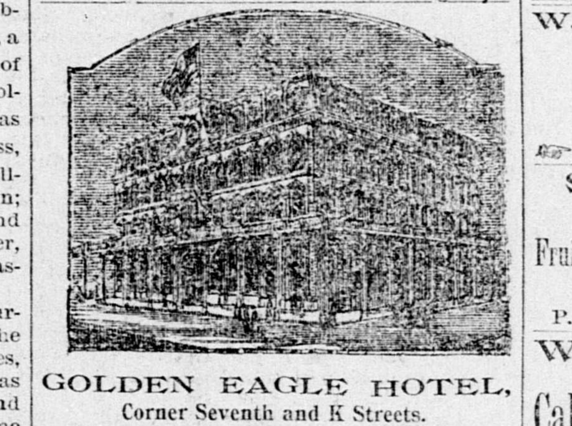
Every young gentleman and lady who wishes a safe investment should purchase a lot.

—APPLY TO—

EDWIN K. ALSIP & CO., Managers,

Real Estate and Insurance Agents, 1015 Fourth St., Sacramento.

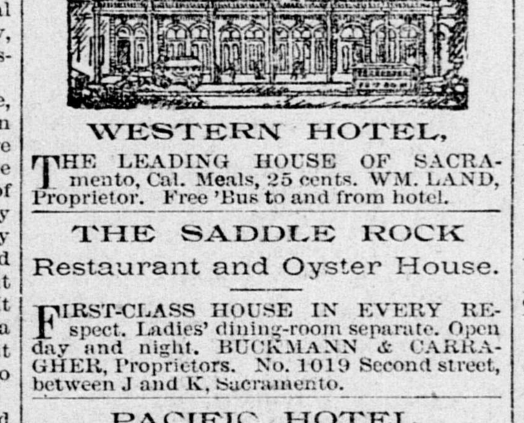
Hotels and Restaurants.



GOLDEN EAGLE HOTEL,
Corner Seventh and K Streets.
STRICTLY FIRST-CLASS. FREE 'BUS TO and from the cars.
W. O. BOWERS, Proprietor.

Corner Seventh and K Streets, Sacramento.

STRICTLY FIRST-CLASS. FREE 'BUS TO and from the cars. B. B. BROWN, formerly of the State House Hotel, Proprietor.



WESTERN HOTEL,
THE LEADING HOUSE OF SACRAMENTO, Cal. Meals, 25 cents. WM. LAND, Proprietor. Free 'Bus to and from hotel.

THE SADDLE ROCK
Restaurant and Oyster House.
FIRST-CLASS HOUSE IN EVERY RESPECT. Ladies' dining-room separate. Open day and night. BUCKMANN & CARRAGHER, Proprietors. No. 1019 Second street, between J and K, Sacramento.

PACIFIC HOTEL,
Corner K and Fifth Streets, Sacramento.
CENTRALLY LOCATED, AND CONVENIENT to all places of amusement. The best family Hotel in the city. The table always supplied with the best the market affords. Street Cars from the depot pass the door every five minutes. Meals, 25 cents.
C. F. SINGLETON, Proprietor.

INTERNATIONAL HOTEL.
CHEAP FURNISHED ROOMS BY THE day, week or month.
W. A. CASWELL, Proprietor.

DISSOLUTION OF COPARTNERSHIP.

NOTICE IS HEREBY GIVEN THAT THE copartnership heretofore existing between the undersigned, under the firm name of POSTEL & SCHNERR, has this day been dissolved by mutual consent. CONSTANT SCHNERR, having purchased all the interest of HENRY J. POSTEL, will continue the business under the name of C. SCHNERR & CO. All accounts of the old firm are payable to Mr. SCHNERR, and he has assumed all of the firm's liabilities.
Sacramento, March 7, 1891.
HENRY J. POSTEL.
mr10-2w CONSTANT SCHNERR.

SHERWOOD HALL NURSERIES,
Timothy Hopkins,
MENLO PARK, SAN MATEO COUNTY, CAL.
Carnations, Roses, Chrysanthemums and Cut Flowers.
SWEET PEA SEED A SPECIALTY.

THE VIDETTE,
No. 228, J St., Sacramento, Cal.,
FINEST WINES, LIQUORS AND Cigars.
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A. MEISTER,
CARRIAGES, VICTORIAS, PHAETONS, Buggies and Spring Wagons.
910, 912, 914 Ninth St., Sacramento.

TO WEAK MEN Suffering from the effects of youthful errors early decay, wasting weakness, lost manhood, etc., I will send a valuable treatise (sealed) containing full particulars for home cure, FREE of charge. A splendid medical work; should be read by every man who is nervous and debilitated. Address, Prof. F. C. FOWLER, Moodus, Conn.

THE NEWS OF THE WORLD IS CONTAINED in the WEEKLY UNION.

Fruits, Seeds, Produce, Etc.

W. R. STRONG COMPANY,
—HEADQUARTERS FOR—
Alfalfa Seed, Etc.
Oregon Potatoes in Lots to Suit.

S. GERSON & CO.,
—WHOLESALE—
Fruit, Produce and Commission Merchants,
SACRAMENTO, CAL.
P. O. Box 170.

W. H. WOOD & CO.,
Wholesale Dealers and Shippers of
California Fruits, Potatoes, Beans,
BUTTER, ETC.,
Nos. 117 to 125 J Street, Sacramento.

CURTIS BROS. & CO.,
General Commission Merchants,
Wholesale Dealers in Fruit and Produce,
308, 310, 312 K St., Sacramento.
Telephone 37. Postoffice Box 335.

EUGENE J. GREGORY. FRANK GREGORY.
GREGORY BROS. CO.,
SUCCESSORS TO GREGORY, BARNES & Co., Nos. 126 and 128 J st., Sacramento. wholesale dealers in Produce and Fruit. Full stocks of Potatoes, Vegetables, Green and Dried Fruits, Beans, Alfalfa, Butter, Eggs, Cheese, Poultry, etc., always on hand. Orders filled at LOWEST RATES.

Liquors, Wine, Beer, Etc.

CITY BREWERY,
FRANK RUHSTALLER, Proprietor,
Corner Twelfth and H Streets.
GENUINE LAGER BEER AND PORTER.
fe24-tf

FINEST LUNCH HOUSE IN THE CITY.
CAPITAL ALE VAULTS, NAGELE & SVENSSON, Proprietors. Lunch from 11 A. M. to 2 P. M. Clam Chowder and Mussel Soup every evening from 6 to 12 o'clock. Finest brands of Wines, Liquors and Cigars.

CONCORDIA BEER HALL,
No. 1021 Fourth Street.
HAVING MADE EXTENSIVE IMPROVEMENTS the public are now cordially invited to a first-class resort. Sandwiches of all kinds. Buffalo Beer on draught and in bottles. The finest Wines, Liquors and Cigars on hand. H. KOHNE, Proprietor.

EBNER BROS.,
116-118 K Street, Front and Second, Sacramento,
IMPORTERS AND WHOLESALE DEALERS in Wines and Liquors. Agents for the celebrated Pommery and Greno Champagne.

M. CRONAN,
230 K St., and 1108-1110 Third St., Sacramento, Cal.,
IMPORTER AND WHOLESALE DEALER in Fine Whiskies, Brandies and Champagne.

JAMES WOODBURN,
No. 417 K Street, Sacramento, Cal.
IMPORTER AND WHOLESALE DEALER in Fine Whiskies, Brandies, Wines and Liquors. Thanking my old friends and patrons for their former patronage, I solicit a continuance of the same. All orders will be promptly and cheerfully filled.

Railroad Time Table.

SOUTHERN PACIFIC COMPANY

[PACIFIC SYSTEM.]

JANUARY 19, 1891.

Trains Leave and are Due to Arrive at Sacramento:

LEAVE	TRAINS RUN DAILY.	ARRIVE
6:15 A	Calistoga and Napa	11:40 A
3:05 P	Calistoga and Napa	8:40 P
12:50 A	Ashland and Portland	5:55 A
4:30 P	Deming, El Paso and East	7:00 P
7:30 P	Knights Landing	7:10 A
10:50 A	Los Angeles	9:35 A
12:05 P	Ogden and East—Second Class	2:25 A
11:00 P	Central Atlantic Express for Ogden and East	8:15 A
3:00 P	Oroville	10:30 A
3:00 P	Red Bluff via Marysville	10:30 A
10:40 A	Redding via Willows	4:00 P
2:25 A	San Francisco via Benicia	11:40 A
6:15 A	San Francisco via Benicia	12:35 A
8:40 A	San Francisco via Benicia	10:40 P
3:05 P	San Francisco via Benicia	8:40 P
*10:00 A	San Francisco via steamer	§6:00 A
10:50 A	San Fran. via Livermore	2:50 P
10.50 A	San Jose	2:50 P
4:30 P	Santa Barbara	9:35 A
6:15 A	Santa Rosa	11:40 A
3:05 P	Santa Rosa	8:40 P
8:50 A	Stockton and Galt	7:00 P
4:30 P	Stockton and Galt	9:35 A
12:05 P	Truckee and Reno	2:25 A
11:00 P	Truckee and Reno	8:15 A
12:05 P	Colfax	8:15 A
6:15 A	Vallejo	11:40 A
3:05 P	Vallejo	†8:40 P
*6:35 A	Folsom and Placerville	*2:40 P
*3:10 P	Folsom and Placerville	*11:35 A

*Sunday excepted. †Sunday only. §Monday excepted. A.—For morning. P.—For afternoon.

RICHARD GRAY, Gen. Traffic Manager.
T. H. GOODMAN, General Passenger Agent.

SEND THE WEEKLY UNION TO YOUR friends in the East.