John B. Gray and others } Transferred &c.

" — The Bill filed in this case seeks the specific performance of a contract; prays discovery &c. The Defendants demurred to the Bill upon the grounds that it stated no case for the discovery or relief and that if the matter set forth in it did give the Complainants any grounds of Complaint they were properly triable at Law.

The Bill alleges that a certain John B. Gray for a large amount of monies advanced by the Complainants, did grant to them One Thousand Tons of Cinnabar ore to be taken from the Abrego Cinnabar ore mine in California and the privilege to take the same on the terms mentioned in the written grant to them of which the following Extracts are sufficient to show the nature of the grant and the terms &c. "Memorandum of an agreement "made on the 18th April 1850 between John B. Gray &c and William Reder & "Jonathan Trotter &c. Witnesseth that said Gray in consideration of Ten thou "sand Dollars to him paid by said Reder and Trotter the receipt whereof is "hereby acknowledged hath agreed to give and doth hereby give said Reder "and Trotter full power and authority to take from said Cinnabar mines "One Thousand Tons of Cinnabar ore of such quality as they or their agents "shall select and the same to smelt on the premises or to ship it away to any "other place or places to be smelted, with their agreement to give me, the "said Gray thirty three per cent of said ore, I paying the freight & expenses "to the point of shipment or of smelted on the ground they are to give thirty "three per cent of the net proceeds of the quicksilver taken from it, and "I further agree to give and do hereby give said Reder and Trotter full "power and authority to occupy any lands about said mine belonging "to me for pasturage or to locate smelting apparatus and dwellings upon "for mines and agents as well as the privilege of taking from the premises "timber and wood necessary for dwellings furnaces and smelting pur "poses and further to do all other things that they may think necessary to "be done in order to enable them to mine said ore and smelt and transport "the same upon the condition that they give me their obligation to pay "over to me thirty three per cent of the net proceeds as aforesaid. Proper "and legal papers to be drawn up as soon as may be and signed by the "parties hereto when this is to be concluded.

Signed J. B. Gray.

The Bill which was filed on the 21st day of November 1851 states that as yet the said Reder and Trotter had "not to any extent" availed themselves "of said grant nor have exercised any of the privileges thereof having had faith "in the said Gray that he would in no wise at any time" "interpose any obstacle "to their free access to said mine whenever they might deem it expedient "to profit of said grant and remove out their proportion from said mine "then said One Thousand Tons of ore."

It then states that said Gray designing to defraud them of their right "thus acquired and vested" had transferred the said mine and mining privileges to three persons named in the Bill, in Trust for himself and others individually constituting "the Santa Clara Mining Association", with a Capital Stock of $350,000 (being the said mine and privileges).

It states the Stockholders in the said Company other than said Gray have paid but a small proportion of their subscriptions for Stock, and that a large amount of it reserved for himself is now vested in him undisposed of. That in the formation of the said Company said Gray made no reservation nor provision for their rights under the said grant and in this respect was guilty of a fraudulent default an omission of duties owing to them as their interest therein under is worth not less than $200,000. as they allege. The Bill also charges that the said Gray has in his agreement with the said Stockholders reserved to himself a proportion of the ore or of the mines that may be obtained for said Association.

That their "grant" is not recognized by said Stockholders and that the Complainants are left by said Gray to contend against them for "the specific performance of all that is secured to them by the terms of the said grant" and the privileges over the said mineral property stipulated to them thereby. That he will as they fear and believe dispose of and transfer his said Stock or his remaining interest in said mine and mining privileges and that in fraud of their rights.

The Complainants in their Bill insist, that these Stockholders have not paid their subscriptions in full and inasmuch as Gray holds an amount of Reserved Stock and has in his agreement with said Company "reserved a proportion of the ore" "or of the mine" they are entitled to have the "said" grant "carried into full effect according to its tenor" and enforced against any claims and antecedently to any interests of said Stockholders and of said Gray and that said alleged interest of said Gray in said ore and in said mines, "stands equally as any stock interest of said Gray bound "to make good the grant aforesaid held by the said Complainants."

The Bill relies upon relief in Equity "where specific performance of contracts of the character of said grant may be enforced" and prays subpoena against all the Defendants, to the end that they may discover their interest in the said Stock and the proportion of shares held by them respectively and how much has been paid on them and that said Gray may set forth his interest in said Stock or in said mine or mining privileges or the ore or the proceeds thereof: and that they may set forth all their Deeds from said Gray relating to said Stock and to said Association and all transfers of Stock and "that they may be decreed to perfect with any "necessary legal form the grant aforesaid so "as to entitle the said Reder and Trotter to enter upon said mine so as to take "and have and dispose of at their pleasure 1,000 Tons of ore as aforesaid and that the Defendants may be required to license the said Reder & Trotter to enter and take said ore; and that the Defendants may be restrained from hindering the Complainants from entering on said mine and taking and disposing of said ore as aforesaid according to the purport of said grant and that the Defendants may be enjoined from transferring any Stock or other interest connected with said mines until the said Complainants shall have received their said one Thousand Tons of ore.

Upon an examination of the Bill it will be found that it is directed against four classes of Defendants. Gray the party to the said grant to the Complainants Isaac Tyson Jr, David Kenna, and Alexander Fisher, the Trustees to whom it is alleged the said mine and mining privileges have been transferred. John H. Thomas the President and John M. Gordon the Treasurer of "Santa Clara