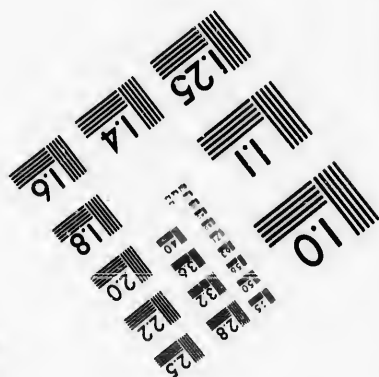
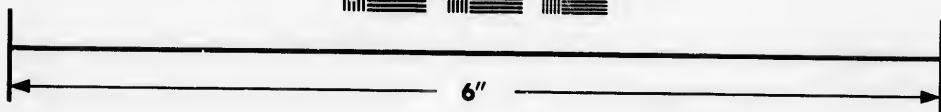
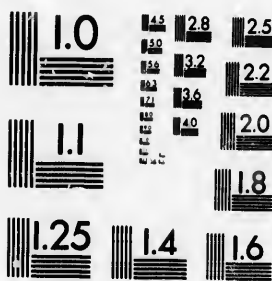


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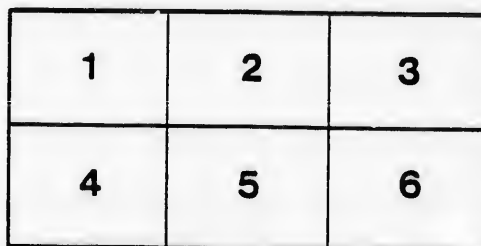
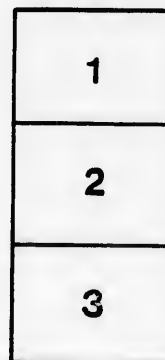
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In Chancery.

BETWEEN THE NORTH STAR SILVER MINING
COMPANY - - - - - *Plaintiffs.*

AND

JOHN B. TAYLOR, THOMAS ASPDEN,
ALEXANDER T. MACHATTIE, THE-
OPHILUS S. WILLS AND JAMES
H. FRASER - - - - - *Defendants.*

CITY OF LONDON :

To the Honorable the Judges of the Court of Chancery.

THE BILL OF COMPLAINT

Of the North Star Silver Mining Company, the above named Plaintiffs.

HUMBLY SHEWETH :

1. Prior to the eighteenth day of November, in the year of our Lord 1872, one Don Carlos Butterfield, of Salt Lake City, in Utah Territory of the United States of America, jointly with certain other persons, whose names are unknown to your Complainants, had acquired by assignment from the original locatees thereof, certain valuable silver mines and mining locations situated in the North Star Mining District, in Beaver County, in Utah Territory aforesaid, respectively known as the "Harrington" ledge, the "Raineer" ledge, the "Oakland" ledge, the "Old Hickory" ledge, and the "Fuller and Harrington Tunnel," all of which mines and locations together were known as the "Old Hickory Silver Mining Company's property," the legal estate therein still remaining in the People or Commonwealth of the United States of America.

2. The said Don Carlos Butterfield and the other persons interested with him in the said mines, were desirous of selling the same or of organizing a Company for the purpose of raising money to work the said mines, which had already been partly opened and developed, and they assigned their right in the property to the said Don Carlos Butterfield, and authorized him to endeavour to sell the said mines, or to organize a Company for the purposes aforesaid.

3. Some time before the said eighteenth day of November, in the year of our Lord 1872, the said Don Carlos Butterfield furnished to the Defendants, Thomas Aspden and Alexander T. Machattie, both of whom resided at the said City of London, a statement, purporting to be a

detailed and circumstantial account of the position of the said mines and of the character of the veins and deposits of silver which they contained, and an estimate of certain immense profits which might be obtained from properly working them, and offered to sell to them the said mines for \$75,000 in cash, and a further sum in paid-up stock of a Company, which, he proposed, should be organized by the said Defendants, Thomas Aspden and Alexander T. Machattie, for the purpose of working and developing the said mines.

4. The said Defendants, Thomas Aspden and Alexander T. Machattie, thereupon went from London aforesaid, to Utah aforesaid, to view and inspect the said mines and property, and they thereupon formed the plan of contracting to purchase the said mines and property from the said Don Carlos Butterfield, at the price at which he so offered them, paying a small amount down and obtaining time for the balance, of then organizing, and procuring an Act incorporating a Company under the name of "The North Star Silver Mining Company," and appointing, or procuring themselves and their nominees to be appointed, Directors thereof, for the purpose of carrying out the purchase thereof, and of raising, by the sale of bonds or shares of the Company, the residue of the purchase money of the said mines and property, and of making themselves a large profit out of the transaction by issuing to themselves, while being such Directors, capital stock of the Company to the amount of \$500,000, as paid-up stock for their own private use and profit, without paying any money whatever upon such stock, and without giving any consideration to the Company therefor.

5. In pursuance of the said plan the said Defendants, Thomas Aspden and Alexander T. Machattie, on or about the eighteenth day of November, in the year of our Lord 1872, entered into an agreement in writing with the said Don Carlos Butterfield, in the words and figures following:

"Memorandum of an Agreement made at Salt Lake City,
 "Utah Territory, this eighteenth day of November, Anno Domini
 "1872, Between Don Carlos Butterfield, of said Salt Lake City,
 "of the first part, and Thomas Aspden and Alexander Taylor
 "Machattie, both of London, Province of Ontario, Dominion of
 "Canada, of the second part.

"WHEREAS, the party of the first part has become the owner,
 "by assignment, of a certain bond executed on the twenty-first
 "day of September, in the year 1872, by James Harrington T. F.
 "Fuller, James H. Cook, Joseph Hooper, F. M. Adams and J. M.

"Davidson, to J. H. Cornwall, William A. Hudson and Jay
 "Barnes, whereby said Harrington, Fuller, Cook, Hooper, Adams
 "and Davidson bound themselves to convey to said Cornwall,
 "Hudson and Barnes, or their assigns, those certain mining pro-
 "perties situated in the North Star Mining District, Beaver
 "County, Utah Territory, known as the 'Harrington' Lode, the
 "'Raineer' Lode, the 'Old Hickory' Lode, the 'Oakland' Lode,
 "and the 'Harrington and Fuller' Tunnel, upon payment to the
 "said obligors, on or before the thirty-first day of March, 1873,
 "of the sum of \$60,000, of which sum \$30,000 has already been
 "paid; to which said bond, and the assignment thereof to the
 "party of the first part, reference is hereby made as a part of this
 "instrument.

"AND WHEREAS, the parties hereto believing the said mining
 "properties to contain valuable deposits of silver bearing ores and
 "other minerals, and wishing to unite in an enterprise for securing
 "said properties and putting them upon a paying basis, the party
 "of the first part has agreed to assign his interest in said bond
 "and properties, and the parties of the second part have under-
 "taken to raise the sum of \$200,000 to pay for and work the
 "same. NOW THEREFORE, this agreement witnesseth the condi-
 "tions of said mutual undertakings as follows, that is to say:

"First. The parties of the second part agree to furnish the
 "party of the first part, on or before the twentieth day of Novem-
 "ber instant, the sum of \$5,000, to be paid on that day to said
 "Cornwall, Hudson and Barnes, by the terms of their assignment
 "of said bond to the party of the first part, which sum the party
 "of the first part agrees faithfully to apply to that purpose.

"Second. The parties of the second part agree to furnish
 "and pay to the party of the first part, on or before the twelfth
 "day of January, 1873, the further sum of \$62,500. From this
 "sum the party of the first part obligates himself to pay to said
 "Cornwall, Hudson and Barnes the balance of the \$60,000 men-
 "tioned in said bond, and to procure a good and sufficient deed
 "and conveyance of said properties in fee, subject only to the
 "paramount title of the Government of the United States of
 "America, and to obtain for the benefit of the parties interested
 "the possession and control of said several properties for the uses
 "hereinbefore specified.

"Third. It is further agreed that there shall be paid to the
 "party of the first part, out of the moneys to be raised as herein-

“ before mentioned, in cash or bonds, the further sum of \$75,000
 “ the sum agreed to be paid the obligors of said bond, and the
 “ value of the labor and improvements actually put on said prop-
 “ erties by the party of the first part.

“ Fourth. The parties of the second part agree to form a
 “ Corporation, wherever they shall deem most advisable, for the
 “ purpose of developing and working said mining properties ;
 “ such Corporation shall have a nominal capital of \$1,000,000, to
 “ be divided into equal shares according to the discretion of the
 “ parties of the second part. The affairs of the said Corporation
 “ shall be managed by a Board of 5 Directors, and the Directors
 “ for the first 6 months shall be named, to wit : 3 by the parties
 “ of the second part, and 2 by the party of the first part ; and
 “ thereafter said Directors shall be elected by the stockholders, at
 “ such times and in such manner as shall be provided by law or
 “ by the By-laws of such Corporation. The stock of such Cor-
 “ poration shall be issued, one half to the order of the party of
 “ the first part, and one half to the order of the parties of the
 “ second part ; but none of the stock of said Corporation shall be
 “ issued until after the full payment of the sums of \$5,000 and
 “ \$62,500 mentioned in the first and second articles of this agree-
 “ ment.

“ Fifth. In consideration of the agreement of the party of
 “ the first part to procure the title of said mining properties as
 “ aforesaid, the parties of the second part undertake to raise, by
 “ the sale of bonds bearing interest at the rate of 7 per cent. per
 “ annum, interest payable in gold, the sum of \$200,000, or less,
 “ such sum as may be necessary for the purchase of said prop-
 “ erties and the development and working of the same, which shall
 “ be faithfully applied to the following purposes :—First. The sum
 “ of \$75,000 in payment for said properties as hereinbefore
 “ specified. Second. The sum of \$100,000, to be expended under
 “ the direction of the Board of Directors of said Corporation for
 “ erecting, at some convenient point near said mines, a mill, with
 “ an ore roaster and the necessary machinery, buildings, etc., for
 “ working and developing said properties ; and, third, the balance
 “ to be held and used under the direction of the Board of Direct-
 “ ors of said Corporation as a working capital.

“ Sixth. The payment of said bonds shall be secured by a
 “ first mortgage on all the mining properties herein mentioned

sum of \$75,000, and the bond, and the out on said pro-

agree to form a advisable, for the mining properties; of \$1,000,000, to the discretion of the said Corporation and the Directors 3 by the parties first part; and stockholders, at provided by law or lack of such Cor- of the party of the parties of the oration shall be o. \$5,000 and les of this agree-

of the party of ing properties as take to raise, by 7 per cent. per 00,000, or less, e of said proper- me, which shall -First. The sum as hereinbefore expended under Corporation for nes, a mill, with kilnings, etc., for and, the balance Board of Direct-

be secured by a herein mentioned

"and upon the improvements to be made thereon; and for that purpose the party of the first part binds himself to cause to be executed, to 2 Trustees for said bondholders to be nominated by the parties of the second part, so soon as he shall be able, on the payment of the moneys mentioned in said bond and the assignment thereof to him, a good and sufficient deed of grant, bargain and sale, signed, sealed, acknowledged, delivered and recorded, according to the laws of the Territory of Utah, transferring to said Trustees the absolute title in fee to said properties, subject only to the paramount title of the Government of the United States of America, said conveyance being by way of mortgage, for the purpose of securing the payment of said bonds and not otherwise; the said Trustees to undertake at the same time, by proper instruments of defeasance and with security, to be approved by the parties hereto, that, upon the payment or surrender of said bonds, they will re-convey said properties, free from all incumbrances done or suffered by them, or either of them, to the Corporation, to be formed as specified in article fourth of this agreement.

"Seventh. The parties of the second part shall have until 10 o'clock in the forenoon of the twelfth day of January, 1873, to raise and pay the party of the first part the said sum of \$62,500, and if they shall be unable to do so by that time, they shall forfeit all right under this agreement, and also the sum of \$5,000, to be paid on the twentieth day of November instant, the said limited periods of time being of the essence of this agreement.

"Eighth. For the the purpose of assisting in the development of said properties, the party of the first part binds himself, if required by the Corporation to be formed under article fourth of this agreement, to undertake the position of resident manager of said properties, at a monthly salary of \$250, until said properties yield paying returns; and if he shall remain in that position thereafter, his salary shall be at least \$5,000 a year.

"Ninth. For the faithful performance on his part of all his undertakings in this agreement, the party of the first part pledges his entire interest therein to the parties of the second part.

"Tenth. In case all the conditions and stipulations expressed by this agreement shall be carried out, and said mining proper-

“ ties become absolutely the property of the Corporation, contained in article fourth of this agreement, the party of the first part agrees to take all necessary steps in his own name, but at the expense and charges of said Corporation, to obtain a patent from the Government of the United States to said mining properties; but, when obtained, said patent shall be solely for the use and benefit of said Corporation, and the title thereby obtained shall be immediately conveyed to said Corporation.

“ IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and affixed their seals the day and year and at the place first herein above written.

“ Signed
 “ Done in the presence of “ D. C. BUTTERFIELD, (L.S.)
 “ THOS. ASPDEN, (L.S.)
 “ ALEX. T. MACHATTIE.” (L.S.)

“ The word ‘fifteenth’ erased and ‘twelfth’ interlined on line 1, page 3, and the word ‘less’ interlined on the last line of page 4, before signing.

“ Signed,
 “ GEO. E. WHITNEY,
 “ C. A. GOULD.”

And at or about the time they so entered into the said agreement, the said Defendants, Thomas Aspden and Alexander T. Machattie, paid to the said Don Carlos Butterfield the sum of \$5,000, being the first payment in the said agreement mentioned.

6. The said Defendants, Alexander T. Machattie and Thomas Aspden, after entering into the said agreement, returned to London aforesaid and disclosed their said plan to the other Defendants, John B. Taylor, Theophilus S. Wills and James H. Fraser, who were intimate friends of the two first named Defendants, and who resided at the said City of London, and offered to share with them the profits to be derived therefrom, and all of the said Defendants thereupon agreed to work together in carrying out the said plan, and to share amongst themselves the profits to be derived therefrom, and for the purpose of evidencing the terms of the agreement between them, they entered into an agreement in writing, under their respective hands and seals, on the twenty-eighth day of December, in the year of our Lord 1872, which was annexed to, or endorsed upon, the said agreement of the eighteenth day of November, in the year of our Lord, 1872, in the words and figures following:—

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 (L.S.)
 MACHATTIE." (L.S.)

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E. WHITNEY,
 GOULD."

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 owing :—

" We, Thomas Aspden and Alexander Taylor Machattie, both
 " of the City of London, in the Province of Ontario, Esquires, do
 " hereby declare that we hold the one-half of the deferred or
 " capital stock of the North Star Silver Mining Company, amount-
 " ing to \$500,000, as in the within agreement mentioned, for the
 " benefit of ourselves and John Barton Taylor, T. S. Wills and
 " James H. Fraser, all of the said City of London, in the following
 " equal proportions :—

" Thomas Aspden, \$100,000,

" A. T. Machattie, 100,000,

" John B. Taylor, 100,000,

" T. S. Wills, 100,000,

" J. H. Fraser, 100,000,

" and it is hereby distinctly understood by and between the said
 " parties that all allotments of stock to preference bondholders or
 " others, as agreed on by the said parties, shall be deducted
 " equally from each of their respective shares.

" IN WITNESS WHEREOF, the said parties have hereunto set their
 " hands and seals the twenty-eighth day of December, 1872.

" Sd., THOS. ASPDEN, [Seal]

" Sd., ALEX. T. MACHATTIE, [Seal]

" Sd., J. H. FRASER, [Seal]

" Sd., T. S. WILLS, [Seal]

" Sd., JOHN B. TAYLOR, [Seal]

" Signed, Sealed and Delivered in presence of

" Sd.. M. D. FRASER."

7. In further pursuance of their said plan, the Defendants gave
 notice, in the usual manner, of their intention to apply to the Parliament
 of the Dominion of Canada for a special Act incorporating " The North
 Star Silver Mining Company," being the name under which they proposed
 to incorporate their said intended Company; and previous to such appli-
 cation, and for the purpose of raising the money necessary to carry out
 and complete the said agreement with the said Don Carlos Butterfield,
 the said Defendants, on or about the twenty-eighth day of December, in
 the year of our Lord, 1872, met together and organized themselves as
 the Provisional Board of Directors of the North Star Silver Mining Com-
 pany, and drew up and caused to be printed and circulated, both in the
 said City of London and in various parts of England and Scotland, a
 Prospectus, upon which the names of the Defendants were printed and

endorsed, the Defendants other than the Defendant, James H. Fraser, being therein styled "Directors of Company," which said Prospectus is in the words and figures following :—

" Subscriptions are invited for \$150,000 first mortgage bonds
 " or preference shares of the North Star Silver Mining Company,
 " payable to bearer, secured by a first charge on the Old Hickory,
 " Harrington, Rainer and Oakland Lodes, and the Fuller &
 " Harrington Tunnel, situated in the North Star Mining District,
 " Utah Territory, and the entire property of the Company.

" The price of issue of the bonds or preference shares is par
 " with bonus, payable as follows:—

" Fifty per cent. when called for by the Directors on 10 days'
 " notice. Fifty per cent. 30 days after payment of the first instal-
 " ment.

" The bonds or preference shares will bear interest at 10 per
 " cent. per annum, commencing from the date of the second
 " instalment of 50 per cent. The first payment of interest will be
 " for 6 months, payable six months after payment of the second
 " instalment of 50 per cent., after which the interest will be pay-
 " able half yearly by interest coupons attached.

" The entire profits of the mines, after providing for their
 " working and such reserves as the Directors may deem necessary
 " for that purpose, will be applied in the redemption of the bonds
 " or preference shares. The bonds or preference shares are no-
 " minally payable in two years, and it is confidently expected that
 " by the above arrangement of applying the entire profits to the
 " redemption of the bonds or preference shares, they will be all
 " paid off by the end of 1874.

" By way of bonus to the bondholders or preference share-
 " holders, there will be given 100 per cent. in fully paid up stock
 " of the Company, which will be delivered on payment in full of
 " the bonds or preference stock by the subscriber. This stock
 " forms part of the capital stock of the Company, amounting to
 " one million of dollars. Subscribers to the bonds or preference
 " shares will therefore receive :—

" 1. A bond or preference share, bearing interest at 10 per
 " cent. per annum, secured by a first charge on the entire property
 " of the Company.

" 2 A bonus of 100 per cent. in fully paid up stock of the
" Company.

" This Company is formed for the purpose of acquiring and
" working the Old Hickory, Harrington, Rainier and Oakland
" Silver Lodes, and the Fuller and Harrington Tunnel, situated in
" North Star Mining District, Beaver County, Utah Territory.

" For full description of these lodes, their location, develop-
" ments and present condition, &c., reference is requested to the
" accompanying report

" Since that report was made, the Southern Utah Railroad,
" to connect Salt Lake City with Colorado River and the Southern
" Pacific Railroad, has been opened, and is now running for a
" distance of 40 miles from Salt Lake City, and, according to the
" official survey, will pass, when completed, within 4 miles of the
" mine.

" The leading features of these properties are, that they are
" indisputably true fissure veins, of clear mineral, with little or
" no waste matter, and at a depth of 70 feet, from 4 to 6 feet in
" width, with a decided tendency to widen out. The ore is
" suitable for milling, averaging at least \$70 per ton by mill
" process.

" The character of the ore is identical with that from the
" celebrated Meadow Valley and Raymond & Ely Mines at Pioche,
" a distance of about 100 miles from the North Star Mining
" District, and there is every indication of the present lodes being
" on the same belt of mineral as the Pioche Mines. The Meadow
" Valley and Raymond & Ely mines are now producing \$25,000
" in silver per day.

" The Superintendent of the Raymond & Ely mines, who
" has examined the Old Hickory, Harrington, Rainier and Oak-
" land lodes, pronounces them as almost identical with the Ray-
" mond and Ely, at the same depth and equal, and, if anything,
" more promising.

" The parties interested in the property, and selling to the
" Company, have expended about \$20,000 in developments, etc.
" To demonstrate their opinion of the properties, they transfer
" them to the Company at prime cost and expenditure incurred

“ in developments, etc. They do not seek to make any profit in
 “ cash, are content to forego all present profit, and satisfied to
 “ receive all their interest in the stock of the Company, thus
 “ postponing all benefit whatever, till the bonds with interest are
 “ first paid.

“ The amount represented by the bonds or preference shares,
 “ viz., \$150,000 will be applied as follows :—

“ In payment of the properties - -	\$75,000
“ Mill, roaster, machinery, buildings, etc	50,000
“ Working capital - - - -	25,000
	\$150,000

“ It appears, by the report, there are about 300 tons of ore
 “ at the mines, which will average throughout not less than \$70
 “ per ton by mill process.

“ A mill, which will mill about 30 tons of ore per day, can
 “ be erected with roaster in working order complete, within 90
 “ days from date of contract. During these 90 days the mines
 “ can be worked to produce about 25 tons per day, and at the
 “ expiration of the 90 days there will be 2,500 tons of ore ready
 “ for milling, which will average \$70 per ton by mill process ;
 “ and after allowing \$20 per ton, which will be the outside cost
 “ of mining, freighting and milling, there will be a net result in
 “ 90 days' working of the mill of about \$125,000. The results
 “ of working the mill are shown by the report.

“ The Company will commence operations on a thoroughly
 “ sound basis, viz.:—Mines thoroughly developed and their
 “ resources demonstrated. A mill, roaster, machinery and all
 “ necessary plant, etc., complete in every respect, abundant
 “ working capital, and in fact all requirements provided for.

“ The title to the property is clear and simple.

“ To ensure the bondholders or preference shareholders a
 “ first charge upon the entire property of the Company, a deed of
 “ mortgage will be duly executed to trustees on behalf of bond-
 “ holders or preference shareholders.

“ Against payment of the first instalment of 50 per cent.,
 “ certificates will be issued, entitling the holder, on payment of

“ the remaining instalment, to receive the bonds and the bonus of
 “ 100 per cent. in fully paid up stock of the Company.

“ NOTE.—From the supplementary report by Dr. Machattie
 “ and Mr Aspden, which accompanies the report originally fur-
 “ nished by the owners of the mine, the Directors have every rea-
 “ son to believe that the representations made were in all respects
 “ correct, though they deemed it only prudent to have this
 “ corroborative proof by an actual and independent examination.
 “ It will be observed, also, that the average value of the 300 tons
 “ of ore on the dumps, estimated from samples taken by Dr.
 “ Machattie personally, instead of being \$100, as stated in the
 “ owner's report, was not less than \$165.26.

8. Attached to or accompanying each copy of the prospectus was
 a printed document headed “ Report Furnished to the Directors by the
 Owners of the Mine,” purporting to contain a description of the position
 of the said mines, and of the development that had been made, of their
 character and richness, and of the quality of the ore obtained and of the
 profits to be derived therefrom, and also another printed document signed
 by the Defendants, Thomas Aspden and Alexander T. Machattie, of which
 the following is a copy :—

SUPPLEMENTARY REPORT.

“ London, Ontario, Dec. 3, 1872.

“ To the Directors of the North Star Silver Mining Company :—

“ In reporting on the property of the North Star Silver Min-
 “ ing Company, which we have personally examined in November
 “ last, it is necessary to explain that the owners of the mine first
 “ submitted to us a somewhat detailed report on the character of
 “ the various lodes of silver ore on their property. Taking their
 “ report, which is attached with this to the prospectus, as a basis,
 “ the chief points which seemed to us necessary to be determined
 “ were :—

- “ 1. The accessibility of the mine.
- “ 2. The permanent character of the lodes or veins of ore ;
 “ in other words, whether or not they were, as affirmed by the
 “ owners, true fissure veins, and not mere surface indications or
 “ pockets.
- “ 3. The security of the title to the property.

“ 4. The facilities for working the mine ; in other words, “ easily available machinery, building materials, labor, wood and “ water, with no interference from weather or climate.

“ 5. The quality, and, as stated in the second heading, the “ probable quantity of the ore.

“ On these points we have had every opportunity of satisfy- “ ing ourselves, and consider it unnecessary to report at any length.

“ The climate of the North Star District is so moderate that “ mining operations can be readily carried on at all seasons. A “ good road passes within two hundred yards of the mine, so that, “ should the further construction of the Southern Utah Railroad “ be delayed, the silver from the mine can now be conveyed, at a “ trifling cost, to Salt Lake City by stage, as it is at present from “ the Pioche mines, which are at least one hundred miles farther “ from Salt Lake City than the North Star District. In this and “ in every other respect we are satisfied that, so far as the situation “ of the mine is concerned, there is no difficulty in working the “ ore, extracting the silver and forwarding it to a proper market.

“ The veins, after careful examination, we believe to be true “ fissure veins, and therefore, so far as can ever be ascertained in “ mining, the quantity of ore is practically unlimited.

“ The title of the property has been examined for us by a “ leading lawyer in Salt Lake City, who pronounced it clear, and “ the vendor undertakes to obtain for the Company a patent to “ the property from the United States Government, which, as a “ title, is indisputable.

“ We have ascertained the cost of machinery and plant for “ working the mine on the basis stated by the owners, namely, “ thirty tons of ore per day, and are satisfied that the amount of “ \$50,000 set apart for machinery and plant account is ample. “ Building materials, labor, wood and water are abundant, and “ easily obtained in the immediate neighborhood.

“ The sum of \$25,000 set apart as working capital is abun- “ dant, as the silver can be sold at the mines to Wells, Fargo & “ Co. for its value, less freight to a proper market and their com- “ mission.

“ As we were thoroughly satisfied that the veins are of a permanent character, that there is no difficulty in working the mines, and that the title to the property is good, there was nothing else to be established except the quality of the ore. On this most important point we have taken every precaution to satisfy ourselves. Fortunately in this case there is abundant material to experiment upon. The veins, four in number, are not mere surface claims, but are sufficiently developed to constitute a mine. The specimens of ore taken by us for assay were a careful average from not less than 300 tons of ore on the dumps. The owners claimed that an average of this ore on the surface would show an assay value of \$100 per ton, and would yield in practice \$70 per ton. A very careful average of the ore selected by us personally from the 300 tons of ore lying on the surface ready for milling, gave by assay, instead of a value of \$100, no less than \$165.26. Picked samples gave as high a value as \$1,311 per ton. Experience has shown that veins usually increase in richness as they descend, and in this case the ore at the bottom of the shafts is much richer than that found near the surface.

“ To sum up our opinion of the properties, we may state that the chief points which warrant confidence in this scheme are, first, that a comparatively small sum of money is required to purchase the mine. Second, that after the purchase, the vendor and others interested desire no pecuniary benefit from the mine until all the bondholders or preference shareholders have been reimbursed the amount of their subscription, with interest. Third, that in our opinion there is far more than sufficient ore in sight to repay the bondholders or preference shareholders their subscription with interest, thereby furnishing ample security to those who actually advance money to further this mining project, and what is of still greater future value, every reasonable prospect of a practically unlimited supply of ore. The present owners base their opinion almost entirely on the vein known as the Old Hickory. Whilst we believe this vein to be as good as, and better than they describe it, we have equal confidence in the other lodes named Harrington, Oakland and Raineer, as true fissure veins. But taking for granted, as we believe, that the Old Hickory vein is sufficiently developed to guarantee ample security to the bondholders or preference shareholders, in this case there is the additional security of three lodes, less, but still well developed.

(Signed) “ ALEX. T. MACHATTIE, PH. D.
“ THOS. ASPDEN.”

9. The said prospectus, and the documents thereto attached, were issued and circulated, as aforesaid, with the object of inducing the persons amongst whom it was so circulated to become the purchasers of the shares of the said Company, and it was the duty of the said Defendants, in issuing the same, to have fully disclosed the fact that they, the said Defendants, had already themselves contracted to purchase the said mines from the said Don Carlos Butterfield, upon the terms of the said agreement of the eighteenth day of November, in the year of our Lord 1872, and intended to re-sell the same to the proposed Company at a profit; but, in breach of their said duty, the Defendants intentionally drew and framed the said prospectus and the documents accompanying it, as aforesaid, in such language as to conceal the fact of their having any interest whatever in the said mines, and to induce the persons amongst whom it was circulated to suppose and believe that the purchase of the said mines had been or would be made by or on behalf of the said proposed Company directly from the said Don Carlos Butterfield and the other persons jointly interested with him, as in the first paragraph of this Bill mentioned, who are the persons referred to in the said prospectus, and the documents attached to it, as "the owners of the mine," "the parties interested in the property," and "the vendor," and that they, the Defendants, had no interest in such purchase by the Company, and would make no profit out of the same.

10. By means of the statements in the said prospectus, and the said documents attached thereto, a large number of persons were induced to agree to become purchasers of the shares of the said proposed Company under the terms of the said prospectus, upon the promise of the Defendants, as such Provisional Directors, to issue certificates for such shares so soon as the proposed Company should be legally incorporated, and to pay the Defendants therefor; and the Defendants, out of the moneys so obtained, acting as the Provisional Board of Directors of the proposed Company, repaid to themselves the sum of \$5,000, which they had paid as aforesaid to the said Don Carlos Butterfield upon the execution of the said agreement of the eighteenth day of November, in the year of our Lord 1872, together with all their travelling and other incidental expenses incurred in the inspection of the said lands by the said Thomas Aspden and Alexander T. Machattie in the fourth paragraph mentioned, and the fees which had been paid by the Defendants to the counsel employed by them for his services in drawing and settling the agreement of the eighteenth day of November, in the year of our Lord 1872, and advising on the titles to the said mines; and they also paid thereout to the said Don Carlos Butterfield the residue of the purchase money in the said last mentioned agreement mentioned, and the said Don Carlos But-

terfield, at the request of the Defendants, before the passing of the Act of incorporation hereinafter mentioned, by a deed purporting to be made for the consideration of \$75,000 then paid to him, conveyed his interest in the said mines to two persons nominated by the Defendants, who, by a separate instrument, declared that they held the same upon trust for the said intended Company under the name of the "North Star Silver Mining Company," and the Defendants also, both before and after the passing of the Act of incorporation of the Plaintiff Company, expended large sums of money obtained by means of the sale of the said shares in working and developing the said mines and the erection of buildings and machinery at the same.

11. On the twenty-second day of May, in the year of our Lord 1873, the Plaintiff Company was incorporated upon the petition of the Defendants and one Thomas J. Almy, by the Act of the Parliament of the Dominion of Canada, passed in the thirty-sixth year of the reign of Her Majesty Queen Victoria, chaptered 117, entitled "An Act to Incorporate the North Star Silver Mining Company."

12. The preamble to the said Act of incorporation is in the following words:—

"WHEREAS, the persons hereinafter named have, by petition, represented that they are desirous of associating themselves together for the purpose of carrying on mining operations in the Territory of Utah, in the United States of America, and that they can do so to better advantage by the aid of a Charter of Incorporation, and have prayed for an Act of Incorporation to that end: And whereas, it is expedient to grant the prayer of their petition."

And it is by the said Act enacted amongst other things as follows:

"1. Alexander T. Machattie, John B. Taylor, Theophilus S. Wills, Thomas Aspden, Thomas J. Almy and James H. Fraser, together with such other persons as shall become shareholders in the Company hereby constituted, shall be, and they are hereby constituted, a body corporate and politic by the name of 'The North Star Silver Mining Company.'

"2. The Company may carry on the business in the said Territory of Utah of exploring for, mining, smelting, manufacturing and selling gold, silver, copper and other ores and metals, and for these purposes may acquire and hold, by purchase, lease,

“ or other legal title, personal property, lands and mining claims
 “ or rights, and construct and maintain buildings, machinery and
 “ other erections and improvements thereon or connected there-
 “ with, with power to sell and convey any of such lands or other
 “ property.

“ 3. The head office of the Company shall be in the City of
 “ London, in the Province of Ontario, but the Directors may have
 “ offices and transact business wherever they may see fit.

“ 4. The capital stock of the said Company shall be
 “ \$1,150,000, in 11,500 shares of \$100 each, which said capital stock
 “ may from time to time be increased as the wants of the Company
 “ may require, by a two-third vote of the majority of the share-
 “ holders at a meeting of the Company called for that purpose, to
 “ an amount not exceeding \$3,000,000.

“ 6. The Directors may set apart a part of the stock, not
 “ exceeding 1,500 shares, as preference shares, each preference
 “ share to be sold for the full par value thereof, actually paid in
 “ cash, and the holders of such preference shares shall be repaid
 “ the amount therefor, with interest, at ten per centum per annum,
 “ within two years from the first day of January, 1873, and, upon
 “ such repayment, they shall cease to be shareholders in respect of
 “ such preference shares.

“ 13. The affairs of the Company shall be administered by
 “ a Board of 6 Directors, being severally holders of at least 50
 “ shares of stock, who shall be elected at each annual meeting of
 “ the Company, to hold office until their successors are elected,
 “ and who, if otherwise qualified, may always be re-elected; and
 “ 3 members of such Board present in person shall be a quorum
 “ thereof.

“ 14. Alexander T. Machattie, John B. Taylor, Theophilus
 “ S. Wills, Thomas Asplen, Thomas J. Almy and James H. Fraser,
 “ are hereby constituted the first Board of Directors of the said
 “ Company, to hold office until the first election, as hereinafter
 “ provided for. The Board of Directors shall have full power in
 “ all things to administer the affairs of the Company, and to
 “ make, or cause to be made, any purchase and any description
 “ of contract which the Company may by law make; to adopt a
 “ common seal; to make, from time to time, any and all by-laws
 “ (not contrary to law or to the votes of the Company) regulating

" the allotment of shares, the calling in of instalments of shares
 " and payment therefor; the issue and registration of certificates
 " of shares.

" 19. The Directors of the said Company may purchase
 " mines or other property necessary for the business of the Com-
 " pany, and issue stock in payment therefor, and the stock so
 " issued shall be declared and taken to be paid up stock, and shall
 " be entered in the book mentioned in Section 23 of 'The Cana-
 " da Joint Stock Companies' Clauses Act, 1869,' as paid in full;
 " but this section shall not be taken to authorize the issue of stock
 " beyond the amount authorized by the fourth section of this Act.

" 20. The provisions of 'The Canada Joint Stock Com-
 " panies' Clauses Act, 1869,' shall, except in so far as they are
 " inconsistent with the provisions hereof, apply to the Company
 " hereby incorporated."

13. The persons mentioned and referred to in the said Act by the names of Alexander T. Machattie, John B. Taylor, Theophilus S. Wills, Thomas Aspden and James H. Fraser, are the Defendants in this suit; Thomas J. Almy, named in the said Act, resided at Salt Lake City, in the Territory of Utah, aforesaid, and never attended, or was notified of, any of the meetings of the Directors of the said Company, either before or after the passing of the said Act of incorporation, and was, in fact, merely a nominee of the said Don Carlos Butterfield, having no actual or bona fide interest in the stock, property or affairs of the Plaintiff Company.

14. Immediately upon the passing of the said Act of incorporation, the Defendants met together as the Board of Directors of the Plaintiff Company, and, amongst other acts and proceedings, appointed the Defendant, John B. Taylor, to be the President, and the Defendant, Thomas Aspden, to be the Vice-President of the Plaintiff Company, and appointed a Secretary-Treasurer, and passed a resolution confirming, on behalf of the Plaintiff Company, all the acts which they had done as the Provisional Board of Directors of the Plaintiff Company.

15. Your Complainants, the Plaintiff Company, charge that upon the passing and adoption, by the Defendants, of the resolution in the preceding paragraph mentioned, the said Plaintiff Company became entitled to the said mines, subject only to the obligation of issuing to the said Don Carlos Butterfield, paid up shares of the Plaintiff Company to the amount of \$500,000, and to any lien the holders of preference shares

of the said Company might be entitled to under the said Act of incorporation.

16. On the nineteenth day of June, in the year of our Lord 1873, the Defendants again met together as such Board of Directors, and without making any further disclosure to the said persons who had subscribed for shares of the said Company, of the terms of the said agreement of the eighteenth day of November, in the year of our Lord 1872, or of the rights which they claimed thereunder, and without applying for, or in any way obtaining, the sanction of the said persons to any contract between the said Defendants and the Plaintiff Company, by which the Defendants, or any of them, should take or realize to themselves any profit from the acquisition, by the Plaintiff Company, of the said mines, and without, in fact, making any contract between themselves and the Plaintiff Company for the sale, or pretended sale, by them to the Plaintiff Company of the said mines, at such meeting, the said Defendants passed and adopted, as such Board of Directors, a resolution in the following words:—

“RESOLVED,—That the President and Secretary-Treasurer be authorized to issue scrip certificates for the full amount of the capital stock, \$1,150,000, in payment of the mines now owned by the Company, in accordance with Section 19 of the Act of Incorporation, and in pursuance of the agreement made between the promoters of this Company.”

17. The agreement referred to in the said resolution was made by and between the Defendants hereto, on the day before the passing of the said resolution, and was in the words and figures following:

“Memorandum of agreement made and entered into this eighteenth day of June, 1873, respectively by and between Alexander T. Macchattie, Thomas Aspden, John B. Taylor, Theophilus S. Wills and James H. Fraser, all of the City of London, in the Province of Ontario, Canada, Esquires. WHEREAS, the above named parties were the original promoters of the North Star Silver Mining Company, limited, and own equally between them 6,500 shares of the capital stock of the said Company, inclusive of 1,500 shares of preference stock, the remaining portion, 5,000 shares, being owned by Don Carlos Butterfield, of Salt Lake City, Utah. AND WHEREAS, a Company has been formed according to the prospectus issued, and certain shareholders have become by the terms of the said prospectus entitled respectively to a certain number of shares of the said capital

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“ stock. NOW THEREFORE, these presents do testify that we, the
 “ above named Alexander T. Machattie, Thomas Aspden, John
 “ Barton Taylor, Theophilus S. Wills and James H. Fraser, do
 “ hereby authorize and appoint John Barton Taylor the President,
 “ and Edmund Baynes Reed the Secretary-Treasurer of the said
 “ Company, to allot and issue the scrip certificates for preference
 “ and ordinary stock to the persons and in the quantities respec-
 “ tively set forth in the schedule marked A hereunto annexed.

“ In witness whereof, the said parties have hereunto set their
 “ hands and seals.

“ Sd., ALEX T. MACHATTIE, [Seal]

“ Sd., THOS. ASPDEN, [Seal]

“ Sd., JOHN B. TAYLOR, [Seal]

“ Sd., T. S. WILLS, [Seal]

“ Sd., J. H. FRASER, [Seal]

“ Signed, Sealed and Delivered in presence of

“ EDMUND BAYNES REED.”

The schedule referred to in the said agreement sets forth the names of the persons who had agreed to take shares in the Plaintiff Company and had paid for the same, and the number of shares which they had respectively agreed to take under the terms of the said prospectus, and sets forth, also, the names of the Defendants hereto and their nominees, as being entitled to all the remaining ordinary shares of the capital stock of the Plaintiff Company, amounting to 4,060 shares of the par value of \$100 each, and sets forth the name of the Defendant, John B. Taylor, as being entitled “in trust” to all the remaining “preference” shares of the said capital stock, being 560 shares of the par value of \$100 each, such trust being for himself and the other Defendants hereto.

18. Immediately after the passing of the resolution in the preceding paragraph mentioned, the Defendants, purporting to act as Directors of the Plaintiff Company, issued, or caused to be issued, certificates for the whole capital stock of the Company as follows, that is to say:—To the persons who had agreed to take shares in the Plaintiff Company, as in the tenth paragraph mentioned, for the amount of shares, amounting, in all, to 940 of the shares which the said persons had respectively subscribed and paid for, and agreed to take in the Plaintiff Company, called preference shares, and an equal number of the ordinary shares of the said Company, according to the terms of the said prospectus; and they also issued to the said Don Carlos Butterfield, and his assigns and nominees, certificates for 5,000 of the ordinary shares of the Plaintiff Company; and they also improperly, without consideration, and in pur-

suance of their plan in the fourth paragraph of this Bill mentioned, issued to themselves and their assigns and nominees certificates for the remainder of the shares of the Plaintiff Company, amounting, in all, to 4,060 shares, called ordinary shares, and 560 shares, called preference shares, all of which shares so issued were duly accepted by the persons to whom they were so issued respectively.

19. By the direction of the said Defendants, all of the said shares so issued were entered in the books of the Plaintiff Company as fully paid up shares, and each of the said certificates was sealed with the corporate seal of the Plaintiff Company, and was signed by the Defendant, John B. Taylor, as the President of the Plaintiff Company, and by the said Secretary-Treasurer, and contained a declaration and certificate by the Plaintiff Company that the full sum of \$100 had been paid to the Plaintiff Company upon each of the shares mentioned therein.

20. At the time the said Defendants so issued the said shares, no agreement had been, and no agreement hath since been, entered into by the Plaintiff Company with the Defendants, or any of them, or with any other person or persons, for the purchase, by the Plaintiff Company, of the said mines, other than such agreement as may be deduced or presumed from the transactions and dealings of the Defendants in relation to the said mines hereinbefore set forth, and the resolutions of the Defendants, as the Board of Directors of the Plaintiff Company, also hereinbefore set forth; the Defendants had never disclosed to the shareholders of the Plaintiff Company the terms or effect of the said agreement of the eighteenth day of November, in the year of our Lord 1872, nor the fact that they, the said Defendants, were interested in the acquisition, by the Plaintiff Company, of the said mines, and were taking to themselves a large profit out of their connection with the said mines, and the said shareholders, other than the Defendants, were ignorant thereof at the time they accepted the said shares, and the Defendants, in fact, never paid, nor did any of them, nor did any other person ever pay, to the Plaintiff Company, nor did the Plaintiff Company ever receive any money or other consideration whatever for or in respect of the said 4,060 ordinary and 560 other shares which they so issued to themselves and their assignees and nominees as fully paid up shares, and no consideration whatever for the issuing of such shares ever passed from the Defendants, or any of them, or any other person or persons whatever, to the Plaintiff Company, and the said 4,620 shares were, in fact, issued by the Defendants to themselves, in pursuance of the unlawful plan in the fourth paragraph of this Bill mentioned, and in breach of their duty as Directors of the Plaintiff Company.

21. The Defendants have sold to other persons, who were not aware of the facts hereinbefore set forth, and have otherwise disposed of a large number of the shares which they so issued to themselves, and have received and converted to their own use the proceeds thereof, and the said other persons have caused themselves to be entered upon the books of the Plaintiff Company as the holders of the shares which they have so purchased as being fully paid up shares.

22. The Defendants have lately ceased to be Directors of the Plaintiff Company, and other persons have lately been appointed to be Directors in their stead, and, shortly after such appointment, discovered the facts and circumstances hereinbefore set forth.

23. Your Complainants, the said Plaintiff Company, submit that under the circumstances hereinbefore set forth, the Defendants are jointly and severally liable to pay to the Plaintiff Company the sums which they so certified and declared had been paid upon the said shares so issued to themselves, their assignees and nominees, being the sum of \$100 upon each share so issued.

24. Sometimes the Defendants pretend that they became the absolute owners of the said mines under the agreement of the said eighteenth day of November, in the year of our Lord 1872, and that after the passing of the said Act of incorporation they contracted and agreed with the Plaintiff Company to sell to the Plaintiff Company, and that the Plaintiff Company contracted and agreed to purchase from them the said mines for the sum of \$75,000 in cash, and \$1,000,000 in ordinary paid up shares, and \$150,000 in preference shares of the Plaintiff Company, and that such shares were therefore properly and legally issued to them as fully paid up shares, as aforesaid, in accordance with such contract, under the nineteenth section of the said Act of incorporation, but your Complainants, the said Plaintiff Company, shew that, even if such pretences were true, the contrary of which your said Complainants charge to be the fact, the Defendants, acting as Directors of the Plaintiff Company, could not, at least without first making a full and fair disclosure to the shareholders of the Company of the particulars of such contract and of their own interest therein, and obtaining the sanction and approval of such shareholders thereto, bind the Plaintiff Company to a bargain, from which they expected and intended to take to themselves, as individuals, so enormous a profit at the expense of the Plaintiff Company.

Your Complainants therefore pray :

1. That it may be declared that the Defendants were not, nor were any of them, entitled to take or retain any profit what-

ever arising out of their having transferred, or procured to be transferred, to the Plaintiff Company the said mines, and that the said Plaintiff Company were entitled to obtain the said mines at the price of \$75,000 in cash, and \$500,000 in paid up shares to be issued to the said Don Carlos Butterfield, being the price at which the said Don Carlos Butterfield agreed to sell the same to the Defendants, Thomas Aspden and Alexander T. Machattie, by the said agreement of the eighteenth day of November, in the year of our Lord 1872.

2. That it may be declared that all of the shares of the Plaintiff Company which were issued to the Defendants, or any of them, their or either of their assignees or nominees, as paid up shares, other than the shares, if any, so issued, which the Defendants, their assignees or nominees, actually paid up in cash were improperly so issued by the Defendants in breach of their duty as Directors of the said Company, and that the Defendants are jointly and severally liable to pay and make good to the Plaintiff Company the sums which were certified and declared to have been paid upon such shares (being the sum of \$100 upon each share so issued), or in case this honorable court shall decide that the Defendants are not jointly and severally liable for such sums, then that each of the Defendants may be declared liable to pay and make good to the Plaintiff Company the sums so certified and declared to have been paid upon the shares improperly issued to him, his assignees or nominees, as aforesaid (being the sum of \$100 upon each share so issued).

3. That an account may be taken of the shares so improperly issued to the Defendants, and each of them, and their and each of their assignees and nominees.

4. That the Defendants may be ordered to pay the costs of this suit.

5. That, for the purposes aforesaid, all proper directions may be given and accounts taken.

6. That your Complainants may have such further and other relief in the premises as to your Lordships may seem meet.

And your Complainants will ever pray.

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