The New North-West,

Saturday, March 8, 1873.

UNCONSTITUTIONALITY OF RAILROAD SUBSIDIES.

Decision of the Supreme Court of Michigan.

(Opinion by Judge Cooley.)

SUPREME COURT OF MICHIGAN.—THE PEOPLE EX REL. THE DETROIT AND HOWELL R. R. CO. v. THE TOWNSHIP BOARD OF SALEM.

It is a fundamental principle in the law of taxation that taxes must be laid for a *public* and not a mere private purpose.

A statue authorizing the levy and collection of a tax to aid railway companies in the construction of their roads, violates the fundamental principle and is void.

A statute which undertakes to confer upon a majority of the voters of a township authority to vote a tax, the proceeds of which are to be given to railway corporations to aid in the construction of roads to run through the township, is not an enactment authorized by the taxpaying power of the state.

The nature and extent of the taxing power, and the limitations upon it, discussed by Cooley, J.

This was a motion for a *Mandamus*. In 1864 the legislature passed an act allowing certain townships to pledge their credit to aid in the construction of certain railroads. The electors of the townships were authorized to hold meetings to determine what amount should be raised for this purpose, and the form, mode of issuing, and other particulars relating to the securities by which the credit was to be given: Laws of 1864, p. 96.

Under this act the township of Salem voted aid to the extent of five per centum of its assessed valuation; but the meeting at which the vote was taken was irregular for want of sufficient notice, and a special act of the legislature was obtained to legalize the same. The township board refused to issue the securities voted, claiming that the act of 1864 was in excess of legislative authority, and therefore unconstitutional and void, and that the township vote was in consequence a nullity. The railroad company thereupon applied for a writ of *mandamus* to compel the delivery of the securities.

* * *

I understand that, in order to render valid a burden imposed by the legislature under an exercise of the power of taxation, the following requisites must appear:

1. It must be imposed for a public and not a mere private purpose. Taxation is a mode of raising revenues for public purposes only and, as is said in some of the cases, where it is prostituted to objects in no way connected with the public interest or welfare, it ceases to be taxation and becomes plunder: *Sharpless* v. *Mayor*, 21 Penn. St. 168; *Grim* v. *Weisenberg School District*, 57 Penn. St., 433; *Broadhead* v. *Milwaukee*, 9 Wis. 652.

2. The tax must be laid according to some rule of apportionment; not arbitrary or by caprice, but so that the burden may be made to fall with something like impartiality upon the persons or property upon which it justly and equitably should rest. A state burden is not to be imposed upon any territory smaller than the whole state, nor a county burden upon any territory smaller or greater than the county. Equality in the imposition of the burden is of the very essence of the power itself, and though absolute equality and absolute justice are never attainable, the adoption of some rule tending to that end is indispensable: [illegible] v. *Milwaukee*, 10 Wis., 258; *Ryerson* v. *Utley*, 16 Mich., 269; *Merrick* v. *Amherst*, 12 Allen 504.

3. As a corollary from the preceding, if the tax is imposed upon one of the municipal sub-divisions of the state only, the purpose must not only be a public purpose, as regards the people of that sub division, but it must also be local, that is to say, the people of that municipality must have a special and peculiar interest in the object to be accomplished, which will make it just, proper and equitable that they should bear the burden, rather than the state at large, or any more considerable portion of the state; *Wells* v. *Weston*, 22 Mo., 285; *Covington* v. *Southgate*, 15 B. Mon., 491; *Morford* v. *Unger*, 8 Iowa, 82.

The three principles here stated are fundamental maxims in the law of taxation. They inhere as conditions in the power to impose any taxes whatsoever, or to create any burden for which taxation is to provide; and it is only when they are observed that the legislative department is exercising an authority over this subject which it has received from the people, and only then is that supreme legislative discretion of which the authorities speak called into action. No discretionary power in that department is so absolute, and no judgment it can pronounce is so conclusive, as to preclude the citizen's contesting it whenever he believes his rights have been invaded by a disregard of any of these conditions. The duty of considering such a question is both unwelcome and undesirable, but it is not a duty which can be avoided, and we have no disposition to postpone its performance.

* * *

In the present case it appears that the object of the burden is not to raise money for a purpose of general state interest. Its object, on the contrary, is to create a demand which shall be a burden upon a small portion of the state only. On the ground of local benefit a small district of the state is to be taxed to encourage a local enterprise, which it is supposed will be of such peculiar local advantage that this district, rather than the state at large, or any greater or smaller portion of the state, should contribute to its construction. The road, when constructed, is nevertheless to be exclusively private property, owned, controlled and operated by a private corporation for the benefit of its own members, and to be subject to the supervision and control of the state only as other private property is, with such few exceptions as the state in granting the coporate powers, has stipulated for, in order to secure impartiality in the management of its business, and to prevent extortion. Primarily, therefore, the money, when raised, is to benefit a private corporation, to add to its funds and increase its property; and the benefit to the public is to be secondary and incidental, like that which springs from the building of a grist mill, the establishment of a factory, the opening of a public inn, or from any other private enterprise, which accommodates a local want, and tends to increase local values.

* * *

I have said that railroads are often spoken of as a species of public highway. They are such in the sense that they accommodate the public travel, and that they are regulated by laws with a view to preclude partiality in their accommodations. But their resemblance to the highways which belong to the public, which the people make and keep in repair, and which are open to the whole public to be used at will, and with such means of locomotion as taste, or pleasure or convenience may dictate, is rather fanciful than otherwise, and has been made prominent perhaps rather from the necessity of resorting to the right of eminent domain for their establishment than for any other reason. They are not, when in private hands, the *people's highways*; but they are private property, whose owners make it their business to transport persons and merchandise in their own carriages, over their own land, for such pecuniary compensation as may be stipulated. These owners carry on, for their own benefit, a business which has, indeed, its public aspect, inasmuch as it accommodates a public want, and its establishment is consequently, in a certain sense, a public purpose. But is not such a purpose in any other or different sense than would be the opening of a hotel, the establishment of a line of stages, or the putting in operation a grist mill, each of which may, under proper circumstances, be regarded as a local necessity, in which the local public may take an interest beyond [illegible]

what they would feel in other objects for which the right to impose taxation would be unquestionable. The business of railroading in private hands is not to be distinguished in its legal characteristics from either of the other kinds of business here named, or from many others which might be mentioned; but in the case of *Weeks* v. *Milwaukee*, 10 Wis., 242, the Supreme Court of Wisconsin justly treated with very little consideration the claim of a right to favor, under the power of taxation, the construction of a public hotel, though the aid was to be rendered expressly "in view of the great public benefit which the construction of the hotel would be to the city." The court expressly declared that the public could not be compelled to aid such an enterprise from any regard to the incidental benefits which the public were to receive therefrom.

* * *

On the other hand certain things of absolute necessity to civilized society the state is precluded, either by express constitutional provisions, or by necessary implication, from providing for at all, and they are left wholly to the fostering care of private enterprise and private liberality. We concede for instance, that religion is essential, and that without it we should degenerate to barbarism and brutality, yet we prohibit the state from burdening the citizen with its support, and we content ourselves with recognizing and protecting its observance on secular grounds. Certain professions and occupations in life are also essential, but we have no authority to employ the public moneys to induce persons to enter them. The necessity may be pressing, and to supply it may be in a certain sense to accomplish a "public purpose;" but it is not a purpose for which the power of taxation may be employed. The public necessity for an educated and skillful physician in some particular locality may be great and pressing yet if the people should be taxed to hire one to locate there, the common voice would exclaim that the public moneys were being devoted to a *private* purpose. The opening of a new street in a city or village may be of trifling public importance, as compared with the location within it of some new business of manufacture, but while the right to pay out the public funds for the one would be unquestionable, the other, by common consent, is classified as a private interest, which the public can aid as individuals if they see fit, while they are not permitted to employ the machinery of the government to that end.

* * *

We perceive, therefore, that the term "public purpose," as employed to denote the objects for which taxes may be levied has no relation to the urgency of the public need, or to the extent of the public benefit which is to follow. It is, on the other hand, merely *a term of classification to distinguish the objects for which, according to settled usage, the government is to provide, from those which, by the like usage, are left to private inclination, interest or liberality.*

It creates a broad and manifest distinction—one in regard to which there need be neither doubt nor difficulty—between public works and private enterprises; between the public conveniences which it is the business of government to provide and those which private interest and competition will supply whenever the demand is sufficient. When we draw this line of distinction, we perceive immediately that the present case falls outside of it. It was at one time in this state deemed true policy that the government should supply railroad facilities to the travelling and commercial public, and while that policy prevailed, the right of taxation for the purpose was unquestionable. Our policy in that respect has changed; railroads are no longer public works, but private property; individuals, and not the state, own and control them for their own profit; the public may reap many and large benefits from them, and indeed are expected to do so, but only incidentally, and only as they might reap similar benefits from other modes of investing private capital. It is no longer recognized as proper or politic that the state should supply the means of locomotion by rail to the people, and this species of work is therefore remitted to the care of private enterprise, and cannot be aided by the public funds any more than any other private undertaking, which in like manner falls outside the line of distinction indicated.

* * *

But the discrimination by the state between different classes of occupations, and the favoring of one at the expense of the rest, whether that one be farming or banking, merchandising or milling, printing or railroading, is not legitimate legislation, and is an invasion of that equality of right and privilege which is a maxim in state government. When the door is once opened to it there is no line at which we can stop and say with confidence that thus far we may go with safety and propriety, but no farther. Every honest employment is honorable; it is beneficial to the public; it deserves encouragement. The more successful we can make it, the more does it generally subserve the public good. But it is not the business of the state to make discriminations in favor of one employment against another. The state can have no favorites. Its business is to protect the interests of all, and to give all the benefit of equal laws. It cannot compel an unwilling minority to submit to taxation in order that it may keep upon its feet any business that cannot stand alone. Moreover, it is not a weak interest that can give plausible reasons for public aid. When the state once enters upon the business of subsidies, we shall not fail to discover that the strong and powerful interests are those most likely to control legislation, and that the weaker will be taxed to enhance the profits of the stronger.

* * *

It scarcely seems necessary to say that what the state as a political community cannot do, it cannot require the inferior municipalities to do. When the case is found to stand entirely outside the domain of taxation, state burdens and township burdens are alike precluded; no township vote and no township majority, however large, can affect the principle; any single individual has a right to insist that the public do not own or control his property for the purpose of donations.

* * *

I have stated the case on behalf of the railroad as strongly as is possible, for I have assumed that the road is certain to be constructed, and to be operated afterwards, though the act in question makes no very effectual provision to that end, and the railroad company demand the bonds without expecting to give any security that the township will ever receive the expected benefit from its expenditure. The opposition to this proceeding may be based, for aught we know, upon a conviction that the enterprise cannot succeed, and that money must consequently be wasted; but I prefer not to consider the case in any other light than that which is most favorable to the relator, and I shall therefore assume that the legislature has established all possible safe-guards against loss or disappointment, and that these safe-guards would prove effectual. And regarding the case in that light it rests, in my view, upon fallacies which are transparent, and upon decisions which, followed to their legitimate results, will leave us wholly at sea as regards the objects of taxation, and will justify a resort to that measure for almost any private purpose which can be suggested. It is said, however, [illegible]

of authority for this species of legislation. This statement is very often made with great emphasis, but without a foundation proportioned to the energy with which it is repeated. There is, indeed, a considerable number of cases which for diverse and irreconcilable reasons have supported local taxation for objects of general interest, but many of these cases have not the least relevancy to the point here contested. Such cases, for instance, *Thomas* v. *Leland*, 24 Wendell, 95, and *Merrick* v. *Amherst*, 12 Allen, 504, where local communities, on the ground of special local benefit, have been allowed or compelled to tax themselves in aid of the public works or buildings owned by the state, are not at all analagous. Where the state itself is to receive the benefit of the taxation, in the increase of its public fund, or the improvement of its property, there can be no doubt of the public character of the purpose. Such of the other judicial decisions as are best reasoned, rest plainly upon the doctrine that the state, having within itself unlimited authority to aid works of internal improvement, may use its municipal bodies as its agencies for that purpose—a doctrine which is precluded by express provision in the constitution of this state. If we set aside these two classes of cases very little real authority remains to support the doctrine contended for. The right to vote municipal aid to railroads has been vigorously disputed from the beginning, and many eminent jurists have always denied it. I regard with the utmost respect the courts which have preceded us in considering this question, but we should be wilfully blind if we shut our eyes to the fact that there have always been circumstances surrounding the consideration of this subject which have not been favorable to a complete and unbiased expression of views. It is easy to follow an apparent authority without stopping to question its soundness, when the popular desire is in the same direction; and upon this subject there are repeated decisions which do not by any new reasoning, or by any attempt to examine the suject on principle, add to the authority of those which preceded them. When cases follow in line for no better reason than because they have a case to follow, the authority is to be found in the first decision, and not by counting up the number in the line. The leading cases upon the subject has been the Pennsylvania case of *Sharpless* v. *Mayor*, 21 Penn. St., 147, and read the result, in the language of the same court, in a subsequent case. "We know," say the court, "the history of these municipal and county bonds; how the legislature, yielding to popular excitement about railroads, authorized their issue; how grand jurors and county commissioners and city officers were moulded to the purpose of speculators; how recklessly railroad officers abused the overwrought confidence of the public, and what burdens and debt and taxation have resulted to the people. A moneyed security was thrown upon the market by the paroxysm of the public mind:" *Diamond* v. *Lawrence county*, 37 Penn. St., 353. The learned judges were quite too sanguine when they declared that the like could never happen again; but we are not concerned with their prophecy so much as we are with their manifest consciousness that those evils have come from a provision of the law. The best judgment of the legal profession, so far as I have been able to judge, has always been against the lawfulness of this species of railroad aid, and there has been a steady and persistent protest which no popular clamor could silence against the decisions which supported it. This protest has of late been growing stronger instead of fainter, and if the recent decisions alone are regarded, the authority is clearly with the protest. But whether this is so or not is not of controlling authority here. We are embarrassed by no decisions in this state, and are at liberty, therefore, to consider this question on principle; and when the legal principle which governs a case stands out in bold relief, it is manifestly more in accord with a proper discharge of judicial duty that we should reach to it with directness, than that we should shut our eyes to the principle and blindly follow where others have blindly led.

I have not deemed it important to consider any of the minor objections to this act, preferring, as I do, to deal with the main and fundamental infirmity. The case before us is that of a private corporation demanding a gratuity which has been voted to it in township meeting upon the assumption that its business operations and facilities will incidentally benefit the township. I do not find that the meeting possessed any inherent authority to pass such a vote, or that any such authority could have been conferred upon it. The legislature could not confer upon the majority there convened a jurisdiction to measure for the minority the demands upon their gratitude and liberality. Individuals, as such, must make their own donations, and decide for themselves how far any proposed enterprise of other individuals can properly and justly, in view of the benefits they may receive therefrom, demand their aid and assistance.

As, therefore, it appears that the first and most fundamental maxim of taxation is violated by the act on this question, it becomes superfluous to consider whether the act would also violate the maxim of apportionment, or be obnoxious in its application, because the burden, even if public, could not also be regarded as local and peculiar to this township. Equally superfluous is it to consider in detail the several express provisions of the state constitution which the repondents suppose to be violated. If the authority exercised is not within the taxing power of the state, it is quite needless to discuss whether, if it were within it, there are not restrictions which prohibit its exercise.

The *mandamus* applied for should, in my opinion, be denied.

Campbell, C. J., and Christiancy, J., delivered concurring opinions, Graves, J., dissented.

Drinking too Much the Cause of Kidney Disease.

Five-sixths of an animal body is made up of water. A man weighing two hundred may be dried into a mummy not weighing 16 pounds, including bones of the skeleton. Water, therefore, is largely employed in giving form, flexibility and beautiful lines. Enough is taken in with food to meet all demands of the system. The precise quantity, and indeed quality, is regulated by a sense of thirst. But that vital sentinel may be corrupted by excessive indulgence. When simply water is taken, a morbid thirst never follows. If, however, stimulating fluids are swallowed a morbid craving may be generated, which if not restrained, may become an unsatisfied passion, to the positive injury of organs on the regular functions of which sound health depends.

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The Doctor having permanently established in this city, [illegible]

Legal Advertisements.

[NO. 127.]

Application for Patent.

U. S. LAND OFFICE, Helena, M. T., January 10th, 1873.

Notice is hereby published that JOHN B. WILSON and JAMES R. WILSON, of Deer Lodge county, M. T., whose postoffice address is Blackfoot City, M. T., have this day filed application for patent, under the Mining laws of Congress, for a placer mining claim situated in the locality known as Wilson's Diggings, in Nevada creek valley, in no organized mining district, Deer Lodge county, Montana Territory, in sec. 20, township Thirteen north, range ten west: which claim is described as follows: The north half of the north half of the north half of the south west fourth and south half of the north west fourth, and the south half of the north half of the north west fourth and the south half of the north half of the north half of the north west fourth, of section twenty, in the township and range aforesaid, embracing one hundred and sixty acres, upon which a notice of said application is posted. The nearest claimants to these premises being J. H. Helms, Adolph Hoepfner, Chas. Hoepfner and Thomas Coleman, agricultural claimants. W. C. CHILD, Register.

[NO. 126.]

Application for Patent.

U. S. LAND OFFICE, Helena, M. T., January 16th, 1873.

Notice is hereby published that DALLAS P. NEWCOMER, CONRAD KOHRS and WILLIAM W. DIXON have this day filed application for patent, under the Mining laws of Congress, for their placer mining claim, situated in Oro Fino Mining District, Deer Lodge county, Montana Territory, on unsurveyed public land; which claim is recorded in the office of the District Recorder of said district, and described as follows. Beginning at a point from whence the initial point of survey in said district bears S. 53½ deg. E. 42.87 chains distant, and running thence N. 37 deg. E. 10.43 chains, thence S. 58½ deg. E. 48 chains, thence S. 15¼ deg. W. 11 chains, thence S. 37½ deg. N. 27.40 chains, thence N. 56 deg. W. 4.50 chains, thence N. 20½ deg. E. 22.66 chains to said initial point, thence to place of beginning, embracing 77-98-100 acres, upon which a notice of said application is posted. The adjoining claimants to these premises are Schnell & Co. below, and Bowers & Co. above.

W. C. CHILD, Register.

L. B. LYMAN, Attorney for claimants.

[NO. 128.]

Application for Patent.

U. S. LAND OFFICE, Helena, M. T., January 16th, 1873.

Notice is hereby published that EDWIN H. IRVINE, WM. L. IRVINE, THOS. C. IRVINE, THOS. H. IRVINE, THOS. H. IRVINE, Jr., DAVID L. IRVINE, by E. H. IRVINE, Administrator, BRYAN IRVINE, WM. WILLIAMS, JOHN WILLIAMS and JOHN ROGERS, have this day filed application for patent, under the Mining laws of Congress, for that mining claim known as the Gem Lode of 2,200 linear feet, situated in Flint creek Mining District, Deer Lodge county, Montana Territory, in township six north, range thirteen west, which claim is recorded in the office of the county Recorder of said county, and described as follows: Beginning at the special initial point from whence the discovery shaft on the Speckled Trout lode, bears N. 27½ deg. E. 217 links distant, and the discovery shaft of said Gem Lode also bears S. 5 deg. W. 75 links distant; and running thence S. 85 deg. E. 1100 feet, thence S. 5 deg. W. 100 feet, thence N. 85 deg. W. 2200 feet, thence N. 5 deg. E. 100 feet, thence to place of beginning, embracing five 5-100 acres, upon which a notice of said application is posted. The nearest claimants to these premises are the claimants, names unknown, upon the Speckled Trout lode, and also upon the Algonquin lode.

W. C. CHILD, Register.

L. B. LYMAN,
D. P. NEWCOMER,
Attorneys for claimants. 176-60d

[NO. 133.]

Application for Patent.

U. S. LAND OFFICE, Helena, M. T., January 22d, 1873.

Notice is hereby published that WILLIAM T. BALLARD and WILLIAM MILLING, the postoffice address of each being at Pioneer, Deer Lodge county M. T., have this day filed application for patent, under the Mining laws of Congress, for their placer mining claim, situated in Ballard Mining District, in Deer Lodge county, Montana Territory, in township nine north, range eleven west; which claim is recorded in the office of the District Recorder of said district, and described in the plat and field notes on file in this office as follows, viz: Beginning at a point whence the quarter section corner between sections 22 and 27, in township 9 north of range 11 west, bears north 49 deg. and 51 min. east, 66.79 chains distant, and running thence S. 10¼ deg. W. 5.47 chains, thence S. 12 deg. W. 6 chains, thence S. 52 deg. W. 9 chains, thence S. 22 deg. W. 8.50 chains, thence N. 27½ deg. W. 14 50 chains, thence N. 30½ deg. E. 19.74 chains, thence S. 84 deg. E. 4 50 chains, thence N. 23½ deg. E. 4 86 chains, thence S. 63½ deg. E. 2.57 chains to place of beginning, embracing twenty-one and 1-10 acres, upon which a notice of said application is posted. The only known adjoining claimants to these premises are G. Lebbetts and Ballard & Milling, on the south west, and Thornton, Joe Allen, Doc Ashmead and Yandell on the north east and east.

W. C. CHILD, Register.

L. B. LYMAN,
D. P. NEWCOMER,
Attorneys for claimants. 186-60d

[No. 136.]

Application for Patent.

U. S. LAND OFFICE, HELENA, M. T., January 30, 1873.

Notice is hereby published that JOHN O'ROURKE and FRANCIS R. BILL, whose postoffice address is Blackfoot city, M. T., have made application for patent for a placer mining claim, situate in the locality known as Rowle's Gulch, in no organized mining district, in Deer Lodge county, on surveyed land, and embracing the following legal subdivisions: The north west ¼ of the south east ¼ of the south west ¼, and the south ½ of the north ½ of the south west ¼ of the west ¼ and the north ½ of the south ½ of the south west ¼ of the south west ¼; all in section nineteen, in township twelve, north of range eight west. And also, the east ½ of the south east ¼ of the south east ¼, and the east ½ of the east ½ of the north east ¼ of the south east ¼ of section twenty-four, in township twelve, north of range nine west, containing sixty acres, upon which a notice of said application is posted. The adjoining claimants to these premises are Jacob Olsen & Co., on the south, placer mining claimants.

W. C. CHILD, Register.

W. W. JOHNSON, Attorney for claimants. 187-60d

[NO. 137.]

Application for Patent.

U. S. LAND OFFICE, HELENA, M. T., January 28th, 1873.

Notice is hereby given that JOHN O'ROURKE and FRANCIS R. BILL, whose postoffice address is Blackfoot city, Deer Lodge county, M. T., have made application for patent for a placer mining claim situated in the locality known as Washington Gulch Mining District, in Deer Lodge county, M. T., and described in the plat and field notes on file in this office as follows, viz.: Beginning at a stone set for cor. No. 10, on this claim from which the ¼ sec cor. on the west boundary of sec. 18, township 12 north range 8 west, bears N. 40 deg. 45 min. W. distant 15 10 chains; thence running N. 27 deg. 15 min. E. 17 chains to a stone; thence N. 28 deg. 30 min. E. 25 chains to a stone; thence N. 45 deg. E. 8.85 chains to a stone; thence N. 34 deg. 45 min. E. 15.60 chains to a stone; thence S. 55 deg. 30 min. E 2 chains to a stone; thence S. 27 deg. 30 min. W. 15.75 chains to a stone; thence N. 55 deg. 30 min. W. 2 chains to stone; thence S. 33 deg. 30 min. W. 20 chains to a stone; thence S. 52 deg. W. 3.50 chains to a stone; thence S. 33 deg. W. 20 chains to a stone; thence S. 20 deg. 30 min. W. 7.50 chains to a stone; thence N. 46 deg. 30 min. W. 5 chains to the place of beginning, containing 25 16-100 acres and forming a portion of the west ½ of section 18, in township 12, north of range 8 west. principal meridian, M. T. The adjoining claimants to these premises are John Ferris, Michael Kiley, and others below, placer mining claimants.

W. C. CHILD, Register.

W. W. JOHNSON, Attorney for claimants. 187-60d

[No. 140.]

Application for Patent.

U. S. LAND OFFICE, HELENA, M. T., February 1st, 1873.

Notice is hereby given that ANDREW J. DAVIS, whose postoffice address is Helena, Montana Territory, has made application for patent for 1500 linear feet of the Allie Brown lode, bearing silver and gold, the same being 750 feet easterly and 750 feet westerly from discovery shaft thereon, with surface ground 108 feet in width, situated in Summit Valley Mining District, Deer Lodge county, and described in the plat and field notes on file in this office as follows, viz.: Beginning at a stone set for corner No. 6 on said lode, from which a monument on the top of the butte bears S 51 deg. 30 min. W. distant 84.50 chains; thence running S. 7 deg. 15 min. E. 106 feet to a stone; thence N. 82 deg. 45 min. E. 830 feet to a stone; thence S. 84 deg. 45 min. E. 678 feet to a stone; thence N. 7 deg 15 min. W. 106 feet to a stone; thence N. 85 deg. W. 697 feet to a stone; thence S. 82 deg. 45 min. W. 813 feet to the place of beginning, designated as lot No 37 A.; also a mill site (lot 37 B.) adjoining, commencing at corner No. 2 on said Allie Brown Lode and running as follows: S. 7 deg. 15 min. E. 5 chains to a stone; thence S. 82 deg 45 min. W. 10 chains to a stone; thence N. 7 deg. 15 min. W. 5 chains to a stone thence along the south boundary of lot 37 A. to the place of beginning, designated as lot 37 A. B., in township 3 north of range 8 west, containing an area of 5-05 acres, said location being recorded in Books E. and G. of the records of Deer Lodge county. The adjoining claimants to these premises is A. J. Davis on the said Allie Brown lode.

188-60d W. C. CHILD, Register.

[No. 154.]

Application for Patent.

U. S. LAND OFFICE, HELENA, M. T., February 24, 1873.

Notice is hereby given that JACOB OLSEN and ROBERT E. McCONNELL, whose postoffice address is Washington Gulch, Deer Lodge county, Montana Territory, have made application for patent for a certain tract of land as a placer mining claim, designated as lot No. 38, in township 12 north of range 8 west, situated in the locality known as American Gulch, in Deer Lodge county, Montana Territory, and described in the plat and field notes on file in this office as follows, viz.: Beginning at a stone set for cor No 1 on this claim, 7 chains E of the ¼ sec cor on the south boundary of sec 18, in township No 12 north of range 8 west, thence running N 47 deg E 18 chains to a stone, [illegible]

Legal Advertisements

[No. 142.]

Application for Patent.

U. S. LAND OFFICE, HELENA, M. T., February 5th, 1873.

Notice is hereby published that ELI D. HOLLAND and JAMES W. ESTILL, whose postoffice address is Philipsburg, Deer Lodge county, M. T., have this day filed application for patent, under the Mining laws of Congress, for 1300 linear feet of the Little Emma lode, bearing silver, the same being 750 feet northwesterly from discovery shaft thereon, and 750 feet southeasterly (excepting 101 feet at the intersection of the Camanche Extension lode,) from discovery shaft thereon, with surface ground 100 feet in width, situated in Flint Creek Mining District, Deer Lodge county, Montana Territory, in township 6 north, range 13 west: which claim is recorded in Book E, in the office of the County Recorder of said county, and described on the plat and field notes on file in this office in two parcels as follows, viz: For first parcel, designated lot 39 A, at a point on north boundary thereof, whence the initial point of surveys in said district bears S. 18 deg. E. 8060 feet distant, and discovery shaft on said lode bears S. 15 deg. W. 50 feet distant, and running thence S. 75 deg. E. 211 feet, thence S. 7½ deg. W. 101 feet, thence N. 75 deg. W. 974 feet, thence N. 15 deg. E. 100 ft. thence S. 75 deg. E. 750 ft. to place of beginning: and for second parcel, designated lot 39 B. beginning at the northwest corner thereof, whence the northeast corner of lot 39 A. bears N. 75 deg. W. 101 feet distant, and running thence S. 75 deg. E. 438 feet, thence S. 15 deg. W. 100 feet, thence N. 75 deg. W. 425 feet, thence N. 7½ deg. E. 101 feet to place of beginning, embracing three and 21-100 acres, upon which a notice of said application is posted. The only known adjoining claimants to these premises are H. Cogswell, George Caldewood, D. Brown and others on the Camanche lode, which intersects the said Little Emma lode, and W. B. Dance, claimant upon the Isaac lode.

W. C. CHILD, Register.

L. B. LYMAN, attorney for claimant. 188 60d

[No. 143.]

Application for Patent.

U. S. LAND OFFICE, HELENA, M. T., February 5th, 1873.

Notice is hereby published that ELI D. HOLLAND and JAMES W. ESTILL, whose postoffice address is Philipsburg, Deer Lodge county, M. T., have this day filed application for patent, under the Mining laws of Congress, for 1200 linear feet, being the Cliff Extension No. 2, and Salmon lode, bearing silver, the same being 300 feet northwesterly and 300 feet southeasterly from discovery shaft on the Salmon lode, and 600 feet southeasterly from discovery shaft on Cliff Extension No. 2 lode, with surface ground 100 feet in width, situated in Flint Creek Mining District, Deer Lodge county, Montana Territory, in township 6 north, range 13 west: which claim is recorded in Book E, in the office of the County Recorder of said county, and described in the plat and field notes on file in this office as follows, viz: Beginning for the Salmon lode at the southwest corner thereof, whence the initial point of surveys in said district, bears S. 39½ deg W. 933 feet distant, and running thence N. 35 deg. W. 600 feet, thence N. 55 deg. E. 118 feet, thence S. 35 deg. E. 600 feet, thence to place of beginning; and the Cliff Extension No 2 lode, is described as follows, viz: Beginning at the southeast corner of said Salmon lode and running thence S. 35 deg. E. 600 feet, thence S. 55 deg. W. 118 feet, thence N. 35 deg. W. 600 feet, thence to place of beginning, embracing three and ½ acres, upon which a notice of said application is posted. The nearest claimants to these premises are J. J. Lyon, C. W. Frost and others on the Providentia lode, and Mariah S. Saunders on the Speckled Trout lode.

W. C. CHILD, Register.

L. B. LYMAN, attorney for claimants. 188 60d

[No. 139.]

Application for Patent.

U. S. LAND OFFICE, HELENA, M. T., February 1st, 1873.

Notice is hereby given that ANDREW J. DAVIS, whose postoffice address is Helena, Montana Territory, has made application for patent for 1500 linear feet of the Gem Lode, bearing silver and gold, the same being 1500 feet westerly from discovery shaft thereon, with surface ground 107 feet in width, situated in Summit Valley Mining District, in Deer Lodge county, and described in the plat and field notes on file in this office as follows, viz.: Beginning at a stone set for corner No. 3 on this lode, from which the corner No. 4 on the Allie Brown lode, lot No 37 bears S. 80 deg. 10 min. W. distant 57.93 chains; thence running S. 26 deg. W. 107 feet to a stone; thence S. 61 deg E. 1500 feet to a stone; thence N. 26 deg. E. 107 feet to a stone; thence N. 64 deg. W. to the place of beginning, designated as lot No. 38 A.; also a mill site (lot 38 B.) appertaining to said Gem lode, commencing at a stone set for corner No. 1. on said mill site, 34 chains east of corner No. 1 on said Gem lode; thence running east 5 chains to a stone, thence north 10 chains to a stone, thence west 5 chains to a stone, thence south 10 chains to the place of beginning, designated as lot 38 A. B., in township 3 north of range 8 west, principal meridian, containing 8 68-100 acres; said location being recorded in vols. E. and I. of the records of Deer Lodge county. The adjoining claimant is Wm. Reagan on the Gem lode, east from said discover y shaft W. C. CHILD,

188-60d Register.

[No. 149]

Application for Patent.

U. S. LAND OFFICE, HELENA, M. T., February 18, 1873.

Notice is hereby given that JOHN O'ROURKE and FRANCIS R. BILL, whose postoffice address is Blackfoot city, M. T., have made application for patent for a placer mine situated in Pepce's Mining District, in Deer Lodge county, Montana Territory, and described in the plat and field notes on file in this office as follows, viz: Beginning at a point on the west side of a trap ledge 6x4 feet on the west side of Ophir gulch, opposite the mouth of Carpenter's gulch, marked for corner No 1, then running N 21 deg 30 min E 11.30 chains to a pine stump 33 inches diameter, thence S 10 deg E 40 chains to a stone, thence S 49 deg 45 min W 4.30 chains to a stone, thence S 8 deg 45 min W 11.78 chains to a pine tree 17 inches diameter, thence S 25 deg 15 min E 15 chains to a stone, thence N 70 deg 15 min W 24 chains to S side of a trap ledge 10x5x3 feet, thence N 0 deg 30 min W 20 chains to a stone, thence N 28 deg 52 min E 20.24 chains to a point 3.98 chains west of the ¼ sec cor on the line between sections 12 and 13 in township 10 N of range 8 west, and continuing on said course from said point to the place of beginning, forming a portion of the south ½ of sec 12 and north ½ of sec 13, township 10 north of range 8 west, principal meridian, containing 116 94 acres and designated as lot No. 37 in said township. The original deeds of conveyance from the grantors, being found in books G 11 and I of the Records of Deer Lodge county. The adjoining claimants are Quang Yea & Co., north, Yee Wan & Co., south, Rierson and Kimberly west.

190-60 d W. C. CHILD, Register.

[No. 153.]

Application for Patent.

U. S. LAND OFFICE, HELENA, M. T., February 21, 1873.

Notice is hereby given that WILLIAM T. PAREL, CORNELIUS DALY and EUGENE CULLINAN, whose postoffice address is Washington Gulch, Deer Lodge county, Montana Territory, have made application for a certain tract of land designated as lot No 39 in township 12 north of range 8 west, situated in the locality known as American Gulch, in Deer Lodge county, and described in the plat and field notes on file in this office as follows, viz: Beginning at cor No 5 of lot No 39, in township 12 north of range 8 west, thence running N 72½ deg E 9 chains to a stone, thence E 7 chains to a stone, thence N 57 deg E 14 chains to a stone, thence N 15 deg E 4 chains to a stone, thence N 24½ deg E 3 50 chains to a stone, thence S 58 deg W 7.50 chains to a stone, thence S 71½ deg W 16 chains to a stone, thence S 56½ deg W 12.10 chains to cor No 4 of said lot No 39, thence S 34 deg E 5 chains to the place of beginning, containing an area of 21.07 acres, and forming a portion of the southwest ¼ of section 20, in township 12 north of range 8 west, principal meridian, M. T. Said location being in no organized mining district, and not being of record. The adjoining claimants to said premises being Jacob Olsen and R. E. McConnell, lot 38, township 12 north of range 8 west below, placer mining claimants. W. C. CHILD.

191-671 Register.

NOTICE TO MINERS.

U. S. LAND OFFICE, HELENA, M. T., Feb. 18, 1873.

JOHN B. RENAUX, whose postoffice address is Deer Lodge City, Deer Lodge county, Montana Territory, has filed in this office his application to enter as agricultural land under the pre-emption laws, the southwest ¼ of southeast ¼ and south ½ of southwest ¼ of section 10, and northwest ¼ of northwest ¼ of section 15 in township No 9 north of range No 13 west, which land is suspended from entry as agricultural land; notice is hereby given that a hearing will be had at this office at 10 o'clock a. m., on the 3d day of April, 1873, to determine as to the mineral or non-mineral character of said land, and testimony to be taken upon said hearing will be taken before D. P. Newcomer, Probate Judge, at Deer Lodge city, in Deer Lodge county, Montana Territory, commencing at 10 o'clock a. m., on the 27th day of March, 1873. It is alleged there are no known miners, nor mining improvements or claims upon said land.

(Signed) W. C. CHILD, Register.

L. B. LYMAN, attorney for applicant. 190-30d

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