

Sutro Tunnell

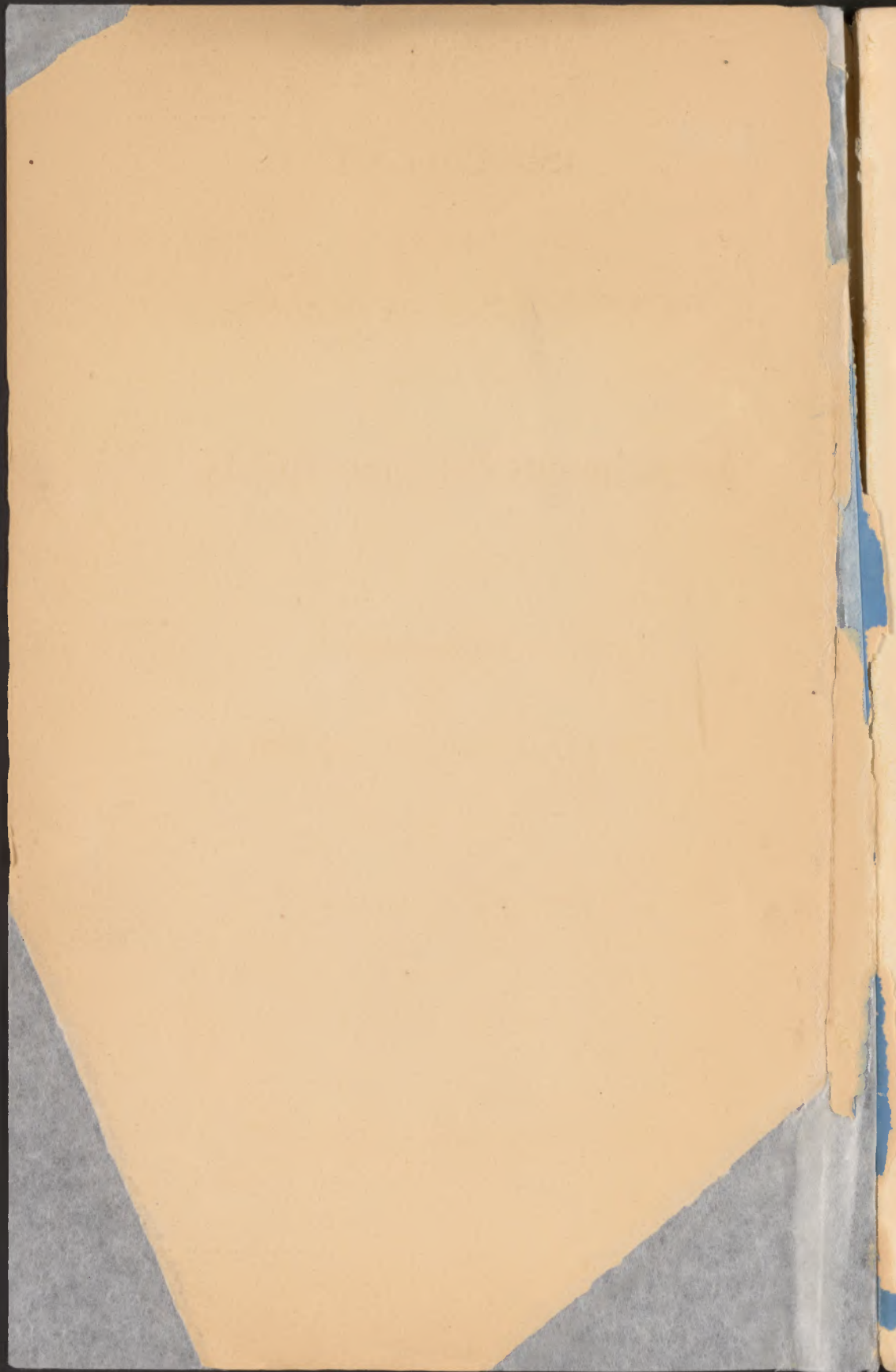
ARGUMENT
AND
STATEMENT OF FACTS,
SHOWING WHY THE
Amendments to Senate Bill 16,
ADOPTED BY THE
HOUSE OF REPRESENTATIVES,
Should be Concurred in by the Senate.

Washington, D. C., May, 1874.

"Sir, this Bank has waved its hand over the Comstock Lode, and ordered Sutro away. That is the whole of this transaction as it seems to me."—*Hon. Austin Blair, in the House of Representatives.*

M'GILL & WITHEROW, PRINTERS AND STEREOTYPERS.

1874.



Sutro, Adolph Heinrich Joseph.

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SUTRO TUNNEL.

WILLARD'S HOTEL,
WASHINGTON, May 8, 1874.

HON. GEO. F. EDMUNDS,

Chairman of the Senate Judiciary Committee:

SIR: I have the honor of transmitting herewith copy of an opinion by the Hon. Jeremiah S. Black, attorney for the Sutro Tunnel Company, giving the legal reasons why the amendments adopted by the House of Representatives to Senate Bill 16 should be concurred in by the Senate; also a general statement of facts relating to the subject prepared by myself. I also have the honor of submitting for examination the following documents:

1. A book on the Mineral Resources of the United States, and the Importance and Necessity of Inaugurating a Rational System of Mining, by Adolph Sutro, Baltimore, 1868.

I would call your special attention to the following documents contained in said book:

(a) Memorial of the Nevada Legislature, asking the United States to aid in the construction of the Sutro Tunnel. p. xiii.

(b) Letters from distinguished experts, pp. 33 to 74.

(c) Report of the Committee on Federal Relations of the Nevada Legislature, p. 77.

(d) The Comstock Lode, its character, by Ferd. Baron Richthofen, p. 97.

(e) Report of the Mechanics' Institute of San Francisco on the Sutro Tunnel, p. 143.

(f) Act of the Nevada Legislature, p. 171.

(g) Contract with the Mining Companies, p. 173.

(h) Act of Congress, p. 189.

(i) Vote of thanks to A. Sutro by the Nevada Legislature, 232.

2. A book published by order of Congress, entitled Report of Commissioners and Evidence, etc., taken in relation to the Sutro Tunnel. In this volume I desire to call your especial attention to—

(a) A report of the House Committee on Mines and Mining, 42d Congress, recommending aid to the Sutro Tunnel, p. 1.

(b) Law authorizing the appointment of a commission to examine and report on the Sutro Tunnel, p. 8.

(c) Report of Commissioners, p. 11.

(d) Speech of Mr. Sutro to the miners of Nevada, p. 58.

(e) Extracts from numerous letters of superintendents, showing that the great obstacle in mining on the Comstock Lode is the influx of water, p. 364.

(f) Closing argument of Mr. Sutro, p. 395.

3. A copy of the mining laws of the United States, containing provisos protecting the rights of the Sutro Tunnel Company.

4. Blank copy of a United States patent containing the Sutro Tunnel clause.

5. A letter from the Hon. Secretary Hugh McCulloch and the Hon. Jos. S. Wilson, Commissioner of the General Land Office.

6. A debate in the House of Representatives on a bill to repeal the vested rights of the Sutro Tunnel Company; also a debate in the United States Senate concerning an amendment protecting the rights of the Sutro Tunnel Company.

7. A report of the superintendent of the Sutro Tunnel Company in 1873.

8. A pamphlet entitled, "Why does the Bank of California oppose the Sutro Tunnel?"

9. A pamphlet entitled, "Minority Report by Mr. Sargent Reviewed."

10. Speeches in the House of Representatives on the Sutro Tunnel by the

Hon. N. P. Banks, of Massachusetts;

Hon. R. C. McCormick, of Arizona;

Hon. Selucius Garfield, of Washington Territory.

11. Report of the Committee on Mines and Mining in the 40th Congress, recommending an appropriation of five millions of dollars in aid of the Sutro Tunnel.

12. A pamphlet published by Mr. Sutro, September 1, 1866, at New York.

13. A petition signed by 4,500 miners and laboring men residing on or near the Comstock Lode, praying Congress to compel the productive mines to take out their patents.

Hoping that your honorable committee may find time to look over the most important of these documents,

I am your most obedient servant,

ADOLPH SUTRO.

OPINION OF THE HON. JEREMIAH S. BLACK.

Hon. G. F. EDMUNDS,

Chairman of the Senate Judiciary Committee:

I beg to suggest some points which I think very conclusive on the matter pending before you. Mr. Sutro will himself furnish you with the facts. Indeed, I am not aware that any material question of fact is disputed.

1. The Sutro Tunnel Company was incorporated under the laws of the State of California. You know the work it was expected and authorized to do.

2. The mining companies working the Comstock Lode were very anxious for its success. Many subscribed to the Tunnel Company, and nearly all of them entered into a contract with Sutro to pay two dollars per ton for all the ore that should be taken out of the lode after the completion of the tunnel. It is of no use to inquire whether this was a good bargain or a bad one for one party or the other. Considering the magnitude of the work to be done and the immense advantages it would produce to the mines, the compensation promised seemed like a mere trifle. The

mining companies thought so when they engaged to give it. The Legislature of the State, the Representatives from that coast in Congress, and everybody else who had any special knowledge of the subject, were of the same opinion.

3. But the contract with the miners was no security to Sutro. They were mere trespassers on the public lands. They had no right, estate, or title, in equity or law, to the lands they were on. They could make no covenant that would run with the land or have any binding force on the persons who might succeed them in the possession. Their personal promise was worthless, for it soon became manifest that they did not intend to keep it.

4. In these circumstances Sutro came to Congress. He would deal with the United States. They were the owners of the lands. They could secure his toll of two dollars per ton, not for a day, but for all time, by making it a perpetual lien upon the property which he was to improve. This appeal to Congress was backed by the almost universal support of parties interested. All asserted that the Federal Government should aid in some form or another in carrying out this magnificent enterprise. Congress responded by passing the act of July 25, 1866, called the Sutro Tunnel act, by which the faith of the Government was pledged that Sutro should have for his work what the mining companies had agreed to give him, to wit, two dollars per ton. And this was a duty charged forever upon the land. It was solemnly stipulated that if the United States should ever part with the title, it must be expressed on the face of the conveyance that all subsequent owners would hold it subject to this burden in favor of Sutro. There is not on all the records of this Government a fairer or more clearly expressed contract. On the faith of it Sutro has expended his time, toil, and money.

5. Congress did not undertake to pass any law affecting the rights or obligations of the parties under the contract between Sutro and the mining companies. It could not. If that contract was in force, Congress could not impair it; if it was broken or rescinded, Congress

could not rehabilitate it. The Sutro Tunnel act is simply an agreement of the United States, as the sole owner of certain mineral lands, to give a citizen a certain compensation for improving them, and to secure the payment of the compensation upon the lands themselves. The contract between Sutro and the miners is referred to in the act merely as the *measure* of the compensation. If you will read Mr. Sargent's minority report you will learn that the companies so understand it. They were so advised by their own counsel. I do not think that anybody has ever doubted that Congress had a right to make this contract and impose this burden on the public property. When accepted by Sutro it became inviolable. It was a grant of an estate to him which could not be divested. Yet an effort was made in 1870 to get Congress to repudiate the contract and deprive him of his property. To ask that he should be hung without trial would have been exactly as proper and just as clearly within the Constitution. Mr. Sargent was the only member of the committee to which the subject was referred by the House of Representatives who was in favor of confiscating Sutro's estate. (See his report, which discloses very clearly the principles on which the opposing parties act.)

7. The rights of the mining companies were not affected by the contract which the Government made with Sutro. They had no rights connected with the subject-matter which could be affected by it. They were mere trespassers. The only *interest* they could have in the matter rested upon the expectation that the United States would at some time give them the land, and that *interest* was greatly promoted by the improvement of it. But there was no right or title vested in them. It belonged solely to the Government, and the Government could do what it pleased with its own. But subsequently a law was passed which authorized the location of mining claims on which a patent might be taken out, and as regarded these claims the patent must express Sutro's rights as well as the rights of the patentees.

8. When the miners accepted this proffered bounty of the Government by claiming their locations (if they did it in good faith) on the Comstock lode, they acquired an equitable title. What was their equity? It consisted purely in a right to take out a patent upon certain terms. Apart from their right to a legal title they can have no equitable title. The United States have consented to hold the legal title in trust for them, and if they refuse to have the trust executed according to its terms, that is an end of it.

9. These companies, having made their locations and thus acquired a right to get patents for the lands they are on, subject to the rights previously granted to Sutro, have declared in solemn form that they will not take patents of that kind. They have gone further, and raised a quarter of a million dollars to resist the right of Sutro under his grant of antecedent date. They have avowed their determination to renounce their claims to any patents at all rather than take the only patent that the United States are legally bound to give them. I maintain that this is a renunciation of the only estate which they ever had. They have—I do not say forfeited—but given up and abandoned their whole equitable title, and their claims are at this moment open to re-location. They do not seem to perceive the danger they are in of being hoisted by their own petard. But it is perfectly certain that if a stranger would now make his claim for the same mine, apply for a patent in the prescribed form, bring an ejectment and prove their refusal of a patent, their defense would be a forlorn hope.

10. In their desire to injure Sutro they have lost their own rights. Congress, perhaps, ought not to leave them to their own devices. The Negley amendment comes to their relief and gives them a *locus penitentiae*. Under that provision no advantage can be taken of their abandonment for a year. This saves them from themselves, their own worst enemies. It is to be hoped that they will not sin away the day of grace which this amendment gives them.

11. To Mr. Sutro this amendment is eminently due. The United States promised that he should have the assurance of his rights expressed in patents to the grantees of the mines. To postpone it indefinitely *is as bad faith as to refuse it altogether*. The treachery is aggravated if it be committed at the instance of those who confess their intention to use it for the purpose of defeating his admitted rights. The public is interested in settling men's rights justly and properly. This amendment will not create any new rights. It merely provides for the proper definition of those already granted and vested. There is, besides, a large number of miners who desire to have their own claims fixed, as they cannot be fixed until the boundaries of these large companies are adjusted. If the Negley amendment be accepted, it will save much trouble to all parties, and it can do no possible injury to any human being.

J. S. BLACK.

YORK, PA., May 7, 1874.

A SIMPLE STATEMENT OF FACTS.

The *first* act in relation to the Sutro Tunnel is one by the State of Nevada, now superseded by an act of Congress, which reads as follows:

An act granting the right of way, and authorizing A. Sutro and his associates to construct a Mining and Draining Tunnel. (Approved Feb. 4, 1865.)

The people of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. A. Sutro and his associates, successors, and assigns, shall, for the next fifty years ensuing, from and after the approval of this act, have, possess, and enjoy the *exclusive privilege of the right of way*, and to run, construct, and excavate a tunnel, running into the Comstock Lode, from any point to be selected in the foot-hills of the Carson River Valley, within the boundaries of Lyon county, and between Corral Cañon and Webber Cañon; also to sink mining-shafts along the line or course of said tunnel, and connecting with the same at such points as may be selected by said parties; *Provided, however*, The right of way hereby granted for said tunnel shall in no manner or in any wise interfere with any rights heretofore acquired in and to the said Comstock Lode, or any other lode along the line or in the vicinity of said tunnel, or any rights of property heretofore acquired by any person or corporation: *And provided further*, That said right of way for said tunnel shall in no wise interfere with the rights of miners, according to the laws and customs of this State.

SEC. 2. That the object of said tunnel being for the purpose of draining the Comstock Lode, and all other lodes along its line of direction or course, and for the discovery and development of other lodes through which the same may pass, and for the general purpose of advancing the mining interest of this State, the rate, price, or sum of money to be charged for the benefit derived by the persons, companies, or corporations along the line of said tunnel, and others who may be benefited by the drainage of their mines or lodes, and freeing the same from the flow of water therein, shall be whatever sum or sums of money or stock which may or shall be agreed upon by and between the corporations, person or persons to be benefited as aforesaid, and the grantee herein, his associates, successors, or assigns. And the said A. Sutro and his associates, their successors and assigns, shall have the right to receive and collect all sums of money or stock which said persons, companies, or corporations shall contract to pay; and in default of the payment of the same, according to the tenor and condition of such contract or contracts, the said A. Sutro and his associates, their successors or assigns, shall have the right, and are hereby authorized and empowered, to sue for and collect the same in any court of competent jurisdiction in this State.

SEC. 3. It shall be the duty of A. Sutro, his associates, their successors or assigns, to commence the work of said tunnel, in advancing the objects aforesaid, within one year from the passage of this act, and to complete the same within eight years.

In pursuance of this act contracts were entered into with twenty-three of the principal mining companies, representing 95 per cent. of the value of all the mines on the Comstock Lode, under which the Sutro Tunnel Company,

which had in the meantime been formed, bound itself to perform certain matters and things. The mining companies, however, soon showed symptoms of backing out of their agreements, as will be more fully shown further on, and commenced to throw every possible obstacle in the way of carrying them out. These contracts established certain rates which the mining companies agreed to pay, and which are referred to in the subsequent law of Congress. These are named in article XII of the contract, which is here reproduced in full:

AGREEMENT.

The Sutro Tunnel Company with the ——— Mining Company.

ARTICLES OF AGREEMENT, made and entered into this day of A. D. one thousand eight hundred and sixty-six, by and between William M. Stewart, D. E. Avery, Louis Janin, jr., H. K. Mitchell, and A. Sutro, trustees for the Sutro Tunnel Company, parties of the first part, and the — Mining Company, a corporation doing business in the county of Storey, State of Nevada, party of the second part.

Whereas, by an act of the Legislature of the State of Nevada, entitled "*An act granting the right of way, and authorizing A. Sutro and his associates to construct a Mining and Draining Tunnel,*" approved February 4, 1865, the Legislature of said State granted to the said A. Sutro and his associates, his and their successors and assigns, for the period of fifty years from and after the approval of said act, the exclusive privilege of the right of way, and the exclusive privilege to run, construct, and excavate a tunnel, running into the Comstock Lode from any point in the foot-hills of the Carson river valley, within the boundaries of the county of Lyon, and between Webber Cañon and Corral Cañon; and also granted other rights and privileges, which fully appear in said act;

And whereas the said A. Sutro, and the above-named William M. Stewart, D. E. Avery, Louis Janin, jr., and Henry K. Mitchell, have associated themselves together, under the name and style of "The Sutro Tunnel Company," for the purpose of running and completing said tunnel in accordance with the terms and conditions of said legislative enactment;

And whereas all corporations, associations, companies, and individuals owning or interested in the said Comstock Lode are beneficially interested by the drainage of their respective mines on the Comstock Lode, in the speedy completion of the said tunnel;

And whereas the party of the second part is the owner of, in possession of, and working upon that certain portion of the said Comstock Lode in the county and State aforesaid, known as the — Mining Company's mine; and as such owner is beneficially interested in the early completion of said tunnel, for the purposes of drainage aforesaid, and other conveniences thereby to be afforded: Now, therefore, these articles witness:

ARTICLE I. The parties of the first part, in consideration of the premises, and in consideration of the covenants and agreements hereinafter mentioned, to be kept and performed by the party of the second part, covenant and agree to and with the party of the second part, that the parties of the first part will, on or before the 1st day of August, 1867, commence, and with reasonable energy and vigor, and at their own expense, run, excavate, and complete the tunnel and lateral drifts hereinafter mentioned, and put the same

in condition for use, in accordance with the provisions of the said act of the Legislature of the State of Nevada, and with the covenants in this agreement contained, for the purpose of draining the mines on the said Comstock Lode and furnishing other conveniences for working the same.

ART. II. The said tunnel shall commence at some point in the foot-hills of Carson Valley, between Corral Cañon and Webber Cañon, within the county of Lyon, and shall extend to, and cut, and pass through the said Comstock Lode to its western wall, at some point between the north line of the claim of the Ophir Silver Mining Company, and the south line of the claim of the Yellow Jacket Company, and at a depth of not less than one thousand eight hundred feet below the top of what is known as the Gould and Curry crop-pings.

ART. III. The parties of the first part covenant and agree that the work shall be commenced at the time specified, by running the tunnel from the foot-hills of Carson Valley; and also by simultaneously sinking at least three shafts of sufficient capacity on the line of the tunnel, and when the shafts have reached the depth required for the level of the tunnel, then to drift in both directions from the bottom of each shaft, so that there shall be at least seven places of excavation going on, from the time that all of the shafts shall reach the requisite level, all the time until the tunnel is completed, unless connections between some of the shafts are sooner made; and the said work at all times shall be prosecuted continuously and without any interruption, except from unavoidable accident, until the completion of the tunnel, and of the works which under this agreement are to be considered as draining the mine of the party of the second part; and in case of any such interruption occurring, the cause thereof shall be removed or remedied and the work resumed without delay.

And the parties of the first part covenant and agree that, on or before the first day of August, 1867, there shall have been subscribed, in good faith and by apparently responsible persons, at least the sum of three millions of dollars, for the purpose of carrying on and completing the said tunnel and the lateral drifts hereinafter mentioned; that of said sum at least ten per cent. shall have been actually paid in cash; that during the first year in which the work shall be prosecuted, commencing on said first day of August, 1867, there shall be expended upon, or on account of the work, not less than the sum of four hundred thousand dollars, and during each succeeding year thereafter, until the work shall be completed so as to drain the mine of the party of the second part within the meaning of this agreement, not less than the sum of two hundred thousand dollars; provided that this amount can be advantageously expended after the completion of the main tunnel, and that they, the parties of the first part, will, within thirty days after the expiration of each year, furnish to the party of the second part a full, true, and correct statement of the expenditures made on account of the work during each year, verified by the oath of the managing agent and secretary or book-keeper of the parties of the first part.

ART. IV. If the work shall not be commenced on or before said day, and with said sum of three millions of dollars subscribed, and ten per cent. thereof actually paid in cash, as hereinbefore provided, or if, after so commencing, the parties of the first part shall during any year fail to expend on account of the work the sum of money hereinbefore agreed to be expended during such year, this agreement shall, at the option of the party of the second part, cease and determine, and thereafter be of no effect. And if, after the work shall have been commenced, it shall not be continuously prosecuted, as hereinbefore agreed, the party of the second part, in conjunction with other companies or corporations with which the parties of the first part may have entered into similar agreements, and which may desire to unite with the party of the second part in so doing, shall have the right to enter and take possession, and complete the work, or have it completed under contracts, at the expense of the parties of the first part, deducting the cost of its completion

from the first moneys becoming due to the parties of the first part under this agreement.

ART. V. The parties of the first part further covenant and agree, that in the event they shall fail in obtaining subscriptions for the sum of three millions of dollars, or if the sum of three hundred thousand dollars shall not have been actually paid in cash, as hereinbefore agreed, on the said first day of August, 1867, then the said parties of the first part shall and will, if the party of second part desire it, sell and convey, within six months thereafter, the said franchise granted to A. Sutro by said act of the Legislature of the State of Nevada, of February 4th, 1865, and also three hundred and twenty acres of land at and including the mouth of said tunnel, to be selected by the purchasers, in one body and in a square or rectangular form, and if the latter, the length not to exceed twice the width, to the said parties of the second part, and to the other mining companies which have entered or shall enter into like contracts with the said parties of the first part, and shall join in the purchase, for the sum or price of one hundred thousand dollars, each company paying thereof its *pro rata*, according to the number of feet of ground owned by each.

ART. VI. The dimensions of said tunnel shall be not less than seven feet in height in the clear, and eight feet in the clear in width. It shall have a grade of not less than one inch to the one hundred feet, and on the floor two substantial railways shall be laid down for the running of cars to and from the mine, and sufficient for the transportation of all materials to be used in said mine, and to convey all ore, debris, earth, and rock from the mine to the mouth of the tunnel. And the said tunnel shall also have capacity to carry all water running into it from any source, and to discharge the same at the mouth thereof.

ART. VII. If the said main tunnel shall intersect the said Comstock Lode outside of the northern and southern boundaries of the mine of the party of the second part, the parties of the first part shall excavate or run a lateral drift, either within said Comstock Lode, or at any point not exceeding five hundred feet from and east of the west wall thereof, to a point from which a drift at right angles from said lateral drift will cut the said Comstock Lode between the north and south boundaries of the claim of the party of the second part; such lateral drift shall be of sufficient height and width to allow the free flow of all water coming into the same, also for the laying down of a double railroad track, and for the transportation of timber and other materials to said mine, and the conveying of ores, earth, rock, and debris therefrom, and such railways shall be laid down by the parties of the first part the entire length of such lateral drift, and the grade thereof shall be the same as in the main tunnel.

ART. VIII. After the completion of the tunnel and such lateral drifts as may be necessary to comply with the preceding articles, the party of the second part shall have the privilege to enter into said tunnel and the lateral drift, and to work through the same, having ingress thereto and egress therefrom, and to excavate and run any drift or drifts necessary to cut said Comstock Lode within the boundaries of the claim of said party of the second part, and to connect such lateral drift with the mine and mining works of said party of the second part, in such manner and by means of such drifts or other works as the party of the second part may think proper for the purpose of draining and conveniently working its mine.

ART. IX. The parties of the first part, from and after the completion of said tunnel—if the same intersects said lode within the northern and southern lines of the said second party's claim—or if not, then from and after the time when the parties of the first part shall have extended their lateral drift to a point opposite the claim of the party of the second part, and from which the party of the second part shall desire to make any connection between said lateral drift and its own works, shall convey, by means of said tunnel, drifts, and railways, from the mouth of the tunnel to the point at which the drifts or

works of the party of the second part connect with the drifts or tunnel of the parties of the first part, all trustees, officers, agents, and employees, who may desire to go into said mine, and shall also by the same means convey them from the same point to the mouth of the tunnel, such conveyance to be made whenever the same is desired by the party of the second part, and in as expeditious a manner as the nature of the case will allow, and without any unreasonable delay.

And the parties of the first part shall, after the time in this article mentioned, also convey to the same point from the mouth of the tunnel, all timber, material, tools, machinery, and implements for mining, which the party of the second part may desire to use in its said mine, and shall also from said point of connection convey to any point designated by the party of the second part, outside of the tunnel, and not more than one thousand feet from the mouth of the tunnel, all ore, rock, earth, and debris which said party of the second part may desire to remove from its said mine or works.

ART. X. The parties of the first part shall keep the said tunnel, and their own lateral drifts and railways and machinery for transportation as aforesaid, in good condition, so as not to interrupt or delay the party of the second part in the transportation of its officers, agents, and employees, or the materials as aforesaid, to and from said second party's mine, and shall also keep said tunnel open for the free flow of all waters coming into it, or into said drifts, for the full drainage of said mine; and in the event that any accident should occur, or the works aforesaid should in any manner be rendered unfit for said purposes, the same shall be remedied with all reasonable dispatch, and without unnecessary delay. And should there be any obstructions to the flow of water through said tunnel or lateral drift, so as to retard the drainage of the said second party's mine, such obstructions shall be removed as soon as possible, according to the circumstances; and if the parties of the first part shall fail, within a reasonable time, to remove such obstructions or to put said tunnel and their own lateral drifts, railways, or machinery in good condition, the party of the second part shall have the right to enter and remove such obstructions, or to make any needful repairs, at the expense of the parties of the first part.

ART. XI. The parties of the first part further agree, that the prosecution of said work shall be as diligent and vigorous as the circumstances and the nature of the work will allow, and that the completion thereof shall not be unreasonably delayed.

ART. XII. In consideration of the foregoing covenants and agreements, to be kept and performed by the parties of the first part, and for valuable considerations from the parties of the first part moving to the party of the second part, the said second party covenants and agrees to pay to the parties of the first part two dollars per ton for all ore extracted from the mine of said second party, after the works of said first parties shall have drained the said second party's mine, so as to render all other means of drainage unnecessary to the lowest level attained, provided such level is not lower than the level of the tunnel herein provided for. Also during the time when said party of the second part shall use said tunnel or drifts as means of transportation, as hereinbefore contracted for, the party of the second part will pay to the parties of the first part, for each ton of ore, rock, earth, or debris removed from the point hereinbefore designated to or beyond the mouth of the tunnel, as the case may be, the sum of twenty-five cents per mile from the place of removing it to the place of discharging it, and at the same rate for all material conveyed from the mouth of the tunnel to said point of connexion heretofore described, forty cubic feet of timber or twenty-two hundred and forty pounds of rock, ore, or other material being considered a ton, and will also pay the said parties of the first part the sum of twenty-five cents for each man conveyed to and from the said point, at the request of or on account of the said second party; all laborers, employees, agents, and other persons connected with the said corporation of the second part to be included and paid

for as above stated. And if at any time the mining works of the party of the second part shall reach a level lower than the level of the tunnel aforesaid, the party of the second part shall be permitted by means of pumps or otherwise, to raise the water from such lower level to the level of said tunnel or lateral drift, and the water so raised shall be discharged by means of the tunnel, as if the same were struck on or above such level: *Provided*, That the party of the second part shall only pay to the parties of the first part the said sum of two dollars per ton on the ore extracted, which said second party shall have reduced at some mill or other reduction work, or shall have sold: *And provided further*, That no such payment shall be due or made until the works of the parties of the first part shall have either actually drained said mine, so as to obviate the necessity for all other modes of drainage, or shall be prosecuted to the extent in the next article mentioned, which shall be deemed and considered sufficient drainage within the meaning of this agreement: *And provided further*, That said sum of two dollars per ton shall only be due and payable during such time or times as the said works shall actually drain said mine as aforesaid, or shall be in good condition to the extent of the next article mentioned; and no sum of money shall be due or payable to the parties of the first part, on account of ores extracted, during any time or times when the said second party's mine is not drained, by reason of any obstruction or defect in the tunnel or drifts of the said first parties.

ART. XIII. It is mutually agreed, that the true intent and meaning of these articles, as to the draining of the mine of the party of the second part, are that whenever the said mine is actually drained by the works of the said first party, so as to render all means of drainage useless, to the lowest level attained by the works of the said party of the second part, but not lower than to the level of the tunnel, the same shall be deemed a full compliance with the covenant of the parties of the first part for drainage thereof, and whether said mine be actually so drained or not, it shall be considered drained within the meaning of this agreement, in either of the following events:

If the main tunnel shall intersect the Comstock Lode, and cut the eastern wall thereof, between the north and south boundaries of the mine of the said second party, the mine shall be considered drained.

Or it shall be considered drained if the main tunnel shall cut said eastern wall outside of those lines, and the parties of the first part shall extend the lateral drift hereinbefore covenanted to be extended within said Comstock vein, to a point equidistant from such north and south boundaries.

Or it shall be considered drained, upon the expiration of three months after the parties of the first part shall have extended said drift outside of said lode, but within five hundred feet east of the west wall thereof, to a point not more than five hundred feet east of said west wall, whence a drift at right angles would enter said lode at a point equidistant from the northern and southern boundaries of the claim of the second party.

ART. XIV. The party of the second part, after the completion of the works aforesaid, according to the meaning and intent of the preceding article, agrees and binds itself to furnish to the parties of the first part, on the fifth day of each and every month, (unless that day be Sunday, and in that event on the sixth day,) a full, fair, and just account of each ton of ore extracted from its mine, and reduced at some mill or other reduction works, or sold for such reduction, during the month preceding, or which may have been sent by the party of the second part to such mill or other reduction works to be reduced; and on the day of rendering such account, or within three days thereafter, shall pay to the parties of the first part the said sum of two dollars for each ton of ore so extracted, and on the same day shall pay such other sum as may be due for the transportation or conveyance of workmen, or other persons, and of ores, rock, debris, timber, and other material, to or from said mine: *Provided*, That if, during the month preceding, the mine of the party of the second part shall not have been drained, by reason of any defect or obstruc-

tion in the works of said parties of the first part, the said sum of two dollars per ton on account of ores so extracted during the time such obstruction existed, shall not be due or payable, but only the sums due for other causes shall be due and payable at such time.

ART. XV. If any question should arise between the parties to this agreement, either in respect to the time when the mine of the party of the second part shall have been drained in accordance with the foregoing articles, and the payment of two dollars per ton for ore extracted should commence, or in respect to the amount of money at any time due or payable from the party of the second part to the parties of the first part, it is agreed that such question shall be determined by each party choosing one competent and disinterested person as an arbitrator: and in the event of disagreement between such arbitrators they shall choose a third competent and disinterested person. The arbitrators shall be sworn, and a majority of the three may decide the disagreement between the parties hereto, and their decision shall be final. For the purpose of deciding such issue, the arbitrators, in the presence of each party, or upon reasonable notice thereof in writing, may receive evidence of witnesses or other proofs; and either party, in the presence of the other, or upon reasonable notice in writing, may produce evidence before the arbitrators so chosen. The decision of the arbitrators shall in every case be made in writing, and it shall be binding and effectual from the time that a copy thereof, certified by the arbitrators, or a majority of them, shall have been delivered to both parties.

ART. XVI. If the parties of the first part shall at any time enter into any agreement with any other person, company, or corporation holding a mine upon the Comstock Lode, in respect to drainage, transportation, or other advantage derived from the works of the parties of the first part, upon terms more favorable to such person, company, or corporation than those herein contained, the party of the second part shall be entitled, at its option, to all the benefits thereof as fully and to the same extent as if they were herein set forth and made part of this agreement.

ART. XVII. Each and every of the articles of this agreement shall be binding and of full force against each party hereto, and upon the assigns and successors thereof; and said assigns or successors shall be entitled to all the benefits and privileges thereof as if the same were in each article distinctly set forth. And it is agreed that if the said corporation, party of the second part, should in any manner be dissolved, or if it should convey said mine, the grantees and successors of said corporation shall take the said mine subject to the conditions and obligations of this agreement, which it is agreed shall constitute and be a lien in law and equity on said mine for the faithful carrying out of the covenants herein contained.

ART. XVIII. It is agreed that all payments provided in this agreement to be made by the party of the second part to the parties of the first part shall be made in gold coin, and not otherwise.

In testimony whereof the said parties hereto set their names and affix their seals the day and year first above written; the name of the party of the second part being hereto subscribed, and its corporate seal affixed, by ———, president, and ———, secretary, duly authorized by a resolution of the board of trustees of said party: these presents being executed in triplicate.

THE SUTRO TUNNEL CO.,
 By { WM. M. STEWART, [SEAL.]
 ADOLPH SUTRO, [SEAL.]
 LOUIS JANIN, Jr., [SEAL.]
 HENRY K. MITCHELL, [SEAL.]
 D. E. AVERY. [SEAL.]

BELCHER MINING CO., executed April 27, 1866.
 CROWN POINT GOLD AND SILVER MINING CO., April 12, 1866.
 SAVAGE MINING CO., April 3, 1866.

CALIFORNIA SILVER MINING CO., April 20, 1866.
 YELLOW JACKET SILVER MINING CO., April 25, 1866.
 GOULD AND CURRY SILVER MINING CO., March 29, 1866.
 CENTRAL SILVER MINING CO., May 9, 1866.
 CONFIDENCE SILVER MINING CO., April 6, 1866.
 CHOLLAR POTOSI MINING CO., April 20, 1866.
 ALPHA GOLD HILL MINING CO., April 25, 1866.
 HALE AND NORCROSS SILVER MINING CO., April 11, 1866.
 BACON MILL AND MINING CO., April 19, 1866.
 GOLD HILL QUARTZ MILL AND MINING CO., April 19, 1866.
 IMPERIAL SILVER MINING CO., April 19, 1866.
 EMPIRE MILL AND MINING CO., April 14, 1866.
 BEST AND BELCHER MINING CO., April 20, 1866.
 OPHIR SILVER MINING CO., April 16, 1866.
 OVERMAN SILVER MINING CO., April 19, 1866.
 WHITE AND MURPHY GOLD AND SILVER MINING CO., April
 12, 1866.
 BULLION MINING CO.,
 And also three private companies.
 Each having its corporate seal attached.

Some of the contracts contained the following additional articles:

On this ——— day of April, A. D. 1866, and at the time of the execution of the foregoing printed instrument, and as part thereof, it is mutually agreed between the parties hereto that the following articles be inserted into and that they shall form part of the said agreement:

ART. XIX. The parties of the first part agree and bind themselves that they will not, nor shall their successors or assigns, or any part of them, take up or lay claim to any quartz lode or mining grounds which may be developed by the Sutro Tunnel within a space of ground lying four thousand feet east from the said western croppings or surface appearance of the mining claims of the party of the second part on the Comstock Lode, nor will they allow any other person, persons, or companies, who have now made or may hereafter make any location in front of the mining ground of the party of the second part within the distance in this article heretofore mentioned, to work through to the said tunnel, or transfer any ore, rock, or debris through the same.

ART. XX. The parties of the first part further agree that they will sell to the party of the second part, within three months after the said second party's mine is drained, as hereinbefore provided for, any portion of a tract of land, not exceeding ten acres in a square body, and situated within two miles from the mouth of the tunnel, to be designated by the parties of the first part, at some convenient and accessible point, the party of the second part hereby agreeing to pay therefor at the rate of *five thousand dollars per acre*; and the said party of the second part shall have the right of way through any lands belonging to the said Tunnel Company to such tract as may be conveyed; and the parties of the first part further agree to transport any ore belonging to the party of the second part, from a point one thousand feet from the mouth of the tunnel to the land which may have been so purchased by the party of the second part, at the rate of twenty-five cents per mile for every ton so transported.

So anxious were the mining companies that the tunnel enterprise should be a success, and so good did they consider their bargain, that, by this last article, they agreed

to pay \$5,000 per acre for land at the mouth of the tunnel, as an additional encouragement to investors, though the land had just been secured from the United States at \$1 25 per acre!

This contract, signed by all the principal mining companies, limits the time of compliance with its terms to August 1, 1867. An extension of time for one year—that is to say, till August 1, 1868—was, however, granted by considerable over a majority in value, as follows:

Extension of Time.

This agreement, made this — day of April, 1867, between the — Mining Company, a corporation duly organized under the laws of the State of California, and having its mine on the Comstock Lode, in the State of Nevada, party of the first part, and the Sutro Tunnel Company, party of the second part:

Witnesseth, that in consideration of one dollar in gold coin of the United States, in hand paid to the said party of the first part by the said party of the second part, and of other good and valuable considerations, receipt whereof is hereby acknowledged, said party of the first part agrees and covenants that said party of the second part shall have, and is hereby granted, an extension of time for one year from and after the period specified in articles first, third, fourth, and fifth of a certain contract entered into between the parties hereto on the — day of —, 1866; and it is hereby declared to be the intention of said grant of extension of time, that the operation and effect thereof shall be the same in all respects as if the first day of August, 1868, had been originally inserted in said contract, instead of the first day of August, 1867, wherever the date last mentioned is found therein.

In testimony whereof the — Mining Company has caused these presents to be signed by its president and secretary, and its corporate seal to be affixed, this — day of April, 1867.

CROWN POINT GOLD AND SILVER MINING CO., May 21, 1867.

SAVAGE MINING CO., March 7, 1867.

OPHIR SILVER MINING CO., April 4, 1867.

HALE AND NORCROSS SILVER MINING CO., April 10, 1867.

WHITE AND MURPHY GOLD AND SILVER MINING CO., April 24, 1867.

OVERMAN SILVER MINING CO., March 16, 1867.

CONFIDENCE SILVER MINING CO., April 1, 1867.

CHOLLAR POTOSI MINING CO., April 24, 1867.

EMPIRE SILVER MINING CO., March 30, 1867.

GOLD HILL QUARTZ MILL AND MINING CO., April 8, 1867.

GOULD AND CURRY SILVER MINING CO., April 10, 1867.

In King's official report, page 191, printed by order of Congress, the following list of the mines on the Comstock Lode is given, showing their product, the assessments levied, and dividends declared for the years 1866 and 1867, as follows:

CLAIMS.	1866.			1867.		
	Assessments.	Products.	Dividends.	Assessments.	Products.	Dividends.
* Alpha.....	\$96,000 00			\$12,000 00		
American.....						
* Bacon.....	18,000 00					
Baltimore-American.....	13,000 00			5,200 00		
* Belcher.....	143,520 00			74,880 00		
* Bullion.....	175,000 00			137,500 00		
* California.....				30,600 00		
Central.....	9,000 00					
* † Chollar Potosi.....		\$884,751 00		42,000 00	\$2,668,885 36	\$420,000 00
* † Confidence.....	39,000 00	304,931 71		70,200 00	142,049 46	
Consolidated Virginia.....						
* † Crown Point.....		1,312,471 13	\$234,000 00	60,000 00	920,717 96	264,000 00
* † Empire Mill and Mining Co.....		422,291 38	32,400 00		278,607 17	49,200 00
Exchequer.....	32,000 00			16,000 00		
* † Gold Hill Quartz.....					106,399 42	33,750 00
* † Gould & Curry.....		1,624,781 01	252,000 00	120,000 00	614,620 51	
* † Hale & Norcross.....		1,186,543 38	350,000 00	60,000 00	1,097,297 45	440,000 00
* Imperial.....		910,387 37	176,000 00		1,106,495 50	380,000 00
Kentuck.....		571,506 79	117,000 00		1,140,741 94	505,000 00
* † Ophir.....	184,800 00	417,472 08		184,800 00	4,108 00	
* † Overman.....	208,000 00	27,953 00		32,000 00	192,316 17	
* † Savage.....		1,814,879 09	320,000 00		3,737,100 12	1,600,000 00
Segregated Belcher.....				6,400 00		
Sides.....				14,000 00		
Sierra Nevada.....	55,500 00			96,000 00		
* † White & Murphy.....				5,670 00		
* Yellow Jacket.....	180,000 00	2,297,132 94	390,000 00	240,000 00	1,729,276 91	300,000 00
	1,153,820 00	11,739,100 88	1,871,400 00	1,207,250 00	13,738,617 97	3,991,950 00

Those who signed contracts with the Sutro Tunnel Company are marked with an asterisk [*], and it will be found upon examination that they include all the productive mines but one. The total yield of all the mines was, for 1866, \$11,739,100 88; of which the contracts represent \$11,167,594 09, or 95 per cent. of the total yield. In 1867 we again find only one productive mine unrepresented by the contracts. The total yield for that year was \$12,738,617 97; of which the contracts represent \$12,597,876 03, or 91½ per cent.

Those mines which, in 1867, granted an extension of time for one year, that is, until August 1, 1868, are marked with a cross [†]. They are eleven in number. Their yield was, for the year 1866, \$7,960,073 78, or 68 per cent. of the total for that year. For 1867, the year in which the extension was granted, they represent \$9,762,103 62, or 71 per cent. of total yield.

Thus it will be seen that considerable more than a majority of the whole yield had granted the extension on the contract until August 1, 1868.

This extension of time had been asked and was granted, though the act of Congress was then the law of the land; for it was considered that certain rights might have existed under the contracts, while others existed under the law of Congress, entirely independent of each other.

No sooner had these companies signed the contracts than some of the leading ones showed strong symptoms of backing out. And now let us see with what good faith they acted, and whether they broke the contract or whether the Sutro Tunnel Company did.

In order that the following may be fully understood, it must be remarked here that, after the passage of the Sutro Tunnel act by Congress these companies became anxious to be interested in the Tunnel Company, and in the spring of 1867 subscribed over \$600,000 to its stock. Here is an extract from the contract made with the Savage Company:

This indenture, made this 26th day of April, 1867, between the Savage Mining Company, a corporation duly organized under the laws of the State

of California, and having its mine on the Comstock Lode in the State of Nevada, party of the first part, and the Sutro Tunnel Company for itself, and for such corporation as may become its successor, party of the second part.

* * * * *

The party of the first part, for and in consideration of the agreement of the party of the second part thereafter contained, hereby covenants and agrees to pay the sum of *one hundred and fifty thousand dollars* to the Sutro Tunnel Company, for the construction of said Tunnel Company's work in the said State of Nevada.

* * * * *

In testimony whereof the Savage Mining Company has caused these presents to be signed by its President and Secretary and its corporate seal to be hereto affixed, and the Sutro Tunnel Company has caused the same to be signed and executed by its agent duly authorized thereto, this 26th day of April, A. D. 1867.

ALPHEUS BULL, *President.*

E. B. HOLMES,

Secretary of Savage Mining Company.

SUTRO TUNNEL COMPANY,

By ADOLPH SUTRO, *Agent.*

That they wanted and did back out not only from the contracts, but also from the subscriptions, long before the former expired, and while they were in full force, will clearly appear from the following extract from Mr. Sutro's speech before a congressional committee. He said:

In order that the circumstances may be thoroughly comprehended, I will refer to a single company, the annual reports of which I have in my possession. It is the Savage Mining Company, of which Alpheus Bull, Esq., is president—a gentleman who is connected with a great many companies out there, and who is supposed to be a very good man, a first-rate man, a very pious man, in fact; but in my opinion a great scamp, and a mere tool of the Bank of California. This is what he wrote in his official annual report on July 10, 1866, shortly after the contracts had been made:

"The importance of affording drainage at a great depth, if it can possibly be obtained, cannot be too highly estimated. The Sutro Tunnel Company is the only party that proposes to undertake this important enterprise, and your trustees have entered into a contract with that company, for the purpose of effecting this great object. It is much to be desired that success may attend the effort, for it is, in my opinion, a work upon which depends the future value and profitable working of the mines of the Comstock Lode. I recommend that this contract be ratified by the stockholders at their present meeting."

They did ratify it. That was in 1866. There was no opposition then. Now, let us see what he says—this same man—in 1867; and a very smooth-talking fellow he is, too. Recollect, now, these contracts did not expire till the 1st of August, 1867, with an extension of time made until August 1, 1868. There was an extension from this particular company, the Savage Company.

He said, in his report on the 18th of July, 1867, before the *original* contract expired:

"On the 26th of April, 1867, the board of trustees entered into an agreement with the Sutro Tunnel Company to subscribe \$150,000 towards the construction of the proposed drain tunnel, upon two conditions: first, that the Tunnel Company were to procure *bona fide* subscriptions to the amount of \$3,000,000; and, second, that the agreement should be submitted to this annual meeting and ratified by the stockholders. *The Tunnel Company have failed to fulfill the first condition.*"

He said we had failed to fulfill the condition that we were to get \$3,000,000

in *bona fide* subscriptions, while subscription agreements contained no limitation as to time, and before the time of the contract had yet expired. It was before the original contract expired, and a year and over before the extension expired.

Then he goes on to say:

"In addition to this, I consider there are grave reasons for doubting the *policy* of such an agreement on the part of this company. Suffice it to say that I recommend the stockholders to refuse to give their approval to the agreement."

This Bull was the tool of a ring, which had then been formed by the Bank of California, and they thought they could explode the tunnel project. It was next to impossible to obtain redress. You could not do anything in any court of law. It was reported that they could manage almost every judge in that part of the country, and that they had vast influence with all the newspapers. They thought they could ride rough-shod over my rights, but I did not let them do it, nor do I think I ever shall. I hold in my hand the paper, dated April 26, 1867, in which the Savage Company agreed to pay \$150,000 to the Tunnel Company, yet that man had the assurance, three months later, to say we had not complied with the conditions of our contract, when we had a year and over to do it in.

RING RASCALITIES.

They put their heads together then, and said:

"Let us break up the Sutro Tunnel. We will get hold of it in a year or two anyhow; and in the meantime we will make the mining companies give the money subscribed to the Tunnel Company towards a railroad, which we will build and own, and that will kill Sutro, and he will not be able to get the money he wants."

As a result of what I have just stated, in April, 1868, this man Bull wrote in the official report of the company:

"I am so strongly impressed with the importance of the early construction of this railway, and the great benefits it would confer upon this company, that I earnestly recommend to the stockholders the repeal or amendment of the fourth article of the by-laws, so as to enable the in-coming board of trustees, if in their judgment they deem it advisable, to increase the subsidy of this company to the railway enterprise by an additional sum of fifty thousand dollars."

"With this road constructed and in operation, and with a *deep-drain tunnel which in a few years will be run*, and with a further saving in the reduction of ore, and also to increase the returns of the assay value of them from 65 per cent., the present standard, to 80 or 85 per cent., it is reasonable to believe, with all these advantages secured, we can transmit the danger of profits from silver mining at Virginia and Gold Hill to another generation."

To recapitulate, then, you find that on April 3, 1866, this man Bull, as president of the Savage Company, makes a contract with the Sutro Tunnel Company, and recommends its confirmation at the annual stockholders' meeting in July of that year, which was duly made.

On the 7th of March, 1867, following, he extends the time for the fulfillment of that contract until August 1, 1868. On the 26th of April, of that same year, (1867,) the board of trustees of the Savage Company, through him, (Bull, their president,) subscribed \$150,000 to the Sutro Tunnel Company; and on the 18th of July of that same year he repudiates it all.

The California Bank ring saw the tunnel was going ahead, and while they wanted to break it up, they at the same time wanted to appropriate the money subscribed by the mining companies to themselves; and, in order to accomplish that, they got up this railroad enterprise.

Thus we find this same man Bull, in his next annual report, in 1868, recommending the subscription of this identical sum of \$150,000 to the rail-

road company, which he had repudiated the year before, as far as the Tunnel Company was concerned; and so confident was he that the tunnel project was killed for good, that he lets out their plans for the future, by saying *that a deep tunnel would be constructed before long*—of course meaning by the bank ring. He thought it was killed off. His indecent haste was so great that he called in the undertaker before the child was dead.

To make the record of their repudiation still more complete, I will here quote from a speech in the House of Representatives by the Hon. Benj. T. Biggs, of Delaware:

"But it was urged yesterday by the honorable gentleman from California [Mr. SARGENT] that Sutro had not lived up to his contract. Mr. Speaker, why did he not? Because a most determined opposition had suddenly sprung up on the Pacific coast against Mr. Sutro and his Tunnel Company. His prospects for success were so flattering that the mining companies became alarmed, and publicly repudiated their former subscriptions to the Sutro Tunnel Company. In July, 1867, the Savage Mining Company repudiated their subscription to the Sutro Tunnel Company, and the Bank of California, through their agents in New York city, Messrs. Lees & Waller, placarded in their office the following:

"That the stockholders of the Savage Company, at their annual meeting, had refused to ratify the subscription made by their trustees of \$150,000 to the stock of the Sutro Tunnel Company, and that the same was utterly null and void."

"Here, then, we see one of the leading mining companies repudiating a subscription which they had made in good faith, the effect of which was to throw a damper upon the whole enterprise. But this company was not alone, for on the 15th day of January, 1868, was sent to Washington the following telegram:

"VIRGINIA, NEVADA, January 15, 1868.

"Received at Willard's Hotel, Washington, D. C., January 16, 1868.

"To Hon. WILLIAM M. STEWART and JAMES W. NYE:

"We are opposed to the Sutro Tunnel project, and desire it defeated, if possible.

WILLIAM SHARON,
The Agent of the Bank of California.
CHARLES BONNER,
Superintendent of the Savage Company.
B. F. SHERWOOD,
President of the Central Company.
JOHN B. WINTERS,
President of the Yellow Jacket Company.
JOHN P. JONES,
Superintendent of the Kentucky Company.
J. W. MACKEY,
Superintendent of the Bullion Company.
THOMAS G. TAYLOR,
President of the Alpha and Superintendent of the Crown
Point and Best and Belcher Companies.
F. A. TRITTLE,
President of the Belcher Company.
ISAAC L. REQUA,
Superintendent of the Chollar Potosi Company."

"Now we see, sir, the very superintendents of the mining companies who had subscribed, together with private individuals, the aggregate sum of \$600,000 towards the construction of this tunnel, telegraph to the Senators from Nevada that they are opposed to the Sutro Tunnel, that they want it defeated, and that they repudiate their subscriptions. How, then, could Mr. Sutro go on with his tunnel? He was not a man possessed of great fortune. He had raised the amount of \$600,000, and these very identical men who had subscribed for the purpose of constructing the tunnel turned round and telegraphed to Senators Stewart and Nye—the former of whom was actually in 1865 the president of the Sutro Tunnel Company—that they did not want the tunnel, and wished it defeated."

I considered myself fortunate to get hold of the above telegram, though dozens of them were sent to Washington. One, addressed to the Hon. James W. Nye, was signed by a number of the presidents of the same mining companies who had granted an extension of time; still another was addressed to John Conness, then a Senator from California. The war against the tunnel, which first commenced in the spring of 1867, now became general.

The Sutro Tunnel had been projected for the main purpose of facilitating mining operations on the Comstock Lode. The persons and companies who held possessory claims on that lode had especially sanctioned, endorsed, and authorized its construction, and entered into the above voluntary contracts with the Sutro Tunnel Company, under which they agreed to make certain perpetual payments after the Sutro Tunnel should be completed and benefit their respective mines.

They were, however, mere squatters on the land, and their agreement to pay certain rates, *which they never meant to keep*, as has been shown above, was not sufficient guaranty to capitalists to embark in so difficult and gigantic an undertaking. It was therefore considered necessary to deal directly with the United States, in whom was the fee to all the mineral lands, and who was the absolute owner of the soil.

Congress, in consequence, passed a law, approved by the President of the United States on July 25, 1866, generally called the "Sutro Tunnel act," of which the following is a copy:

An act granting to A. Sutro the right of way, and granting other privileges, to aid in the construction of a Draining and Exploring Tunnel to the Comstock Lode, in the State of Nevada.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of the construction of a deep draining and exploring tunnel to and beyond the Comstock Lode, so called, in the State of Nevada, the right of way is hereby granted to Adolph Sutro, his heirs and assigns, to run, construct, and excavate a mining, draining, and exploring tunnel; also to sink mining, working, or air-shafts along the line or course of said tunnel, and connecting with the same at any points which may hereafter be selected by the grantee herein, his heirs or assigns.

The said tunnel shall be at least eight feet high and eight feet wide, and shall commence at some point to be selected by the grantee herein, his heirs or as-

signs, at the hills near Carson river, and within the boundaries of Lyon county, and extending from said initial point in a westerly direction, seven miles, more or less, to and beyond said Comstock Lode; and the said right of way shall extend northerly and southerly on the course of said lode, either within the same, or east or west of the same; and also on or along any other lode which may be discovered or developed by the said tunnel.

SEC. 2. *And be it further enacted*, That the right is hereby granted to the said A. Sutro, his heirs and assigns, to purchase, at one dollar and twenty-five cents per acre, a sufficient amount of public land near the mouth of said tunnel for the use of the same, not exceeding two sections, and such land shall not be mineral land, or in the *bona fide* possession of other persons who claim under any law of Congress at the time of the passage of this act; that upon filing a plot of said land the Secretary of the Interior shall withdraw the same from sale, and upon payment for the same a patent shall issue.

And the said A. Sutro, his heirs and assigns, are hereby granted the right to purchase, at five dollars per acre, such mineral veins and lodes within two thousand feet on each side of said tunnel as shall be cut, discovered, or developed by running and constructing the same, through its entire extent, with all the dips, spurs, and angles of such lodes, subject, however, to the provisions of this act, and to such legislation as Congress may hereafter provide: *Provided*, That the Comstock Lode, with its dips, spurs, and angles, is excepted from this grant; and all other lodes, with their dips, spurs, and angles, located within the said two thousand feet, and which are, or may be at the passage of this act, in the actual *bona fide* possession of other persons, are hereby excepted from such grant.

And the lodes herein excepted, other than the Comstock Lode, shall be withheld from sale by the United States; and if such lodes shall be abandoned or not worked, possessed, and held in conformity to existing mining rules, or such regulations as have been or may be prescribed by the Legislature of Nevada, they shall become subject to such right of purchase by the grantee herein, his heirs or assigns.

SEC. 3. *And be it further enacted*, That all persons, companies, or corporations owning claims or mines on said Comstock Lode, or any other lode drained, benefited, or developed by said tunnel, shall hold their claim subject to the condition (which shall be expressed in any grant they may hereafter obtain from the United States) that they shall contribute and pay to the owners of said tunnel the same rate of charges for drainage, or other benefits derived from said tunnel or its branches, as have been or may hereafter be named in agreements between such owners and the companies representing a majority of the estimated value of said Comstock Lode at the time of the passage of this act.

The last section of the Sutro Tunnel act, it will be seen, clearly provides that all mines on the Comstock Lode *shall be held subject to the condition* that they shall pay certain rates after they shall be benefited by the tunnel. The schedule of rates for royalty, transportation of men, rock, timbers, &c., is not named, but established by reference to the contract entered into by a majority of owners, precisely as it might have been established by reference to a given schedule in some book. In order to make these rates perfectly fair, Congress adopted those named in the voluntary contracts previously agreed upon by the parties in interest.

This law embraces all the *essential* features of the act of the Nevada Legislature and the contracts. It gives the right of way, and provides for the sinking of shafts along its line. It gives the dimensions of the tunnel, where it shall start, its length, and what direction it shall have. It provides for branch tunnels, and fully protects the Comstock Lode and any other lode previously located, and adopts the same rate of charges which are named in the contracts.

The law does not adopt any limitation as to time; for it was held that, as long as no payments would have to be made until the mines should be benefited, which could not take place until after the completion of the tunnel, and since all concerned appeared anxious to have it, *all parties would strive to hurry the work along as speedily as possible.*

Compulsory laws for mining tunnels have from experience been found to be a necessity. All the owners on a lode who would be benefited by the construction of such works can seldom be found to agree on one plan; and so it was soon discovered that *all* the owners on the Comstock Lode could not be induced to enter into voluntary agreements, claiming, as several of them did, that after the tunnel should be constructed *they would derive the benefits of drainage and ventilation for nothing.* The owners representing 95 per cent. of the value of the lode, however, entered into agreements, while others, representing principally a number of unproductive mines, remained out.

This was precisely the same difficulty which had been experienced for centuries in other mining countries. We find, in consequence, enactments in the different mining codes making it *compulsory* to contribute to mining works of general utility. These enactments are upon the same principle which gives a city corporation the right to enforce the construction of sewers—every owner on a street is compelled to contribute, or his property, in default, is sold.

In a debate in Congress, which arose from an attempt by the Bank of California to repeal the Sutro Tunnel act, the Hon. M. C. Kerr spoke as follows :

"This tunnel idea stands upon a very common one in application to various other subjects throughout the country, and it is only by the name that is given to it in Nevada that the people are mislead and do not understand just what it means. The country is everywhere familiar with various systems of ordinary sewerage and drainage in cities, towns, and the country. The obvious principles of law, *of just and fair contributions for common advantages and benefits*, on which they are maintained, are well understood. There is no character of monopoly or uncommon hardship about them.

"Now, Mr. Speaker, the whole of this law consists in this simple proposition, that here is to be constructed a sewer, if you please, a drain that will inevitably benefit every owner whose property is in any way reached and drained and ventilated by it. In the city of Washington, and in all the cities of this country, it is a common practice to require the persons who derive advantage from the construction of such works to contribute to their construction originally and to their maintenance thereafter. * * *

In addition to what I have said, I desire to call attention to a further fact, that under the law which it is now desired to repeal, and under the contract which that law adopts, not one of these mining companies or individual miners is required to *pay one farthing to this Tunnel Company* in the way of royalty or anything else until the tunnel shall have been constructed and they shall have begun to *derive advantage from it*. In other words, the entire obligation is strictly reciprocal; its burdens and its benefits go together; they run constantly and perpetually in parallel lines. And the whole assumption, therefore, that there is oppression or injustice or monopoly in this matter strikes me as being very far-fetched and purely unfounded."

Mr. Gregory Yale, an eminent lawyer of California, in the Pacific Law Magazine for April, 1867, reviews the above law as follows:

This is the first act of Congress granting a mining privilege on public land to any individual, or to the public at large. It was evidently intended to be cotemporaneous with the general law under consideration; but it was necessary, for the security of the exclusive privileges granted, that it should be prior in date. In principle, the law assumes the function of regulation, or the administration of the mines, in an important argentiferous locality, by recognizing the necessity of drainage and the equitable adjustment of payment therefor, and for other advantages, according to the benefits derived by proprietors of the lodes cut by the tunnel. It might as well have provided for the payment at once, as the power existed, as to leave it the subject of agreement by a majority in value; or of a forced payment by all, in proportion to benefits, instead of a forced payment, by the minority in value. The minority now pays by compulsion from the majority, instead of being compelled to pay directly by the act. There is no doubt that the lodes benefited are, by this law, subjected to a lien to the extent of the agreements by their respective owners, and the claims of the minority owners are in the like condition by the force of contracts not of their making. The existing mining rules and the regulations prescribed by the Legislature of Nevada are also distinctly recognized.

The principle of *pro rata* payments by the parties benefited, to the constructors of a general tunnel, is a fixed regulation in the mining codes. They are always constructed under the authority of the officers appointed to direct the proper working of the mines. In the Spanish system a tunnel is called a *contramina* or *socabon*, which is rendered in English by the mining term adit, corresponding to the American term tunnel, in the sense used in the Suto act. The royal ordinances promulgated in May, 1783, of New Spain, title X, contain seventeen articles, relative to this and kindred subjects, in great detail, and almost completing a system. By article 2d, it is ordered

that all veins requiring draining, and whose situation will admit of it, and when, in the judgment of the professor of the district, advantage will result from it, the owners shall be obliged to make an adit sufficient for clearing the workings. Article 3d contains the principle of the Sutro act. When several mines can be cleared and kept in order, and each, singly, cannot bear the expense of the construction of an adit, *it shall be made and paid for by all together*, the expense being apportioned among them according to the benefit each shall derive from it when ascertained, it being arranged according to what the poorest mine can pay as the work progresses, so as not to suspend the work, and all shall be assessed and regulated by the mining deputation and its respective professor. * * * *

The following four ordinances of the King of Spain relate to tunnels or contraminas, as they are called in Spanish:

LXXIX. Also, forasmuch as we are advised that many mines are so situated as to admit of *contraminas* being made, and that mines newly discovered may possibly be similarly circumstanced, so that the water might flow out by the *contramina*, or be got out at less expense, which is of great importance, both in regard to the permanence of the mines and their present working: *Wherefore we ordain and command, that wherever there shall be opportunities for making such contraminas, the mine owners shall make them, and each shall contribute to the same*, according to the nature and disposition of his mine, so admitting of being drained by a *contramina*. And that when the mine owners shall not agree amongst themselves to make the same, the administrator-general having inspected and informed himself of the disposition of the ground, and the advantages which would attend the measure, *shall arrange with them to do it*. And that in such case, (such mine owners being agreed,) he shall make such apportionment of the expenses as may be necessary, amongst the proprietors of the mines thereby benefited, assigning to each the contribution he is to make, according to the benefit he may thereby derive, and compelling him to pay and make good such apportionment for the purpose aforesaid. And the ore which may be raised in the course of driving such *contramina* shall go towards the expenses incurred about the same; and any deficiency which may be found shall be apportioned according to the arrangement which the owners, or in default thereof, the administrator shall have made.

LXXX. Also, we ordain and command, that if, in driving such *contramina* or *contraminas*, in pursuance of any such arrangement as aforesaid, *any new mines should be discovered*, not previously discovered from the surface, such mines so discovered in the course of driving such *contramina*, shall, notwithstanding that they may fall within the boundaries of other mines discovered from the surface, *belong to the mine owners who shall have contributed to such contramina*, and each of them shall receive a share of the produce, proportionate to the share of the expenses which shall have been apportioned to him as is aforesaid.

LXXXI. Also, we ordain and command, that if there shall be any mines at a distance from the place where such *contramina* shall have been made, for which reason the owners thereof shall decline to contribute to the expenses of the same, then, when, and so often as it shall be ascertained that the water in such distant mines is *drained off or diminished by means of such contramina*, or that the owners derive any other benefit therefrom, in getting out ore, rubbish, or any other matter whatsoever, *they shall pay to the owners of such contramina so much as shall be rated and estimated by the administrator-general, or the administrator of the department, or the nearest department, as the amount of the benefit derived by their mines from such contramina*,

having regard to the expense to which they would have been put had not such contramina been made, and which is thereby saved to them.

LXXXII. Also, we ordain and command, that if, in any of the mining districts where it may be convenient to drive such contramina or contraminas, the mine owners thereof shall not be disposed to lay out money in driving the same, and any other individual should be willing to undertake the work, the expediency of driving such contramina having been confirmed by the administrator-general, and the commencement thereof having been registered, *he shall be at liberty to drive, and may drive the same to such an extent as he shall think proper, and without regarding any particular limitation of stakes or boundaries; and all the ore and produce which may proceed from the discoveries made in the course of such contramina shall belong to the person who shall have made the same, observing, however, that he shall not take more of the ore of any other person's mine than shall be contained within the cavity of such contramina; and that the party making such contramina shall not be at liberty to extend it in depth, height, or width, beyond the dimensions which shall have been assigned at the commencement of such contramina, and which it is to be understood are to be eight quarters of a vara for the height, and five for the width; and he shall enjoy this preference with regard to the ore, so long as there shall be no other deeper contramina, producing more benefit to the mines aforesaid, for this right is peculiar to the deepest contramina only.*

The parties opposing the Sutro Tunnel claim that the law intended simply a ratification of the contracts, and that Mr. Sutro so understood it. It will, however, be seen from the following extract from a pamphlet addressed to capitalists, printed by Mr. Sutro immediately after the passage of the Sutro Tunnel act, in September, 1866, which was extensively circulated, and read by the parties in interest, that *his* understanding of the law of Congress was clear and distinct:

"After the above preliminary steps had been taken, it was considered necessary, in order to put the enterprise on a still more solid financial basis, to apply to Congress to secure still further rights for the proposed tunnel. At its last session Congress passed a bill, which was approved by the President of the United States, July 25, 1866, entitled "An act granting to A. Sutro the right of way, and granting other privileges, to aid in the construction of a mining and draining tunnel to the Comstock Lode, in the State of Nevada."

RIGHTS GRANTED.

The bill grants:

1st. The right of way through the public domain for seven miles, on or along the Comstock Lode, or any other lode which may be developed or discovered by the tunnel.

2d. The right to select one thousand two hundred and eighty acres of land at the mouth of the tunnel.

3d. The right or title to the mines for two thousand feet on each side of the tunnel, equal to five thousand and eighty acres of mining land.

4th. It makes all the mines of the Comstock Lode, or any other lode benefited by the tunnel, tributary to the same, and *compels* the owners of all those to pay to the Tunnel Company the *same rates of charges* as agreed upon in the above-mentioned contract, and *makes their title subject to that condition.*

Under this act of Congress the Sutro Tunnel is being constructed, and the large sums of money which have already been expended upon the work, amounting to over two millions of dollars in gold, were advanced by capitalists who have implicit confidence that the good faith of the United States will be strictly carried out, and that the provisions of the law shall be promptly enforced when the proper time arrives.

It may be well at this point to call attention to the difficulties of procuring funds for a work as gigantic as that of the Sutro Tunnel. An undertaking which contemplates piercing eight miles of solid rock required some very solid indorsement before capitalists, always timid, could be induced to embark in the work. No tunnel of this magnitude has ever before been undertaken by private individuals. The Mont Cenis Tunnel, which has a length of eight miles, was constructed by the governments of France and Italy. The St. Gotthardt Tunnel, which will have a similar length, is being constructed by the governments of Germany, Switzerland, and Italy. The Hoosac Tunnel has been constructed by the State of Massachusetts, while the great mining tunnels of the Harz and Freiberg were constructed out of the respective treasuries of the kings of Hanover and Saxony.

The Sutro Tunnel act is the first law on the statute books granting a mining privilege in the United States; up to that time all mining claims were held at mere sufferance, to which the Hon. M. C. Kerr refers as follows:

"But it is very clear, Mr. Speaker, that while gentlemen say here that these people had a possessory right in this soil before this last law was passed, they utterly destroy the value that is in that position when they also say that the mines involved in this legislation have very great value, and that out of these mines these same miners have already extracted \$100,000,000 in precious metals. Now, if that be so, it seems to me that for that *shadowy, that unreal, that executory—it is not that much in law—that mere possessory claim of right*, they have been most munificently paid, and ought not to come back here and ask for more. But a further answer to their position is found in the fact that, when the original application to Congress was made, these miners themselves went to work and executed these *voluntary* individual contracts with this Tunnel Company, by which they agreed, whenever the tunnel was constructed, to contribute these several sums to aid its construction and maintenance."

The Hon. Orange Ferris, referring to the same question, said:

"The gentleman from Nevada, [Mr. Fitch] talked about the right which the owners of these mines have acquired. Up to the passage of the Sutro Tunnel act, as it is called, the third section of which gives a royalty to the constructors of the tunnel in case they drain the mines—up to that time there was no law upon the statute book which gave any man in this country a right to one single foot of mining land, with the exception of a small quantity of lands in California, the right to which was acquired under the Mexican title, so called. In all other cases every occupier of every foot of the mineral lands was *merely a squatter*. All the title he had was a mere license, a mere privilege granted by the Government.

"Well, sir, that was the condition of things when this Sutro Tunnel bill was passed. It was passed on the 25th of July, 1866, and the day following we passed the first law that was passed by Congress giving anybody a right to acquire title to a foot of this land; so that at the time that the Sutro Tunnel law was passed, which was one day previous to the passage of the general mining law, as it is called, Congress held every foot of mining land, and *could impose just such conditions as it saw proper upon parties acquiring title to those mines*. The Government owned the mines, and these parties were mere squatters, and were occupying the lands by the allowance of the Government."

Thus it will be seen that Congress had clearly the right to impose just such a tax; and in order that there should be no *evasion* of the law, the third section of the Sutro Tunnel act also provides that its conditions should be expressed in all patents.

In pursuance of the statute, all patents issued by the United States for mines on the Comstock Lode contain the following provision, which is *printed* in all the blanks, which are specially provided for this purpose:

"That the claim hereby granted and conveyed shall be subject to the conditions specified in the third section of the act of Congress approved July 25, 1866, granting the right of way and other privileges to aid in the construction of a draining and exploring tunnel to the Comstock Lode, in the State of Nevada, and the grantee herein *shall contribute and pay* to the owners of the tunnel constructed pursuant to said act, for *drainage* or other *benefits* derived from said tunnel or its branches, the same rate of charges as have been or may hereafter be named in agreement between such owners and the companies representing a majority of the estimated value of said Comstock Lode at the time of the passage of said act, as provided in said third section."

This is the provision from which these parties *want to escape*, and from which they would have escaped had Senate bill 16, without amendment, become a law, and allowed them to make "the *proceedings* for patents so had by such applicants *void and without effect*."

The question now under consideration is, will the Senate

concur in certain amendments attached by the House of Representatives to Senate Bill 16, which, together with the amendments as it came from the House, reads as follows, (leaving out section 2, relating to matters irrelevant to this issue:)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That where applications for patents for mining claims have been filed in the proper district land office, and legal notice thereof given without the appearance of an adverse claimant, and in which cases no further proceedings have been had for the purpose of perfecting title, such applicants shall make final proof and payment on said claims within one year from the date of the passage of this act; and in cases of like applications for patents hereafter filed, the applicants shall, in the absence of an adverse claim during the notice, make said final proof and payment within one year from the date of filing such application, IN DEFAULT OF WHICH THE PROCEEDINGS FOR PATENT SO HAD BY SUCH APPLICANTS SHALL BE CONSIDERED VOID AND WITHOUT EFFECT.

Provided further, That nothing herein contained shall affect or make void the proceedings for patents had by applicants for claims or mines on the Comstock Lode, in the State of Nevada, nor shall it be construed to repeal, impair, or in any way affect the provisions of the act granting to A. Sutro the right of way and other privileges to aid in the construction of a draining and exploring tunnel to the Comstock Lode, in the State of Nevada, approved July twenty-fifth, eighteen hundred and sixty-six.

And provided further, That all persons, companies, or corporations owning claims or mines on said Comstock Lode shall make application for patents within six months from the date of the passage of this act, and in the absence of a *bona fide* adverse claim during the notice make final proof and payment, and file a receipt for such patents in the same manner as hereinafter provided within twelve months from the date of filing such application, or, if already filed, from the date of the passage of this act; and in default thereof, or in default of filing with the register of the land office at Carson City, in all cases where patents have already been issued, an acknowledgment of the receipt of such patent, subject to the conditions therein contained, within twelve months from the passage of this act, such claims or mines shall be open to re-location by other parties in the same manner as if no location of the same had ever been made, always subject, however, to the conditions of the Sutro Tunnel act, approved July twenty-fifth, eighteen hundred and sixty-six: *And provided further,* That unproductive mines located on the Comstock Lode shall not be required to secure patents until the same shall become productive; but it shall be the duty of the owners or claimants of such mines to make a written report of the progress of development in their mines to the register of the nearest land office at the expiration of each year.

It is this last amendment, which does no more than carry out the intention of the Sutro Tunnel act of 1866, which will be resisted by all the power at the command of the Bank of California; for if this passes they will no longer be able to defeat the intention and good faith of Congress.

Nearly all the principal mining companies made their applications for patents immediately after the passage of the

general mining act, over six years ago. They were *then* willing to accept their patents, subject to the conditions therein contained.

At that time everybody was friendly to the enterprise, and the Nevada Legislature memorialized Congress to aid this great work, as appears from the following:

STATE OF NEVADA—SENATE.

Joint Memorial and Resolutions asking Government Aid in the Construction of the Sutro Tunnel.

Whereas the State of Nevada contains within its borders a silver vein called the Comstock Lode; and

Whereas a deep drainage and exploring tunnel, leading into said lode, is necessary to its permanent yield of the precious metals; and

Whereas the character of said lode is now demonstrated to be such as to give ample security to the capital necessary to be advanced for its construction; and

Whereas the following facts in connection with the foregoing are of weighty consideration:

That the mines of said lode have been worked for seven years last past, and during this time have produced sixty-four millions (\$64,000,000) of dollars.

That the present annual yield is sixteen millions (\$16,000,000) of dollars, an amount equal to the total annual product of the Republic of Mexico.

That the expenses of working these mines so rapidly increases with the increased depth, that the sixteen millions (\$16,000,000) of dollars were last year realized at a cost of fifteen million five hundred thousand (\$15,500,000) dollars; and, at the present ratio of cost to production, their resources would, in a few years, be wholly absorbed, and the mines practically abandoned.

That the causes of increased cost are, amongst others, the accumulation of water in the mines, insufficient ventilation, and the increase of heat with depth; and that now, having reached a depth of eight hundred (800) feet, these combined causes will prevent their being worked profitably, on the present plan, below twelve hundred (1200) feet.

That the Comstock Lode is conveniently placed for deep drainage, being situated on the side of a mountain, which declines into a valley, from which a horizontal adit or tunnel four miles long can be constructed, which will cut the mines at a depth of two thousand (2,000) feet.

That this tunnel once constructed, these mines can be profitably worked to a depth of three thousand (3,000) feet, and by means of it at least a thousand millions of treasure will be secured.

That the State of Nevada cannot render material aid to this indispensable work by reason of constitutional inhibitions.

That the mining companies, while producing large amounts of bullion, and distributing it into the channels of trade and commerce, under existing circumstances derives but an inconsiderable profit, and not equal, without Government aid, to the successful prosecution of such an undertaking.

That the taxable property of the United States has been more than doubled within the last eighteen years, and this increase has mainly resulted from the vast additions to the precious metals within this time; and the further addition of one thousand millions would be an increase to that extent of the public resources, and virtually a reduction, to a considerable extent, of the public debt.

That the United States contain, by estimation, one million square miles of mineral lands, the chief value of which is to be found at great depths from the surface; and what is now wanting to enlist private enterprise in the aid

of deep mining, and thus develop incalculable wealth, is a practical proof, upon such a scale as the proposed tunnel would furnish, that our mines are continuous to the lowest levels at which drainage can be secured.

That in all European mining countries the aid of Government is given, on broad financial considerations, to enterprises of this and like character.

That the magnitude of the proposed work, and the results to flow from its completion, as favorably affecting great financial questions, justly assign to it a national consideration: therefore

Resolved by the Senate and Assembly of the State of Nevada, conjointly, That our Senators be instructed, and our Representatives requested, to use their best endeavors to obtain from Congress such material aid as will secure the speedy construction of the deep drainage and mining tunnel known as the Sutro Tunnel.

Resolved, That the Governor be requested to transmit a copy of the foregoing preamble and resolutions, together with the reports of committees, to each of our Senators and to our Representative in Congress.

The recognition of the value of this magnificent undertaking was so great that the Nevada Legislature also passed the following vote of thanks to Mr. Sutro:

NEVADA STATE SENATE—EIGHTEENTH DAY.

THURSDAY, January 24, 1867.

RESOLUTIONS—SUTRO TUNNEL.

By Mr. SUMNER:

Resolved, By the Senate, the Assembly concurring, that the Legislature of Nevada recognize, as already due, and cordially extend the thanks of the people of this State to Adolph Sutro, for his great service in originating the Sutro Tunnel, and urging aid and organization for undertaking work upon the same; and be it further concurrently

Resolved, That we have entire confidence in the ability of Mr. Sutro to present to Congressmen and capitalists the claims of the enterprise referred to, knowing that he will prepare with skill and clearly exhibit the whole statistical and politico-economical argument bearing in his favor, without overlooking or exaggerating any of its merits.

Mr. SUMNER. I have no apology to offer for introducing these resolutions, although they may seem superfluous, inasmuch as we have passed a resolution, under a memorial, touching the subject-matter here referred to. We have already formally commended the project, which is all the originator himself asks. But, sir, I desire that the author of this great enterprise, in which the citizens of Storey county feel a profound interest, should, when he goes from among us to the bankers of the East and of Europe, at least experience for himself that he has the sympathies of the people of this State. And it seems to me that such a special resolution was called for in some measure, inasmuch as merchants in San Francisco that by accident have fallen into seats in the directors' rooms of mining companies whose works are located in this State and upon the Comstock ledge have undertaken to disparage Mr. Sutro's earnest, intelligent, and self-sacrificing efforts, and to belittle the plan which he originated. I say fortunate is that commonwealth which has men of such public spirit as Mr. Adolph Sutro has evinced in connection with the proposed tunnel which is to be called by his name; such indefatigable zeal; such a temper to face the discouragements and endure with complacency and unabated determination the scoffs of the incredulous, and still push forward toward a successful commencement and consummation. I know, sir, that this proposition for a personal indorsement is unusual. But the project named is itself unusual in its need and necessities. If carried out it is to revolutionize, in a great degree, the present system of mining in

the principal mining districts of this State; and will, so far as it proves a successful experiment, indicate what may be done for convenient and exhaustive mining in other and newly-developed portions of Nevada. It is to be reasonably expected that the next journey East of the gentleman referred to, somewhat encouraged and aided by the resolutions we adopt, will result in a positive success. I think that this benediction, if I may be permitted to so entitle it, from the Legislature of Nevada, upon Mr. Sutro, may be of benefit—beneficial to him—that he may be successful; and if he succeed, returning benefits incalculable to my constituency, and to the people of this State, and of this nation.

The resolution unanimously passed.

By Mr. DORAN:

Resolved, That five hundred copies of the memorial and joint resolutions in reference to the Sutro Tunnel, and of the report of the Committee on Federal Relations thereon, be delivered to A. Sutro for distribution at the seat of Government of the United States.

Adopted.

At that time the war by the Bank of California against the Sutro Tunnel had not yet been commenced. At that time they could see nothing but eight miles of solid rock and enormous difficulties in the way. But when they found from the publications on the subject by the projector that the tunnel would also furnish a cheaper mode of transportation, and for the reduction of ores; when they had read the memorial of the Nevada Legislature, setting forth, in the most convincing argument, that this was a great *national work* of immense benefit to the whole country in a financial view, and as a contribution to science, by establishing practically the downward continuation of mineral lodes; when they saw that Congress could hardly refuse aid to this great work; they then came to the conclusion that the tunnel would be of more importance than they had at first supposed, and if Congress was to give aid, that *they, the California Bank ring, should have it*; and in order to accomplish this, they determined to break it up in the hands of its projectors. The war then commenced, and it has been one *unprecedented* in the annals of enterprises in this or any other country.

These parties commenced to vilify the projector and the undertaking itself. They declared him insane, and the project chimerical. They made the mining companies, who had subscribed to the stock of the Tunnel Company to the extent of \$600,000, repudiate their subscriptions. They made

the same companies contribute this identical sum to the construction of a railway from Virginia City to Carson river, which they now claim will be ruined by the completion of the tunnel. They first robbed us, and then charged us with being poor. They next invested the money taken from us in this railroad, and now complain that the completion of the tunnel will curtail the profits of the railroad!

They now declared that the tunnel was no longer needed, for the water in the mines had all disappeared, and the same declaration they make to-day. Read the following extract from Mr. Sutro's speech before a congressional committee:

THEIR OWN LETTERS CONDEMN THEM.

Now, I want to call the attention of the committee for a few moments to some extracts that we have been fortunate enough to get hold of, and at the same time I will reply to the motion of Mr. Sunderland to have that testimony stricken out. They have been denying for years that there is any water in those mines, and that has been their great fight all along; and when we offered this testimony—the extracts from letters written by this same man Day, whose statement I have just read, saying that "this is a dry country, and everybody that looks upon it knows it"—when we have that man's own letters, written to his superior officers in San Francisco from day to day, making reports of the mine, and have got these extracts sworn to by the present superintendent of that mine, he made a motion to have that testimony ruled out. Of course he would like to have that done. We have caught them in the act now. They have been telling untruths, and here we have the proofs on them. We have got them on the record. Here are this man's letters, which he wrote to the president of the company from day to day, stating how much water there is in the mine, and how much they are troubled with water, and that very motion of Mr. Sunderland's is pending before this committee to have that testimony ruled out. On what grounds does he want it ruled out? On some pettifogging law quibble. He says they are "copies of copies." We ought to produce the originals. Why, gentlemen, they are copies made from the press copybook. They are copies of letters sent to San Francisco, and the present superintendent copies them and swears they are correct. The other evidence introduced here in the commissioner's report is not sworn to in any shape whatever. They want to get the truth ruled out by a legal quibble. Mr. Sunderland must think that Congress is a petty justice's court, where prisoners known to be guilty are often rescued on insignificant technicalities of the law. This is the best testimony we have got. It convicts them fully of a most outrageous perversion of facts. It also shows the difficulties of pumping, the breaking down of machinery, and the consequent enormous indirect expense. I will read a few extracts from that man's letters. He writes on June 10, 1868:

"Depth of shaft, 287 feet. I assumed full charge on Monday. Work at shaft is progressing as well as can be expected under the circumstances. We are raising a large amount of water, more than the pump we are using has capacity for."

Then, in the same letter, he says:

"If no accident happens to the pumping machinery within the next two days, the tank and screw drift, with the necessary machinery, will be complete to station the first plunge pump, and the shaft deep enough to swing the

sinking pump for the second lift. That being done, I see no reason why we should not make good progress in sinking."

June 14, he writes:

"Friday we were occupied in making preparations for putting in two 12-inch pumps."

Gentlemen, I wish to call your attention particularly to the fact that these extracts will show what the enormous indirect cost consists of, independent of pumping. The commissioners only gave the presumed direct cost of pumping the water out.

On October 16, 1867, this same man (Day) writes:

"Large amount of water coming in from face of main drift, which is boarded up at present to prevent a run."

October 21: "Large flow of water."

October 22, 1869: "The pump rod to lower pumps broke at 8 o'clock last evening, and has not yet been brought to the surface. *One man killed* this morning by the cable breaking in the pump shaft. It is difficult to form an estimate of the delay it will occasion us."

They do not count the life of a laboring miner. They count the dollars and cents only.

October 24: "Our present flow of water seems to be entirely independent of the water in the old mine, which I regard as indicating the existence of a body of ore to the north, and separate from that worked in the old mine."

November 6: "The water is still rising in the shaft, and now stands about 270 feet from the bottom."

Mind, now, it says 270 feet of water in the shaft. They had to get out 270 feet of water in order to get to work again. Then he goes on to say, in the same letter:

"We are now taking water from the shaft at the rate of 20,000 gallons per hour; and when the machinery (hoisting) is ready for use, we will increase that amount 10,000 gallons. It is impossible, at this time, to form an intelligent opinion of the time that will be required to free the drifts of water."

November 10: "*Our misfortunes, in connection with the strike of water in Ophir, seem to follow us up.* Last Sunday morning, when our second or lower plunger was covered about 60 feet with the rising flood, it very suddenly ceased to throw water, and is now about 200 feet under water. [That's a dry country!] We are building a 500-gallon tank to use with the new engine. With that, and the one now in use of 300 gallons, will enable us to raise to the surface 16,000 gallons per hour. As I stated in my last, it is impossible at this time to form an intelligent opinion of the time necessary to clear the drifts of water. Of one thing I am convinced, however, that *our consumption of wood for the next six months will be perfectly frightful.*"

Recollect, gentlemen, if that tunnel had been made, every drop of that water could have been run out, and under our contracts they only have to pay us \$2 a ton for the ore taken out; and they have had no ore in that mine for five years; yet they protest against that tunnel. We have shown that $\frac{2}{3}$ of the mines have no ore; $\frac{1}{3}$ get the benefit of the tunnel for nothing; only $\frac{1}{3}$ will have to contribute to it.

December 18: "Our progress in lowering the water is quite satisfactory. To-day it stands in the new shaft about 220 feet deep."

December 19: "*We are bending all our energies in our endeavors to free the new works from water, and gradually gaining upon it.*"

It does look like a dry country—"we have now 220 feet of water in the shaft!"

December 22: "*We are working all our machinery to utmost capacity, consequently accidents are liable to occur, but will guard against them as much as possible.*"

December 24: "I assure you *there will be no let up*, and I believe few drawbacks, until we have the water well under control."

December 25: "We have just succeeded in completing repairs to the lower plunger or middle pump, and made connection with the lower pump."

December 27: "Yesterday evening we had the water at a lower point than at any previous time; but immediately after the first earthquake shock, it came up in the shaft some 25 or 30 feet in a short time."

December 28: "We have the water down 25 feet below lower plunge pump, which leaves 175 feet in shaft."

December 31: "Am pleased to be able to report to you a decided gain upon the water to-day—155 feet from the bottom; but it is very stubborn, and requires heavy and persistent work. I have no doubts as to the result."

January 5, 1870: "We are crowding the work steadily in the shaft to-day. We have only 130 feet of water."

January 10: "Since my last, we had the misfortune to lose one of our large tanks."

January 12: "We do not succeed in getting the water in the shaft any lower than heretofore reported."

January 17: "We are still making vigorous battle with the water, and driving it slowly down. We have it now within 110 feet of the bottom."

January 25: "Owing to some delay in repairing tanks, the water is considerably up in the shaft."

January 28: "We do not make rapid progress; but we do gain, and hold all that we get, which is encouraging, and shows that it is entirely a question of time as to when the new works will be cleared of water."

January 31: "Mount Davidson has been shaking again, and consequently the Ophir water has increased, as usual in such cases. Sunday morning there was only 74 feet of water in the shaft, and going down nicely. To-day there is 95 feet, notwithstanding pumping and bailing has been going on without any interruption."

February 3: "There was some delay last night, both with pump and large tank, consequently the water in shaft is higher to-day than usual."

February 12: "Water at No. 1 at 600 foot station. It sticks to that point with great tenacity; but we are bound to get the best of it in time. We will be compelled to stop our large tank about three days next week, to refill the large cogwheel."

February 14: "This water is a monster elephant, but I know we can handle him; but it won't do to relax in the least the grip we have on it. In No. 1 the water is about 150 feet. In old mine it has lowered in last 48 hours 3 feet."

Now, what reliance do you place on that man? He told the commissioners it was a dry country, and they believed him.

February 15: "Water in No. 1, 160 feet; filling wheel will be completed this evening."

March 4: "We are repairing again to-day at shaft No. 1. About one half the cogs in large wheel gave out last night."

You see these are the indirect costs. These people have not mentioned them at all. They were working there four years in order to get down a few hundred feet in a shaft.

March 5: "The repairs at shaft No. 1, spoken of yesterday, are completed, and machinery moving as usual; 150 feet of water in shaft No. 1."

March 18: "Water in No. 1, 65 feet."

March 21: "The bucket to our lower pump has been failing for the last few days. If we succeed in replacing with a newly-dressed bucket, there will be but little delay in pumping. Should we not succeed in this, an extra pump, which we have in readiness, will have to be lowered, which will cause at most only a few days' delay."

March 22: "At No. 1 we have not succeeded in drawing bucket from lower pump; have commenced active preparations for putting in extra pumps."

March 24: "There is to-day 100 feet of water in No. 1; lower pumps working to about half capacity."

March 26: "Water to-day in No. 1 is about 80 feet; will commence filling large cogwheel this evening. You can assure Ophir stockholders that we are doing all in our power to reduce this water. Delays to some extent are unavoidable. There is no time when there is not a large stream of water coming to the surface of Ohpir shaft, and it must tell before long."

March 31: "Have just commenced lowering pump. Putting this pump in place is attended with so many difficulties that it is impossible to say with much certainty the length of time that will be required, but probably about three days."

April 1: "At shaft No. 1 we are still engaged in putting down pump; getting along very well; foundation to pump-bob is becoming a little shaky, and it may be necessary to overhaul it before making our next great effort at lowering the water."

April 9: "At shaft No. 1 we have repaired old pump, and it is doing good work."

April 11: "At shaft No. 1 the drift is free of water. And right here allow me most sincerely to tender you, as president of the Ophir S. M. Co., and your associate trustees, my heartfelt thanks for the generous co-operation with which you have sustained me in this fight; for truly a battle it has been of no ordinary magnitude, and I feel that a great weight of anxiety and responsibility has been removed."

Recollect, now, after pumping for years to get into that drift—doing nothing but pumping—he comes at last and says: "No. 1 is free from water."

He thought he had got rid of the water, but he had not. He congratulated them too soon. That was April 11th.

On May 7th he writes: "Increase of water referred to yesterday still continues, but I have no fear of being flooded."

May 16: "Water about as last reported."

May 26: "Quite an increase of water."

June 3: "Last night, about midnight, *the irons on one end of our pitman rod broke*, which renders our pumps useless until repaired, which will not be before to-morrow morning. Consequently our drifts are filling with water, but I do not apprehend any serious damage to them."

June 4: "Started pump this morning at 7 o'clock."

June 9: "The pump is laid up to-day, owing to the breaking of some of the upper gearing last night."

June 10: "At shaft No. 1, *pumping machinery is very much demoralized*. The very best that we can do, it will probably require ten or twelve days before we can regain the ends of our drifts and resume work. I regret this very much, but do not see any way by which this accident could have been foreseen or avoided."

June 14: "Depth of water, 150 feet."

They had it dry before; now it was filling up again.

June 16: "Water is 175 feet in depth, and slowly rising."

June 20: "Pump started last evening at 7 o'clock. The water is now lowered to a depth of 60 feet."

They put in so many more pumps that they could master the water at last.

On September 2 he says: "The water is wholly under control of the pump."

February 16: "In the upraising there is a slight increase of water to-day, somewhat impeding progress of the work."

Then there is more trouble of water; but I will read no more. This man Day, I must remark, was discharged last December, because the bank ring lost control of the mine, and a new set of trustees came in; this is the first time we have been enabled to get at any of the mining company's books. The new superintendent came in January, and he writes on January 2, 1872, this year:

"There are three 12-inch plunger pumps, and one of 10 inches in service and the fifth one, 10 inches, is under construction, and will be ready to put

in place as soon as needed. *We are raising 146,000 gallons of water per twenty-four hours."*

That disposes of this water question. I will comment on it no further. The commissioners went out there to find out all about these mines, and the quantity of water; and the difficulties of pumping it out, direct and indirect, was one of the principal questions to be decided. But they took the superintendent's statements, who told them that it is a dry country, and they made their report, based upon the statements furnished by these people.

In order to show that the influx of water, ill ventilation, and great heat are the main sources of trouble at the greatest depths attained, which can only be overcome by the completion of the Sutro Tunnel, a few extracts from the San Francisco weekly stock report, which derives its information directly from the letters addressed by the superintendents to the San Francisco offices, referring to the Crown Point mine, one of the deepest, are here reproduced:

October 17, 1873.—Water, *scalding hot*, flows so freely from the main drift of the 1,500-foot station that it has been considered unsafe to proceed with the drift, as the pump is now working to its fullest capacity.

October 24, 1873.—The main south drift on the 1,500-foot level, which was stopped on account of the *heavy flow of water*, was again started up on Wednesday last, the water having sufficiently subsided to permit a resumption of the work, although *the heat is so intense* that the progress of the work must necessarily be slow.

October 31, 1873.—The main south drift on the 1,400-foot level has been stopped on account of the great heat and *bad air*.

November 21, 1873.—The main south drift on the 1,500-foot level has been suspended on account of the intense heat.

November 28, 1873.—A steady stream of water, *hot enough to cook an egg in five minutes*, continues to flow from this level. The pumps are taxed to their utmost capacity.

December 5, 1873.—The work of draining the 1,500-foot level is being prosecuted vigorously, though owing to the large flow of water the pumps are taxed to their full capacity.

December 12, 1873.—On the 1,500-foot level the water from the face is *so intensely hot* as to make it almost impossible for the miners to stand the great heat and perform their work.

December 19, 1873.—There is no work of any amount being done at the 1,500-foot level, owing to the *heavy flow of boiling hot water*. Occasionally, however, when the water recedes a little, the miners go in there and work until driven out again. The pump is taxed to its fullest capacity.

December 24, 1873.—The heavy flow of hot water from the main south drift on the 1,400-foot level still continues, greatly impeding the progress of the work.

These extracts might be continued almost *ad infinitum*, in regard to this and other mines; and how any one can have the assurance, in the face of all this, to state that the mines have passed the water belt, only shows to what desperate straits the opponents of the Sutro Tunnel are

driven. That the water does not come from the surface is proven by its great heat.

We next find these companies openly defying the law. Amongst the records of the General Land Office will be found protests signed by these mining companies refusing to hold under a United States patent. The following, filed by the Savage Company, is a fair sample:

The Savage Company Decline to Accept Patent.

At a meeting of the board of trustees of the Savage Mining Company, held on the second day of March, A. D. 1870, the following preamble and resolutions were unanimously adopted:

Whereas this board has been advised that a patent for the mining ground which this company claims and has in possession has been issued by the United States, and is now in the hands of the register of the United States land office for the district of Nevada, for the purpose of being delivered to this company, and that by its terms the said patent is made subject to the rights and privileges conferred upon A. Sutro, his heirs and assigns, by the act of Congress of the United States approved July 25, 1866, entitled "An act granting to A. Sutro the right of way and granting other privileges to aid in the construction of a draining and exploring tunnel to the Comstock Lode, in the State of Nevada," and that it is a condition of said patent that this company shall contribute and pay to the owners of said tunnel certain charges for drainage and other benefits derived from said tunnel, at the rates mentioned in certain agreements referred to in the third section of said act:

Therefore be it resolved, That this company will not accept or receive any patent from the United States for the mining ground claimed by this company, if such patent be subject to the provisions of the act of Congress of the United States approved July 25, 1866, and entitled "An act granting to A. Sutro the right of way and granting other privileges to aid in the construction of a draining and exploring tunnel to the Comstock Lode, in the State of Nevada," or if by such patent there shall be imposed upon this company the obligation to make any payments whatever to said Sutro or other owners of said tunnel; and this company declines to accept, receive, or hold under the patent which has been issued by the United States, and which, as this board is informed, is now in the hands of the register of the United States land office for the district of Nevada for delivery to this company.

* * * * *

ALPHEUS BULL,
President Savage Mining Company.
E. B. HOLMES,
Secretary Savage Mining Company.

It will be asked under what title will they hold after they have refused to take a patent? They mean to hold under the local mining rules and the following provision of the general mining law of 1866, passed subsequent to the Sutro Tunnel act:

That the mineral lands of the public domain, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and occupation by all

citizens of the United States, and those who have declared their intention to become citizens, subject to such regulations as may be prescribed by law, and subject also to the local customs or rules of miners in the several mining districts, so far as the same be not in conflict with the laws of the United States. [This, however, has been repealed.]

And the following clause in the amended mineral land act of 1872:

That all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners, in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States.

Both the mineral land acts of 1870 and 1872 contain the following proviso protecting and confirming the rights of the Sutro Tunnel Company:

And nothing in this act shall be construed to repeal, impair, or in any way affect the provisions of the act granting to A. Sutro the right of way and other privileges to aid in the construction of a draining and exploring tunnel to the Comstock Lode, in the State of Nevada, approved July 25, 1866.

These were inserted in both instances to frustrate the effect of clauses contained in these bills, intended in an underhanded manner to affect the rights of the Sutro Tunnel Company.

These parties, bent upon our destruction, as soon as they found work on the tunnel was going ahead, not satisfied with their secret machinations to ruin us, now had the hardihood to come out openly. Thus we find that in the spring of 1870 an open attempt was made to repeal the third section of the Sutro Tunnel act by the following bill:

An act explanatory of the act of July 25, 1866, relating to the Sutro Tunnel.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the third section of an act entitled "An act granting to A. Sutro the right of way, and granting other privileges to aid in the construction of a draining and exploring tunnel to the Comstock Lode, in the State of Nevada," passed July 25, 1866, shall not be so construed as to impose an obligation upon any person, company, or corporation owning claims or mines upon said Comstock Lode, to contribute or pay to the owners of said tunnel any charges except in accordance with the terms of such agreements as have been or may be made between said persons, company, or corporation, and the owners of said tunnel; nor shall it be so construed as to relieve the owners of said tunnel from the performance of any of the conditions in said agreements covenanted therein to be performed on

the part of the owners of said tunnel, nor from any of the consequences legally attaching to a failure to perform such conditions.

SEC. 2. It shall not be necessary to express any condition in any grant which may hereafter be obtained from the United States by the owners of said mines; but all persons, corporations, or companies obtaining grants or patents shall be bound by the terms of all contracts made with the owners of said tunnel by them, or their predecessors in interest.

This bill was referred to the House Committee on Mines and Mining, and was reported on unfavorably by 8 out of 9 members, the dissenting member being Mr. Sargent, of California.

Judge Orange Ferris, the chairman of the committee, thus spoke of this bill:

Repeal this law, strike out that section—they call it explanatory—and it is taking the heart out of it; it is leaving nothing but the empty carcass. Repeal it at once, and what do you find? Why, sir, the gentleman from California has told us in his minority report that when the owners of the mines desire them to be drained they will do it, and that, too, without any law of Congress. Ah! does the gentlemen suppose that they can build that tunnel and get the right of way without a law of Congress? Perhaps they may do those things over in California. Under all other circumstances, unless the power of the nation is thrown on their side, the power of corporations is so great and so overshadowing that poor and humble individuals have to give way before them. But I apprehend they never will build that tunnel until they get a grant from Congress. Take away these rights from Mr. Sutro, and what will be the result? It may not be during this Congress; with all their assurance these parties would not have the face, after all they have said, to come and ask this Congress to grant them the privilege of constructing this tunnel with certain rights; but when the next Congress assembles you will have their representatives at your door setting forth, what is true, that there is an absolute necessity for the construction of this tunnel, otherwise the mines will become useless and the Government will lose the revenue derived from them. And they will ask a grant from Congress, not with the limited rights attached to this grant to Mr. Sutro, but they will ask double and treble what is attached to this grant, and they may find a Congress that will yield to their demands.

This, Mr. Speaker, is a question of the plighted faith of the nation, and it is for this Congress to determine now when they have given Mr. Sutro this franchise, and when by the terms of the contract, on which so much stress has been laid, he has at least twelve years to complete the work, whether they shall withdraw what they have given, or shall tell him to go on and complete the work which he has commenced in good faith. I think it is the duty of this House at this time not to turn its back upon an enterprise which for magnitude assumes national importance, which is undertaken in good faith, and which, if Congress will stand by its plighted faith, will bring to its aid capital sufficient to build it long before the expiration of the time limited by these very contracts.

After a great struggle in the House, in which the Bank of California brought all its power to bear to carry the bill, it was defeated by a vote of 124 to 42.

This open attempt to repeal the vested rights of the

Sutro Tunnel Company having failed, these parties immediately after tried to accomplish the same purpose in a stealthy manner.

Not much more than a month after their defeat in the House, the following debate in the United States Senate took place, which will explain itself:

WEDNESDAY, April 27, 1870.

The next bill on the calendar was the bill (H. R. No. 562) to amend an act granting the right of way to ditch and canal owners over the public lands, and for other purposes; which was read.

The VICE PRESIDENT. The amendments reported by the Committee on Mines and Mining will be read.

Mr. STEWART. I am instructed by the Committee on Mines and Mining to withdraw the amendments. After having consulted with the Commissioner of the General Land Office I think they are unnecessary.

The VICE PRESIDENT. The Senator from Nevada, on behalf of the Committee on Mines and Mining, proposes to withdraw the amendments reported by the committee to this bill. The Chair hears no objection to that course, and the amendments will be regarded as withdrawn.

Mr. TRUMBULL. I inquire of the Senator from Nevada whether there is anything in this bill, or whether it is intended in any way to interfere with the rights which were granted to Mr. Sutro?

Mr. STEWART. Not the slightest. There is nothing in the bill which will possibly touch him.

Mr. TRUMBULL. My attention was called to it by Mr. Sutro. He was apprehensive that the thirteenth section might interfere with some rights granted in the former act to him. If the Senator has no objections I will send to the Chair a proviso that this shall not interfere with that act.

Mr. STEWART. I do not know why the Senator should want to send this bill back to the House of Representatives for a matter of that kind. It certainly contains nothing that does interfere with Mr. Sutro's rights. It was suggested that the amendment might be construed in that way, but it will not have that effect. Sutro's act was a special act granting to him certain special rights on the Comstock Lode. A general act would not interfere with it anyhow. Then, again, there is a special reservation in this very section in these words:

"*Provided, however,* That nothing in this act shall be deemed to impair any lien which may have attached in any way whatever to any mining claim or property thereto attached prior to the issuance of a patent."

That was a special act giving him the grant of certain privileges; and a general act would not abrogate it.

Mr. TRUMBULL. A general act might interfere with the grant of a special act. The section is rather broad, and I am not prepared to say what may be its precise effect.

Mr. STEWART. Another thing. His act applies to quartz lodes. This section only applies to placer mines. They do not apply to the same subject-matter at all. It has no more effect on Sutro than would the grant of a piece of land in Illinois by Congress have effect upon him. They are different subjects-matter. These are sections extending the pre-emption laws to placer claims. The language is:

"That the act granting the right of way to ditch and canal owners over the public lands, and for other purposes, approved July 26, 1866, be, and the same is hereby, amended by adding thereto the following additional sections, Nos. 12, 13, 14, 15, 16, and 17, respectively, which shall hereafter constitute and form a part of the aforesaid act."

And further:

"That claims usually called 'placers,' including all forms of deposit, excepting veins of quartz or other rock in place, shall be subject to entry and patent under this act under like circumstances and conditions and upon similar proceedings as are provided for vein or lode claims."

This bill does not apply to quartz claims at all. Why, then, send the bill back to the House?

Mr. TRUMBULL. I apprehend that there will be no difficulty in the House concurring in an amendment of this kind. The bill is not intended, as I understand by the Senator from Nevada, to affect any rights under the act to which he has referred; but he will see that this thirteenth section is very broad:

"That where said person, corporation, or association, they and their grantors, shall have held and worked any claim authorized to be patented by this act or the act to which this is amendatory"——

"Any claims"——

Mr. STEWART. Any placer claims.

Mr. TRUMBULL. Where a person has worked any claims authorized to be patented——

"for a period equal to the time prescribed by the statute of limitations for mining claims of the State or Territory where the same may be situated, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this act, in the absence of any adverse claim."

I am not sufficiently advised as to the fact whether there may not be placer claims that might interfere with these rights in this way.

Mr. STEWART. I am, perfectly.

Mr. TRUMBULL. As it is not intended to interfere with it, and the parties interested in that claim suppose it may interfere, I cannot see what objection the Senator can have to accepting the proviso which I propose to offer. There can be no objection certainly, except that it will require the concurrence of the other House.

Mr. STEWART. I have objection to sending this important bill back to the other House in the state of business there.

Mr. TRUMBULL. There is no trouble in the House in concurring in the amendment. I will send my amendment to the Chair, and I hope it will be adopted. I think the Senator will agree to it when he hears it. I move to amend the thirteenth section by adding to the proviso it contains the words which I send to the Chair.

The words proposed to be added were read as follows:

"Nor to repeal, impair, or in any way affect the provisions of the act granting to A. Sutro the right of way and other privileges to aid in the construction of a draining and exploring tunnel to the Comstock Lode in the State of Nevada, approved July 25, 1866."

Mr. STEWART. I am most certainly opposed to that. I am opposed to any more legislation about Sutro; for him or against him. I am opposed to any more of that humbug, one way or the other. It is a mere advertisement for Sutro.

Mr. TRUMBULL. If the Senator is opposed to any legislation for or against Sutro, let this amendment go on the bill, and that will be the end of it.

Mr. STEWART. No; it is simply an advertisement of Sutro's tunnel. You find it all the time in the papers. All these propositions are mere advertisements of it. This amendment has nothing to do with the bill. It does not apply to the same subject-matter, and I do not propose to make every particle of our legislation in regard to mines the machinery for advertising Sutro's scheme. That is all it is. This section of the bill simply applies to placer claims; and there is a reservation that is complete and perfect, so that it cannot possibly affect him.

Mr. TRUMBULL. The Senator from Nevada speaks with some warmth

with regard to the matter. I certainly do not wish to impair the effect of the bill at all; but it is suggested to me that apprehensions are entertained that this bill would interfere with rights under the law specified in the proviso which I have offered. The Senator from Nevada does not intend it that way. The Senate does not intend to pass a bill indirectly to effect an object in this way. It does relate to the same subject-matter. The subject of this section is mining, obtaining title to mining property. That it has effect on the claim of Mr. Sutro I am not prepared to say as a lawyer. I have not sufficiently examined to decide that point; but those who have examined it think it might be construed to affect his claim.

Mr. STEWART. Any respectable lawyer in the world who has examined it knows it will not affect it.

Mr. EDMUNDS. Then the amendment will do no harm; let it go.

Mr. STEWART. No; I do not propose to have this bill advertise Sutro.

Mr. EDMUNDS. You are advertising him now.

Mr. STEWART. Our tables have been filled for the last two or three years with all sorts of publications about Sutro and his tunnel. He seems to have been tunneling Congress, and not the mines. He never will make his tunnel.

Mr. FOWLER. In the Committee on Mines and Mining I gave my consent to the bill with the understanding that it should not touch the rights of any person. Not being thoroughly acquainted with the subject, I was not prepared to judge of the mining interests it would affect. Our attention was brought to this very matter, however, and the Senator from Kansas [Mr. Ross] and myself addressed a letter to the Commissioner of the General Land Office, to which he replies that it may affect the rights of this party. He says: "The design and scope, therefore, of section thirteen are not entirely clear to my apprehension." I, of course, do not understand the rights and interests of these parties in the mining sections of the country, because I have not had much opportunity to look into the subject-matter.

Mr. STEWART. Will the Senator hand me that letter?

Mr. FOWLER. Certainly.

Mr. TRUMBULL. If the statement just made is correct, the amendment certainly had better be adopted.

Mr. COLE. I have some amendments that I should like to offer to this bill.

Mr. EDMUNDS. Let this one be acted on now, as we have been talking about it.

Mr. HARLAN. As objection is made to the amendment I think the bill had better go over.

The VICE PRESIDENT. The bill will be passed over.

THURSDAY, April 28, 1870.

MINING CLAIMS.

The PRESIDING OFFICER. The calendar is now in order. The first bill to be considered to-day is House bill No. 562, which was ordered to be placed at the head of the calendar by unanimous consent yesterday.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R., No. 562) to amend "An act granting the right of way to ditch and canal owners over the public lands, and for other purposes."

The PRESIDING OFFICER. There is an amendment pending, offered by the Senator from Illinois, [Mr. TRUMBULL.]

Mr. EDMUNDS. Let it be read.

The Secretary read the amendment, which was to insert at the end of the thirteenth section the following:

"Nor to repeal, impair, or in any way affect the provisions of the act granting to A. Sutro the right of way and other privileges to aid in the construction of a draining and exploring tunnel to the Comstock Lode, in the State of Nevada, approved July 25, 1866."

Mr. TRUMBULL. I think that amendment which I offered, instead of

coming in at the end of the thirteenth section, should come in at the end of the bill, and be changed so as to read: "That nothing in this act contained shall be construed to repeal," &c. Let the Secretary alter the wording of it in that way.

The PRESIDING OFFICER. The question is on the amendment offered by the Senator from Illinois.

The amendment was agreed to.

Memorandum.—The ayes and noes were not called for, but the vote appeared to be unanimous in favor of the amendment, with the exception of a solitary nay.

Other attempts were made to smuggle in suspicious legislation, which, however, were always discovered in time either to defeat them or to have the bills amended so as to protect our rights. Now these parties are again at work, and have tried their hand once more to throw a cloud upon our title, so *our credit may be destroyed*.

Senate Bill 16, containing a provision concocted with satanic ingenuity, passed the Senate while these parties knew I was absent in Europe. It was intended as the assassin's stab in the dark. Fortunately I returned in time to discover the iniquity, which was not understood by my best friends, none of whom, though able lawyers, could see the scope of that bill until it was pointed out.

The objects which it seems were sought to be attained by this bill are fourfold:

1. To allow the acceptance of the terms of the Sutro Tunnel act, implied *by an application* for patents, to become void by the operation of law, so that it shall *no longer* be evidence of such implied acceptance.

2. To allow not only the application, but *all the proceedings* for patent so had by such applicants to become *void and without effect*, which might be construed to make void also the proceedings for patents already issued, especially in those cases where the duplicate receipts have been stolen.

3. To enable these parties to speedily secure a *new* patent without the Sutro Tunnel clause, should they, towards the end of the session, succeed in smuggling in a repeal of the Sutro Tunnel act at so late an hour that Congress could not correct the error before another session.

4. To allow them, in a new application for patents, to enlarge and float the boundaries of their claims further

east, in order to cover the country in which late developments give every reason to suppose that the Sutro Tunnel will make large and independent discoveries of lodes.

It is in this subtle and underhanded manner that the "*California Bank ring*" will carry out their boast that "they will *set aside a law of Congress*," and rob the Sutro Tunnel Company of its vested rights; for openly they dare not and cannot succeed in accomplishing that purpose.

The following opinion, by the Hon. J. S. Black, refers to this bill:

WASHINGTON, D. C., March 18, 1874.

DEAR SIR: Agreeably to your request, I have examined the law granting certain rights, privileges, and franchises to the Sutro Tunnel Company, and looked into the history of the legislation upon the subject. I have also examined the pending Senate Bill No. 16. It does not appear on the face of the bill that its object is to deprive you of your rights; but if passed, it might seem to authorize such proceedings in the land office as would diminish the securities by which you hold them. Under this bill, if it passes without amendment, a little ingenuity and a little dishonesty, compounded in proper proportions, would probably enable the workers of the Comstock Lode, or some of them, to get patents free from the condition now imposed upon them by the Sutro Tunnel law.

An amendment declaring that this law shall not affect your rights or authorize the issue of a patent for any part of the Comstock Lode in any other form than that directed by the Sutro Tunnel law, would be perfectly proper, and in a degree at least necessary to save you harmless. But suppose the parties decline for an indefinite time to take out patents? I think they could not defeat your right in that way, but they would leave you without the legal security which the law intended to give you, and expose you to some danger from their machinations. To make you quite safe, the law now pending should contain a proviso requiring them to make their applications within a certain limited period, under the penalty of forfeiting their claims. It is true that they have certain equitable rights without a patent, and of these they ought not to be deprived, except for some default of their own. But there is no injustice in compelling a man to perfect an inchoate title, and so define his legal rights that neither he nor his neighbor can hereafter encroach upon one another.

You must not forget the animus which has prompted their proceedings heretofore. It is manifest that they would, if they could, take your clearest rights away, and strip you and your associates of all the privileges which Congress has granted. No doubt they sincerely believe it a good act to deprive you of your property altogether. It is perilous to deal incautiously with an adversary who thinks it right to do wrong.

Yours, truly,

J. S. BLACK.

A. SUTRO, Esq.

The Commissioner of the General Land Office, Mr. Drummond, in a letter which, if not signed by him, might be taken for the argument of an attorney employed by the Bank of California, gives it as his opinion that Senate Bill No. 16 does not interfere with the rights of the Sutro

Tunnel Company, while able lawyers think it does; he also declares that there is no necessity for the amendments to the bill in question.

No necessity indeed; the parties opposed to this great work caught in attempt after attempt, underhandedly, to repeal the vested rights guaranteed by the United States Government! These same parties filing protests in the General Land Office, defying the execution of a law of Congress; and the Commissioner of the General Land Office tells us that there is no necessity for any amendment! Has the Commissioner ever tried to procure funds for a large and difficult undertaking? If he had he would know that the slightest cloud thrown upon the rights of a company is ruinous. Capitalists are skeptical and timid, and these attempts by the Bank of California to question the right to collect the tolls guaranteed by an act of Congress are sufficient to destroy the credit of the Company and will make it impossible to complete the work.

It is true there is no necessity for the Government keeping its good faith; it might break it, and it would still exist. General Banks, in a speech on the Sutro Tunnel, speaks of what may be considered a necessity or not. He said:

IS IT A NECESSITY?

There is no necessity for our being here; there is no necessity, Mr. Speaker, for you or any other member to be in the Speaker's chair. The world can get along without us. The House of Representatives might adjourn, and the world still be well ruled and governed.

There was no necessity for the cotton-gin, the power loom, the steam-engine, the steamship, the locomotive, the sewing machine; there was no necessity for the railway; there was no necessity for the telegraph; we were getting along very well without such things. I can remember when an engineer appeared in the neighborhood of Harvard University for the purpose of surveying a route for a railroad from the city of Boston to the city of Fitchburg, represented by my honorable friend, [Mr. Crocker,] a man came out of his house with an axe on his shoulder, and said he would split open the head of any man who should undertake to survey a route for a railroad through his lands. He evidently thought there was no necessity for a railway in that part of the country at least. King Lear said age was unnecessary.

There was no necessity, in the estimation of many wise men, for many of those things that we regard as improvements of great importance. So in that sense there is no necessity of this tunnel for ventilation or drainage. It would be better for the miners if they could be relieved of the presence of water in the mines, and breathe pure air while at work. But what matters it to the capitalists whether they have it or not, whether the miners die in

the deep recesses of the mountain or not? There is no "necessity" for the Government to aid them in any way. But the great heart of this House and of the people of this country will take a different view of it. And though they may say in a religious and reverential spirit that there is no necessity for anything that man can do, there may be many things that he can do to improve the condition of his race, to elevate the character of the Government, to strengthen its hold upon the affectionate and kind remembrance of those who shall come after him. So in this sense there is a necessity for our doing this work.

Necessity! why, sir, there is no necessity for necessity itself! It is a supererogation. We could get along without what are called necessities, if we could escape them. So we can get along without this enterprise to which our attention is now directed.

The amendment will be considered a necessity, if the good faith of the Government is to be carried out, for we find these parties engaged in raising large sums of money, ostensibly for lawsuits to be commenced in Nevada, but more likely to be used in Washington for corrupt purposes, as will appear from the following document:

SAN FRANCISCO, January 12, 1874.

Meeting of the Board of Trustees of the Ophir Gold and Silver Mining Company.

Present: Messrs. Grayson, Locan, Hall, Hassey, Lissack, and Peart.

The President presented the following report, viz:

It is hereby agreed by the undersigned, Mining Companies owning mines upon the Comstock Lode, in Storey county, State of Nevada, that they will, and hereby do, jointly employ R. S. Messick, of Virginia City, and C. J. Hillyer, of Washington, as their attorneys at law, to institute and carry to a final decision, under the direction of the committee hereinafter provided for, such legal proceedings as may be necessary to secure a final judgment denying the validity and estopping the enforcement of the claim wrongfully preferred by the Sutro Tunnel Company, to a royalty of two dollars per ton upon the ore raised from the mines of said companies, or any claim upon the part of said Tunnel Company to charge said mines in any manner other than in accordance with the terms and stipulations of contract made or to be made between it and the Mining Companies respectively.

J. C. Flood, R. T. Morrow, J. D. Fry, Benjamin Peart, and I. L. Requa are hereby appointed a committee to manage said litigation, and from the fund hereinafter provided for to defray the expenses of the same, including the fees of said attorneys, and of such other attorneys as, upon the approval of said Messick and Hillyer, the committee may deem it advisable to employ.

The first meeting of said committee shall be held upon a call by a majority of its members, and it shall organize by the election from its members of a president and a treasurer, and by the appointment of a secretary. All subsequent meetings shall be held upon an order by the president, or by a majority of the committee. The committee shall have power to fill vacancies occurring in its own membership, and a majority of the committee shall constitute a quorum for the transaction of all business.

For the purpose of defraying the expenses of said litigation, the said committee are hereby empowered to levy by resolution assessments from time to time, as may by it be deemed necessary, upon each of the undersigned companies, provided that each assessment shall be levied upon all the companies at the same time, and provided, further, that the total amount of all the as-

assessments levied shall not exceed for each of said companies, respectively, the amount herein set opposite the name of said companies, to wit:

Name.	Amount.
Alpha Consolidated.....	\$1,200 00
Bacon Mill and Mining Company.....	80 00
Best and Belcher.....	2,188 00
Belcher Silver Mining Company.....	43,680 00
Bullion.....	2,500 00
Caledonia.....	2,000 00
Central.....	1,080 00
Chollar Potosi Mining Company.....	7,000 00
Confidence Silver Mining Company.....	1,000 00
Consolidated Virginia.....	39,960 00
Consolidated Gold Hill Quartz Mill and Mining Company.....	213 00
Crown Point.....	48,000 00
Empire Mill and Mining Company.....	250 00
Exchequer.....	800 00
Gould and Curry.....	4,500 00
Hale and Norcross.....	3,600 00
Imperial Silver Mining Company.....	2,500 00
Kentuck.....	2,250 00
Ophir Silver Mining Company.....	8,316 00
Overman Silver Mining Company.....	9,600 00
Savage Mining Company.....	5,680 00
Segregated Belcher Mining Company.....	2,500 00
Sierra Nevada Mining Company.....	2,000 00
Yellow Jacket Mining Company.....	1,683 00
Challenge Consolidated Mining Company.....	750 00
Eclipse, Winter, and Plato Consolidated Mining Company.....	750 00
Central.....	1,500 00
French Gold Hill Mining Company.....	

\$201,580 00

And provided further, That the assessments shall only be levied at such times and in such amounts as shall be needed to defray the legitimate expenses of such litigation, and that the aggregate amount of each assessment shall be apportioned between the said companies substantially (omitting small fractions) in the proportion of the amounts above placed opposite the names of the companies.

Each of the undersigned companies agrees to pay to the treasurer of said committee the amount of each assessment levied upon it as above provided within thirty days from the time of receiving from the secretary of said committee written notice of the levying of said assessment.

Each of the said companies further agrees to permit the use of its name as plaintiff in any suit or legal proceeding which said committee shall deem it advisable to commence for effecting the purpose above stated, and that its name shall not be withdrawn without the consent of said committee, provided that the entire expenses of such suit or proceedings shall be paid by said committee from the fund above provided for, and that the committee shall have the entire direction and management of the same.

On motion of Hassey, seconded by Grayson, it was unanimously

Resolved, That the president and secretary of this company be, and they are hereby, authorized and directed to make and execute, in the name of this company, a contract or agreement in accordance with the foregoing instrument, binding this company, in connection with other companies on the *Comstock Lode*, to litigate the claim of the Sutro Tunnel Company to collect a royalty upon ores raised from mines of said companies on said *Comstock Lode*.

(Signed)

Jos. MARKS,

Secretary.

STATE OF CALIFORNIA, } ss.
 City and County of San Francisco. }

Before me, F. J. Thibault, a notary public of the State of California, in and for the city and county of San Francisco, duly commissioned and sworn, personally appeared Joseph Aron, who, being duly sworn, deposes and says: That he is a stockholder in the Ophir Gold and Silver Mining Company, a corporation having its place of business in the city of San Francisco, State of California; that he has examined the record-book of the said Ophir Gold and Silver Mining Company; and that the foregoing is a true copy of the minutes of a meeting of the Board of Trustees of said company, held at the office of said company in the city of San Francisco, State of California, on the twelfth (12th) day of January, 1874, as it appears in and is entered upon said record-book.

JOSEPH ARON.

Subscribed and sworn to before me this eleventh day of February, 1874.

[SEAL.]

F. J. THIBAULT,
 Notary Public.

This agreement bears on the face of it that it is intended for *corrupt* purposes, for—

1. Two hundred thousand dollars are not required for litigating a suit in the law courts of Nevada.

2. No litigation can possibly be commenced, for no claim whatever has as yet been presented by the Sutro Tunnel Company, nor will there be any for several years to come, and not until the Tunnel shall have been penetrated *three miles of solid rock* additional to what is done, in order to reach the Comstock Lode.

3. The examination of the names of the persons selected as trustees to manage this litigating fund shows conclusively that the mining companies are used as a *mere blind*, for these five persons represent the five great *monopolies* who are determined to break up the Sutro Tunnel at all hazards:

(a) Mr. J. C. Flood represents the Virginia City Water Company, in which his firm are the principal owners.

(b) Mr. R. F. Morrow represents the San Francisco stock gamblers, whose manipulations are mainly carried on by the California Bank ring.

(c) Mr. J. D. Fry, a relative of Mr. Ralston, the president of the Bank of California, represents that institution.

(d) Mr. Benjamin Peart represents one of the Nevada mill rings, of which Senator Jones is the head.

(e) Mr. I. L. Requa represents the Virginia and Truckee

Railroad Company and the Union Mill and Mining Company, both owned by the managers of the Bank of California.

4. Mr. C. J. Hillyer, a lawyer residing at Washington, D. C., is employed to commence a suit in the courts of Nevada.

The Hon. James S. Negley's amendment simply carries out the original intention of the law. These parties are made to accept patents and file receipts within twelve months.

The principal mining companies on the Comstock Lode number twenty-seven, as appears from the list printed in this document, copied from King's report. Of this number seventeen have received their patents, though many of the duplicate receipts have been *stolen* from the register's office at Carson City. Three patents remain in the register's hands; four have been applied for, but no steps taken to perfect the title, including the Crown Point Company; and three only have never made an application, amongst which is the Belcher mine.

From whence, then, comes this bitter war against the pending amendment? Under the Negley amendment productive mines *alone* are compelled to take out patents. Only four of the Comstock mines are productive at the present time, and *none* of these are included in the list furnished as having taken out their patents. They are the Crown Point, Belcher, Consolidated Virginia, and Ophir.

The following letters from the register gives a list of the companies who have applied for and those who have received patents; they also show for which patents duplicate receipts exist:

UNITED STATES LAND OFFICE, CARSON CITY, NEVADA,
REGISTER'S OFFICE, April 18, 1872.

SIR: Referring to your letter "N," of 10th inst., received this day, directing this office to furnish the department with a statement of any patents for mining claims remaining in this office undelivered, together with a list of all patents for mines upon the Comstock Lode which have been delivered to the patentees, and for which the duplicate receipts have been surrendered, I have the honor to state that the following patents for mining claims remain undelivered, viz:

General Land office—

- No. 125. Claim of Joseph Trench, Comstock Lode.
 " 68. " Confidence Silver Mining Company, Comstock Lode.
 " 132. " Best & Belcher Mining Company, do.
 " 128. " Bacon Mill and Mining Company, do.
 " 62. " Hale & Norcross Silver Mining Company, do.
 " 67. " Central Silver Mining Company, do.
 " 116. " Timoke Mining Company, Leon Consolidation Lode Lander Company.
 " 142. " Alpha Consolidated Mining Company, Comstock Lode.
 " 149. " Empire Mill and Mining Company, do.
 " 150. " do. do.
 " 129. " Bacon Mill and Mining Company, do.

The following patent for mines upon the Comstock Lode has been delivered to the patentee, according to the duplicate receipt in this office, viz:

No. 63. Exchequer Mining Company.

This is the only patent for which I have been enabled to find duplicate receipt, owing to the negligence of my predecessor in keeping papers.

The following patents must have been delivered, however, as they are not in the office, viz:

- No. 78. Justice & Independent Consolidated.
 " 61. Chollar Potosi Mining Company.
 " 49. Front Lode Consolidated Mining Company.
 " 54. New York & Nevada G. & S. Mining Company.
 " 55. New York & Washoe Mining Company.
 " 51. Savage Mining Company.
 " 45. Gould & Curry Silver Mining Company.
 " 49. Alpha Consolidated Mining Company.
 " 50. Utah Silver Mining Company.
 " 64. William Sharon.

All on the Comstock Lode.

I am, sir, very respectfully, your obedient servant,

ADOLPHUS WAITZ,

Register.

Hon. WILLIS DRUMMOND,

Com. Gen. Land Office, Washington, D. C.

UNITED STATES LAND OFFICE, CARSON CITY, NEVADA,

REGISTER'S OFFICE, March 21, 1874.

SIR: Referring to your letter "N" of the 13th inst., requesting this office to furnish you with a statement of mine patents on the Comstock Lode delivered and undelivered to the patentees, I have the honor to report that the following patents have been delivered, viz:

No. of patent.

62. Hale & Norcross Silver Mining Company.
 69. Justice & Independent Consolidated Mining Company.
 68. Confidence Silver Mining Company.
 *61. Chollar Potosi Mining Company.
 129. Bacon Mill and Mining Company.
 *141. Front Lode Consolidated Mining Company.
 *120. New York & Nevada Gold and Silver Mining Company.
 *131. New York & Washoe Mining Company.
 69. Central Silver Mining Company.
 63. Savage Mining Company.
 *64. Gould & Curry Silver Mining Company.
 *132. Best & Belcher Mining Company.
 142. Alpha Consolidated Mining Company.
 *124. Utah Silver Mining Company.

*143. William Sharon.

216. Exchequer Mining Company.

638. Thos. H. Williams and David Bixler.

Those marked with a * must have been delivered, although the records do not show it.

The following patents on said Comstock Lode remain undelivered, viz :

129. Bacon Mill and Mining Company.

125. Joseph Trench.

149. Empire Mill and Mining Company.

150. do. do.

I am, sir, very respectfully, your obedient servant,

ADOLPHUS WAITZ,
Register.

Hon. WILLIS DRUMMOND,

Com. Gen. Land Office, Washington, D. C.

But aside from the protection this amendment will give to the Sutro Tunnel Company, it will do more, it will protect the poor miners who have to this day not had the slightest chance to protect their rights under the aggressions of their wealthy neighbors. These large companies—and be it recollected the main opposition comes from the two wealthiest companies on the lode, the Belcher, owned by the Bank of California, and the Crown Point, owned by Senator Jones and his friends—have been encroaching upon their neighbors, and have driven poor men into the courts where they can get no redress. Both these companies, it can be shown, are not working on their original locations, and as long as no action can be commenced but in the courts of Nevada, which are not very reliable, they rest secure, and can defeat the just claims of others. The moment the pending amendment becomes a law *they will have to define their boundaries*, and if that develops the fact that the twenty millions of dollars which they have taken from the body of ore upon which they are now working belongs to others, they will not only lose their mines, *but they will also be liable for the amount already extracted*. That is where the secret mainly lies; and the parties interested in defeating the pending amendment will leave nothing undone to accomplish their purpose.

A letter has been addressed to the United States Senate by one of the many parties injured by the refusal of the Comstock companies to define their boundaries; it is here given in full:

To the Honorable the Senate of the United States:

The undersigned has been connected with mining operations in Storey county, Nevada, as officer of and owner in various companies, since 1861, and therefore does not desire to be classed among those mentioned in recent congressional debate as "never having seen a silver mine."

In the opinion of many persons familiar with the subject, the passage of a law by Congress requiring holders of mining claims, particularly those upon the Comstock, to obtain patents therefor, would greatly lessen litigation and protect the rights of poor men.

The large companies upon the Comstock have gradually extended their operations to the eastward from their original locations, and into deposits of ore claimed by others under the local mining laws. In some cases title to the east ground has been acquired by purchase, but more frequently the owners have been driven out by expensive and ruinous litigation, forced upon them by the wealthy companies, which litigation would only cease when the ore bodies were exhausted.

The obligation to apply for patents would entail no hardship upon the wealthy companies, from whom alone the opposition to the measure comes, as it would only put them and their poorer neighbors upon an equal footing before the law.

No just rights would be taken from any one by making patents obligatory, the only difficulty now being that while one party is willing to limit their claims the other refuses to do so.

No laboring man would be injured by requiring patents to be taken, as where ore is known to exist it will assuredly be extracted, and the miners will receive their wages irrespective of the ownership or want of ownership of the property.

Much exploration is prevented by reason of the present uncertainty of title, as enterprising though poor men are prevented from prospecting by the well founded apprehension that any discoveries they may make will be claimed by their wealthy neighbors, with whom they are utterly powerless to compete in local litigation.

The argument that the present owners of the large Comstock mines have invested their capital in these enterprises, and are therefore entitled to extraordinary protection, is without force; as none of such owners had any capital when they embarked in the business, and their wealth has been entirely derived from the mines and their management.

Poor men do not generally own in productive mines, as their superior knowledge of the developments enables the managers to possess themselves of the ownership before the fact of extraordinary riches becomes known to the public. One prominent mine will suffice for an example. Within the last four years, the great majority of its stock was purchased by the present owners, then entrusted with its management, at a rate not exceeding forty thousand dollars for the whole property. It has since that time divided over nine millions of dollars as dividends, and is now selling at the rate of over nine millions for the whole mine. It is needless to state that the officers of the company did not promulgate their knowledge of the condition of the mine, until they had acquired possession of the stock.

A very close combination of capital exists in California and Nevada, and from that combination alone, and the influences it is enabled to exert, comes the entire opposition to congressional action requiring the limitation of mining claims within fixed and well-known boundaries.

There are many mining claims in the vicinity of the Comstock which would certainly be prospected and could probably be worked to profit, if the limits of contiguous claims were definitely fixed, and Government titles could be secured; for as the law now stands, the Comstock companies not only decline to apply for patents themselves, but are enabled by protesting to involve in ruinous litigation such of their neighbors as desire to do so.

It is somewhat difficult to obtain a free expression of opinion from the

mining districts controlled by the wealthy companies, as but few men can afford to provoke the wrath of so powerful a combination.

Very respectfully,

JAMES J. ROBBINS,

President of the "Dardanelles" and the "Leviathan" Mining Companies.
SAN FRANCISCO, April 6, 1874.

The following extracts from the few independent journals published in California will also show how the Negley amendment will work as regards outside claimants:

From the Mining and Scientific Press, April 25, 1874.

They say that Senator Jones owns the Crown Point mine—that he, like all the large companies, is working some distance to the eastward of his original location. The Crown Point, like the other *productive* mines, must define its boundaries within six months under the Negley amendment. The Crown Point does not want to define its boundaries any more than any other big claims. The poor men say that, under the present system and laws, the rich men have the best of it. The rich men will not patent their claims nor allow the poor ones to do so. If a claim off to the eastward starts in to get a patent, one of the big ones near by enters a protest, on any ground convenient, and by this means gets a "stay of proceedings." Then under the law the case is brought into the local courts, which we all know do not bear the best of reputations. When once in court, and especially in some of the Nevada courts, it does not take much shrewdness to guess who will get a verdict—the rich or poor man.

Now if the Negley amendment is adopted it will change this method. The *productive mines only* are compelled to procure a patent, and the others must render annual accounts, and when they become productive, they must patent their land also. The productive mines do not want patents, because they must define their boundaries, and the burden of proof rests with them. If they are working over their boundaries, and following other leads, than the dips, spurs, or angles of the one they originally located, and that under other men's ground, have they got any right to do so? If they have, they will be let alone. If they have not, let the proper owners have it. It does not make any difference to the country at large who owns the productive mines, so long as they are productive ones; works will be erected and men employed just the same. But these rich companies will not define their boundaries, and while working their mines, will not permit others near by to be patented for fear of losing ground, which many of them do not believe they really own.

Many of these claim owners do not like the Negley amendment because it provides that the Sutro Tunnel royalty must be paid. The Sutro Tunnel royalty must be paid anyhow, whether this amendment is passed or not. And if many of these mines bound themselves in early days to do certain things, why should they now seek to crawl out of it to the injury of others, because the others have the best of the bargain? They ought to have looked out for that in the first place. If the Sutro Tunnel Company had certain rights and franchises, and undertook an expensive operation because they had them, they should be protected in these rights. Leaving aside all considerations as to whether the tunnel will be beneficial or not, if the tunnel owners have spent large sums of money, on the strength of rights given to them by the highest tribunal in the nation, they ought now to be protected in these rights. If Sutro had bound himself to drain and ventilate the mines free of charge, and only claimed the blind lodes he struck, it is pretty certain that the companies would compel him to finish his tunnel.

Now the question with the common miner in relation to the Negley amend-

ment, etc., is whether there is any great wrong being done in compelling the *productive* mines to define their boundaries once for all, so that other people can know where they are. Because these men have located on a ledge, and sunk deep shafts, and run lengthy drifts, does it give them the right to everything under ground for a mile or two each way, whether on the original ledge or not? Is Senator Jones, who owns one of these *productive* mines, the man to sit in judgment as to whether the amendment is a proper one or not? Is his opinion an unbiased one? Will the poor man have as good a chance as the rich one? Is it better to make these mines define their boundaries now or wait until they have worked out all the ore—their own and that belonging to others? Is there any practical hardship in making ten or a dozen mines spend \$1,000 each in getting a patent? It is not the money they care for, but they do not want to define their boundaries.

We give these views as the views of those miners owning ground to the eastward of the original Comstock. If the big miners believe in the "one-ledge theory," and can get mining experts to corroborate their views, they need not fear the new amendment. If there is more than one ledge, these companies haven't any right to more than they located, and others ought to have a chance. The amendment *only applies to the Comstock*, and only to the *productive* mines; and as their owners only want to fight it, there seems to be a very good reason for poor men to think that it will benefit them more than the rich.

(From the *San Francisco Chronicle*, Thursday, April 16, 1874.)

MINING LAWS BEFORE CONGRESS.

Recent discussions in Congress upon the subject of mining laws have attracted considerable attention in this community, and the matter is deserving of more than the passing comments bestowed upon it by the local press. Early in the session of the present Congress a bill (known as Senate Bill No. 16) was introduced into that body by Mr. Sargent, of this State, which provides that all mining companies or claimants who had made application for patents should, in the absence of opposing claims, perfect the same within one year; otherwise all proceedings in relation thereto should be null and void. The second section of this bill merely defines the mode of verifying affidavits and testimony in certain cases. Mr. Sargent's bill passed the Senate on February 16th, and in due time came before the House, where, upon the 18th of March, two amendments were offered, one by Mr. Negley, of Pennsylvania, the other by Mr. Holman, of Indiana. The Negley amendment, as finally modified, is to the effect that all *productive* mines upon the Comstock Lode shall make application for patent within six months, and complete the same within one year thereafter; or in case such application has been already made, that it shall be perfected within one year. The Holman amendment is, that nothing in the act shall affect the rights of A. Sutro, as granted by the act of July 25, 1866.

The entire delegation from California and Nevada opposed these amendments, and even attempted to kill the bill for the purpose of defeating them, but after an angry and exciting debate, which occupied the "morning hour" for several days, the amended bill passed the House by a decided majority, and was in due course returned to the Senate, and sent to the Committee on Mines and Mining, where it will be taken up on the 20th instant.

The Commissioner of the General Land Office, Hon. Willis Drummond, has addressed a communication to the Chairman of the Senate Committee, stating that, in his opinion, Sutro's rights are secure without the passage of the act, which he considers unnecessary for the purpose of protecting them. Assuming that this view, which is that of the opponents of the bill, is correct, the whole question is reduced to very narrow limits. Shall the *productive* mines upon the Comstock be required to define the boundaries of their claims and apply for Government title therefor within a stated time?

The wealthy mining companies upon the Comstock are a unit in opposition to this amendment, which they and their advocates in Congress charge will injuriously affect the rights of poor men. It is well known that all of these companies are now working far to the eastward of their original locations, for which locations alone they could obtain patents. It is equally well known that hundreds of owners of claims located upon parallel ledges have been driven out and ruined by the operation of the "one-ledge theory," to dispute which, in Washoe, has heretofore been sufficient to deprive any miner of employment, and to drive from the country any expert daring enough to speak the truth upon the subject. There are now many claims, the owners of which would gladly apply for patents, but dare not do so, from the knowledge that they cannot stand the litigation which would be forced upon them by the Comstock companies before tribunals whose previous reputation gives no guaranty of justice as against so powerful a combination.

The Negley amendment only requires that certain companies shall define their boundaries. If a man bought a lot fronting upon a certain city street, would he be allowed to take advantage of the poverty of his neighbor in the rear to gobble his lot also? And that is just exactly what these wealthy companies have been and are now doing; they refuse to define their boundaries or to fix a limit to their alleged possessions, and they combine together to defeat the execution of the laws of Congress and to crush to the earth any one who has the temerity to claim rights conflicting with their rapacity. "How do you know when you come to the east wall of the Comstock?" was the question asked during a recent Virginia City trial of a mining expert upon the witness stand. "*When you can't find ore any further east,*" was the unhesitating reply. And that is the doctrine of these companies. They want it all, and Congress will only be doing simple justice to thousands of persecuted and poor men upon this coast by making the same law to apply to all alike, and requiring that all mining claimants shall define the limits of their claims within a reasonable time.

(From the *San Francisco Chronicle*, April, 18, 1874.)

THE MINING LAWS.

To the editor of the *Chronicle*:

SIR: Every miner in Nevada should thank you for putting before the people the real issue in the mining legislation now going on in Washington. That the "little joker" in the Senate bill introduced by Sargent should not have been detected until the bill was ventilated in the House looks strange; but from your showing in Thursday's paper, by a few amendments the guns of the ring have been turned on themselves with a vengeance; and if the bill, as amended, now passes the Senate, it will open up a new future for the working miner, force the wealthy and powerful mining companies to define their limits, and give us who have locations within a mile or so of that indefinite body, the Comstock Lode, a chance to prospect our claims without the fear of being swallowed up by the Comstock anaconda, if we should happen to strike anything.

MINER.

The California Bank Ring have made many barefaced attempts to make persons abroad believe that the laboring miners and small owners of mines are opposed to the Negley amendment. This is false. A mass meeting held at Virginia City ostensibly for the purpose of protesting against the Negley amendment, was a sham and a fraud; the miners were made to believe that all small claimants to mines

not located on the Comstock Lode would be compelled to take out patents immediately, and under that belief some resolutions, absurd in themselves, were passed and telegraphed at an expense of many hundreds of dollars, in order to make an impression on the day this bill was voted on by the House.

To show the false pretenses under which that meeting was held it is only necessary to read the following, published in one of the organs of the bank ring:

(From the Territorial Enterprise.)

MINERS' MASS MEETING.

Dr. S. A. McMeans being loudly called for came forward and stated the object of the meeting. He said:

"The proposed amendment to the bill recently introduced in Congress is one of the most abominable it is possible to conceive, and is calculated not only to work us incalculable injury, but also to sap our rights as free citizens of this Republic. Now I do not ask you to do things contrary to your best interests as citizens, for it is to the interest of all classes to defeat this obnoxious measure, and more particularly is it to the interest of all such as wield the pick and shovel and earn their bread by the sweat of their brow. The amendment now pending in Congress provides that all persons engaged in mining operations must do one of two things—must make up their minds to take money out of their pockets and petition Congress for patents, or must lose their mining claims; and if the patent be not taken out in six months, no matter how much money or labor has been expended on mining ground, any one may come and say: 'Here is the act of Congress, you have not complied with its requirements—you have no right here; I will take your work and your mine, and you must leave!' This is the bill and this is what it means, and against it you must take some action to show that you will not submit to that which places you in the power of any who may choose to wrong and oppress you. It is believed that your voice will be powerful to prevent the passage of the bill." [There were now loud calls for the reading of the obnoxious amendment, but it was not then at hand.] Dr. McMeans continued: "I am not here as an advocate of the Sutro Tunnel Company, nor as the advocate of any party or persons who may oppose it, but am here simply to do what I can to oppose what I think a great wrong, and I will advocate the truth if it carries me to hell in a moment! I respect the memory of Patrick Henry, who dared to speak when his liberty was threatened, and I will speak my sentiments whenever I see myself or my fellow-citizens threatened with that which I consider oppressive."

Now read the following dispatch from this same gentleman who called the meeting to order:

VIRGINIA CITY, NEVADA, April 3, 1874.

ADOLPH SUTRO, Esq.: The miners' meeting held Saturday last was not called to oppose the Sutro Tunnel, but solely for the purpose of opposing the Negley amendment, just so far as it affected the rights of prospectors, and no further. The Negley amendment, as it passed the House, gives general satisfaction to the miners, as I have learned by conversation with many of them.

S. A. McMEANS.

And the following:

VIRGINIA CITY, NEVADA, *March 31, 1874.*

To ADOLPH SUTRO.

Bank of California organized and controlled mass meeting last Saturday night.
JOHN D. BETHEL.

SAN FRANCISCO, CALIFORNIA, *March 31, 1874.*

To Hon. JAMES S. NEGLEY, *M. C.*

The Virginia City meeting was entirely controlled by the bank interest, which is powerful there among their employés. No poor man or company can suffer under your amendment.

JAS. L. ROBBINS,
Pres. Dardanelles Co.

Petitions have been signed by many of the miners against the Negley amendment, under the misapprehension already named. Since that time, after matters had been fully explained, a memorial has been signed by 4,500 miners, comprising almost every laboring miner in the district, praying for the passage of this amendment.

The three newspapers published in the neighborhood are owned or controlled by the money of this ring, and no news is permitted to appear which does not suit the interests of these monopolists.

The assertion that the passage of this amendment interferes with the rights of the parties in court is not based upon any fact. No suit can be commenced until a demand is made upon the mining companies, and that cannot be made until the tunnel shall be completed—a task of more than three years; and if there be any suit then, it will be brought by the Sutro Tunnel Company, upon a refusal by these parties to pay.

No suit whatever has been commenced, and none can be that could be sustained. These parties, however, may commence some sort of a suit during the pendency of this legislation, in order to make Senators and Members of Congress believe that this is a subject for litigation.

Judge Black comments hereupon as follows:

EBBITT HOUSE,

WASHINGTON, D. C., *March 30, 1874.*

DEAR SIR: By the acts of Congress, you will be entitled, when your tunnel reaches the Comstock Lode, to two dollars for every ton of ore taken out at that place. Thus far you have made no demand of this royalty, and have no present intention of doing so, the tunnel being unfinished.

Can the miners anticipate your demand and bring suit against you? No.

There are cases in which a bill, *quia timet*, may be brought to prevent some lawless wrong, which, if once done, can never be repaired. But such a bill does not lie to stop a party from the legal enforcement of a claim not yet ripened as capable of being judicially asserted. Did you ever hear of a suit by a debtor against his creditor, *quia timet*, because he fears that if he does not sue he will be sued? That is the analogy of this case. It bears no real resemblance to the process authorized in some of the States by which clouds are removed from titles to real estate.

But if a suit were pending, or if the parties were in a condition to bring one, the amendment of Mr. Negley, to which you call my attention, could not affect injuriously any just right of the miners. The object of that amendment, manifest on its face, is to keep the parties in *statu quo*, to reserve your rights as heretofore legally vested, to prevent the mining companies from holding the land contrary to the covenant which the United States, while they were the owners of it, made with you. Congress can do no more than this if it tries; *to do less would be bad faith*.

I believe this answers your questions.

Yours truly,

J. S. BLACK.

The statement that our contract with the mining companies has been forfeited has no bearing upon the question now pending. We claim under the *vested rights* granted us by a law of Congress, which these parties have been striving to set aside.

As far as the contract, however, is concerned, should we ever choose to make any claims under its terms, it will be a question the courts can determine; it will be one of judicial arbitrament. This matter was fully explained in the former controversy in Congress, in which Judge Woodward, of Pennsylvania, remarked:

"Well, sir, yesterday we had an extraordinary spectacle on this floor, when the only Representative of the State of Nevada (Mr. Fitch, the predecessor of the Hon. Charles W. Kendall) denounced that legislation in the most violent manner as improper and dishonest. The act of 1866 looked to the commencement of the *greatest work of internal improvement that has ever been contemplated in the State of Nevada*. It was legislation which was calculated to develop her mineral resources to a greater extent than anything else that has been proposed. This legislation was yesterday denounced on this floor by the Representative of the State of Nevada as dishonest and corrupt. Now, Mr. Speaker, I say that my eloquent friend from Nevada, in opposing this bill, manifestly does not represent the State of Nevada. He says that he does not represent the 'bank ring.' I do not know that anybody charges him with doing so. But he does not represent the State of Nevada, or else the documents which we had before our committee for a whole year were forgeries.

"They complain, through their Representative upon this floor, that Mr. Sutro did not commence his work in time. I say, when that question gets into the courts and becomes a judicial question, these other facts will bear on this question; and the judge or chancellor will ask, if time is the essence of the contract, the other party, 'How have you treated that question?' If it be found that they have thrown obstructions in the way of Mr. Sutro, prejudiced the money market against him, and embarrassed him at every step of his progress, the equity of this special technical defense will not be

very impressive. There is not much in that. If this House is going to legislate on this judicial question, I insist on it that these questions of fact which the gentleman intimates I have not stated correctly, bearing on the question whether time be the essence of the contract, shall be investigated by the House; that we shall go into them in order to act intelligently on this judicial question."

Mr. Biggs, of Delaware, made the following remarks:

"Mr. Speaker, as a member of the Committee on Mines and Mining, I have given the bill which is now before the House some reflection, and I have come to the conclusion, with eight of my colleagues on that committee, that the bill (to repeal the Sutro Tunnel act) ought not to pass. Only one member of the committee can be found to advocate its passage. It is true that the judgment of the eight members of the committee may perhaps be at fault; but I think if the House will carefully investigate the subject they will come to the conclusion that the bill is *an outrage upon the rights of Mr. Sutro and his company*.

The contracts are not affected in the slightest manner by the passage of the pending amendment. The law of Congress gives certain independent rights. In regard to this Judge Strickland said:

"The minority report now under consideration assumes that this legislation changed contracts entered into by the mining companies on the one part and this man Sutro and his assigns on the other part. Now, sir, from this conclusion I entirely differ, as does the committee to which the subject was referred. These contracts *remain intact in every part*. They are not infringed in the least. No right secured by the contracts to the miners is infringed in any way. They are there with all the rights they ever had. They have the same privileges given to them by the terms of the contracts, just as though this legislation had never been enacted."

Should the question ever get into law, the courts will never decide that the contracts have been forfeited. The only point which can be made is that the work was commenced a year too late. In the face of the fact that every possible obstacle was thrown in the way, that plea will have but little weight, when it is considered that *time* was *not* the essence of the contract.

Judge Ferris, in referring to that plea, said:

"By the terms of that contract Mr. Sutro has yet over twelve years, providing the work does not cost over \$3,000,000, as supposed at the time the contracts were made to complete the work. This contract requires that he shall expend \$400,000 the first year, and thereafter \$200,000 a year at least. This, sir, if it costs \$3,000,000, will give him fourteen years to build the tunnel; and if it costs \$6,000,000, which is more likely, will give him twenty-eight years. Yet gentlemen talk about time being the essence of this contract! The purpose of the repeal of the Sutro Tunnel act—I call it repeal, because the effect of the act 'to repeal and modify' is practically to repeal the section indicated—is *to drive this man away from the franchise granted him by law*, now that he has commenced in good faith this important work. As soon as these men see that the work is going on, when they see that the

work is progressing, when they see that a valuable lode may be struck by the tunnel long before it reaches the Comstock Lode, when they see the probability that capitalists will invest their money, they say to Congress that we shall stop this work *which Congress authorized at their request*. The character of this man Sutro has been impugned upon this floor. I respectfully submit no gentleman who has been so long about Congress as he has conducted himself with more propriety than Mr. Sutro.

The simple truth of the matter is, we have expended more money than we would have been compelled to expend under the contracts, had we commenced before August 1, 1868; that is to say, we should have expended by this time \$1,400,000, while our expenditures amount already to over \$2,000,000.

The law of Congress, however, gives us certain rights which these parties have repeatedly attempted to take from us. General Negley's amendment will stop these attempts forever, and will, at the same time, give protection to all the small claimants in the neighborhood of the Comstock Lode.

The whole power of which that gigantic *corporation*, the Bank of California, is possessed will now be brought to bear against the amended bill. Gentlemen who have never visited the Pacific coast have no conception of the thralldom under which the people in that, the fairest part of the United States, are groaning, and of the power exercised by that *monstrous monopoly*.

The Hon. Austin Blair, of Michigan, on the floor of the House of Representatives, made use of the following language:

"The gentlemen whose name has been mentioned in this discussion, Mr. William Sharon, the agent of the Bank of California at the Comstock Lode, took me in his buggy and carried me to his crushing mills, and showed me the line of the new railroad he was building, or rather had got the people to build for him. He took me to his mines, to the very bottom of them; showed me all about them, and told me *he was determined this Sutro Tunnel business should be stopped*.

"Now, sir, I will say to the gentleman that while I do not wish to arraign anybody here at all; while I received, as we all did, such courtesies from the Bank of California or its agents that it might be supposed our mouths might be pretty much shut against saying what perhaps ought to be said on this subject, yet all that occurred there did not blind our eyes to the fact that *this is the most gigantic monopoly in the United States*, that it dominates the whole Pacific coast, and that when it pipes in that country the people dance. And you may rest assured that that will be the case so long as that monopoly continues. It had power enough to thrust out

your greenback currency from the entire coast. Not a dollar of it can be there used to-day in the ordinary business transactions of life, and it is owing to the immense power of the Bank of California that the Government has not been able to introduce it. The agents of the Government have informed me that they have tried diligently to introduce the legal tender notes, but the bank had given its customers notice that if they undertook to deal in greenbacks they would not have the favor of the bank. The result was that they broke down everybody who undertook to do it; and to-day your currency is virtually excluded from the whole Pacific coast, just because the *Bank of California* was determined that it should not circulate there.

"Sir, this bank has waved its hand over the Comstock Lode and ordered Sutro away. That is the whole of this transaction, as it seems to me."

This is the overwhelming power which is used against this enterprise and the best interests of the laboring people, who pray for its completion.

In his minority report, covering less than two printed pages, Mr. Sargent refers to the Sutro Tunnel fifteen times as "*the corporation*," while the Bank of California is spoken of thirteen times as "*the miners*." He says:

"The miners do not want this tunnel. They protest against it. They insist upon their right to manage their own property in their own way, without any interference on the part of this corporation or the Government."

It is not the miners, but the Bank of California, and the milling rings and monopolies, who protest against the tunnel. The laboring miners, the miners' unions, and all the laboring classes petition for it. They want it built as a great exploring work, giving an unknown impetus to mining, employing tens of thousands of people and securing their health. Overgrown monopolies and unscrupulous speculators oppose the work, while the bone and sinew, the honest laboring miners, support it with all their might.

(See evidence, page 83, testimony of Major General J. G. Foster.)

Q. (By General NEGLEY.) My inquiry arose from the fact that miners in our coal mines are almost invariably opposed to any innovation or new custom in the old-established rules of mining.

A. Now that you have mentioned that, I will say the miners, as far as I could get information from prominent men, seemed to be in favor of the tunnel. I believe the miners' union is in favor of the tunnel.

Q. Did they give you their reason?

A. No; they had no reason that I knew of. They had their preferences though.

Mr. SUTRO. General, do you know who are opposed to the tunnel, or at least who are charged with being opposed to it, over there by these people you speak of? Who is at the bottom of it?

Mr. FOSTER. If you want a straight-forward answer, I would say that the

property owners in Virginia City, those who have money invested in the mills around there, the Bank of California, through its agent, and the railroad company.

Q. May I ask you who the owners of the railroad are, as far as you know; whether it is owned by the Bank of California or its men?

A. I don't know who the owners are.

Q. Well, what did you hear over there? Tell us simply by hearsay. You cannot have an absolute knowledge?

A. I haven't the slightest idea who owns that road.

Q. Who has control of it?

A. Mr. Sharon seemed to control it.

Q. The agent of the Bank of California?

A. Yes, sir.

Q. Who owns most of the mills over there?

A. On the Carson river?

Q. Yes, sir; and the other mills—the majority of the mills?

A. A very large number of the mills are owned by the Union Mill and Mining Company.

Q. Do you know whether the Bank of California has anything to do with that?

A. Mr. Sharon has a large amount of stock in that, I believe, but I am not positive.

Q. Is he the agent of the Bank of California?

A. I heard so.

Well, then, the opposition to it is by the Bank of California, by the railroad, and by the mills, which means the Bank of California, and by some people who own town lots in Virginia City.

(See evidence, page 266, testimony of I. L. Requa.)

Q. (By Mr. SUTRO.) Do you know who compose the Union Mill and Mining Company?

A. I do not exactly know. I know who did—a portion of the parties who did compose it.

Q. Do you know who compose it now, principally?

A. No, I cannot say that I do.

Q. Do you know that Mr. Sharon is a large owner?

A. Yes, sir.

Q. Mr. Ralston?

A. Yes, sir; he is reputed to be.

Q. Is not Mr. Mills president of the Bank of California?

A. Yes, sir.

Q. Are not they the owners of the whole property?

A. I think there is no interest outside of that.

Q. They are about the principal owners then.

A. So I understood.

Q. Then the main owners are the president of the Bank of California, the cashier of the Bank of California, and Mr. Sharon, their agent at Virginia City?

A. Yes, sir; that is my understanding.

(See Prof. Newcomb's testimony, page 137.)

Q. (By Mr. SUTRO.) You spoke of Mr. Sharon a moment ago, the agent of the Bank of California. Did he ever say anything to you about being opposed to the tunnel?

A. Well, he expressed himself very strongly when I first saw him in the street in connection with the other commissioners.

Q. When you were introduced to him?

A. He did not address himself to me, but he expressed himself as very strongly against the tunnel.

Q. On what grounds did he state he was opposed to it?

A. The grounds were not given, only he would crush it, or something to that effect.

Q. Did he make any remark to the effect that he would break it up, or oppose it, if he could?

A. Yes, in very strong terms. I cannot use the very words he did, but I know the expression was very strong.

(See evidence, page 138, testimony of Professor Wesley Newcomb.)

Q. (By Mr. SUTRO.) How do they show the opposition to the tunnel, Professor? Do they exercise any influence over the people at Virginia City in such a manner as to prevent them from becoming interested in the tunnel and seeing it go ahead?

A. Well, we took the evidence of some of the miners in regard to that; one of them particularly specified that he did not wish to have his name given in connection with it in any way; and in the course of conversation he stated that if the mining ring knew that any intelligence was communicated to the commissioners adverse to what was thought to be in their own interests, and in favor of the tunnel, the parties communicating it would be discharged from employment, and he would not like to have his name mentioned in connection with it. He gave us some little information upon the subject still further in regard to the amount of low-grade ores.

(See Major General H. G. Wright's testimony, page 210.)

Q. (By Mr. SUTRO.) Did Mr. Sharon in his intercourse with you express any violent opposition to the tunnel?

A. He expressed an intention of opposing it certainly, as being in opposition to his own interests.

Q. Did he say he was going to break it up if he could?

A. I do not think he went so far as that. He said he meant to oppose it.

Q. Now, General, let me quote here from a speech of Governor Blair, of Michigan, in the House of Representatives, in which he uses the following language:

Mr. SUNDERLAND. I would like to have that whole speech taken down.

Mr. SUTRO. All right: we will take down the whole of it. I want to ask General Wright whether that agrees with his experience over there.

Mr. BLAIR. The tunnel was not then begun, but when I was there I heard a very diligent discussion of the question. The gentleman whose name has been mentioned in this discussion, Mr. Sharon, the agent of the Bank of California at the Comstock Lode, took me in his buggy, and carried me to his crushing mills, and showed me the line of the new railroad he was building, or rather got the people to build for him. He took me to his mines—to the very bottom of them—showed me all about them, and told me he was determined the Sutro Tunnel business should be stopped.

Then, in closing his speech, Mr. Blair said:

Sir, this Bank has waved its hand over the Comstock Lode and ordered Sutro away. That is the whole of this transaction, as it seems to me.

Q. General Wright, did you, sir, in your intercourse with Mr. Sharon, hear any similar expressions to that?

A. I heard Mr. Sharon express, over and over again, his opposition to the tunnel project.

Q. Did he say he was going to stop it?

A. I have no recollection of his saying that.

Q. Did he say he would try to break it up; or didn't you arrive at that conclusion from his statement?

A. I arrived at the conclusion that he would do everything in his power to prevent the project being carried out.

Q. Do you think, then, he would try to SET ASIDE A LAW OF CONGRESS?

A. I certainly do; but how he was to proceed about it, of course I do not know. I had some conversation with Mr. Sharon upon the subject, but I never asked him a question in reference to his views. These were rather casual expressions.

The Hon. N. P. Banks thus referred to the opposition to this great work:

Who opposes it? You will hear much said, Mr. Speaker, in the discussion of this question, of the opposition of the Bank of California. And there is no doubt, from what the committee has heard, great reason to believe that gentlemen connected with the Bank of California have been much interested and very determined in opposition to this work. But we take no part in any quarrel with the Bank of California or anybody else. We merely say this: that while the miners are interested in the success of the work, and the application of these recent results of modern mining science, the capitalists of that section of the country, whoever they are and whatever they represent, are interested for themselves and not for the miners. The capitalists own for themselves a railway that transports the material, waste rock, and ore that is taken from the mines to the reducing mills, one of which the commissioners tell us is eighteen miles distant. They own the wood and all the materials of fuel necessary to run the machinery. They have a control naturally of all the markets necessary for the supply of the miners and the laboring men. And through these advantages of capital, of which we might have some right and some reason to complain, they make a profit which consumes in the end all the results of the labor of those employed in the mines in the hazardous and arduous pursuit of their industry. The miners grow poor, as they have done elsewhere, because their pursuit is one of great labor, great danger, and great hazard; while every day the capitalists, who speculate on their necessities, are growing richer. The capitalist takes no risks. He wants no share in the uncertainties of mining. His profits are in the certain, enormous, and sometimes extortionate profits which they make by supplying the daily necessities of laboring men.

The Hon. Wm. D. Kelley, of Pennsylvania, during the debate to repeal our rights, spoke as follows:

I think that the proposition of the minority of the committee presents to the consideration of this House as gigantic a wrong as ever was submitted to the American Congress. Two years ago every Representative from the Pacific coast agreed with the men who are now attempting to destroy his character and to rob him of his rights, in thanking Adolph Sutro for the very characteristics which they now present to the House in order to brand him with odium. They thanked him for his foresight and energy. They lauded his genius and the perseverance he manifested in their interests and in the interests of that young and growing section of the country, the Pacific shore.

Sir, Adolph Sutro's name will live when we who are legislating upon this subject shall be forgotten, or known only to some student of parliamentary history. In the volume which I hold in my hand, "The Mineral Resources of the United States, and the Necessity of Inaugurating a Rational System of Mining with Special Reference to the Comstock Lode and the Sutro Tun-

nel," his name is embalmed by the miners and people of the State of Nevada and of the Pacific coast, and associated with the most eminent men of genius on the continent of Europe. He has won his immortality in the service of the men who are now endeavoring to strip him of his pecuniary reward and his honors, and to associate his name historically with that of Eli Whitney, as a man who, having added to the wealth, the comfort, the prosperity of the American people, was doomed to exhaust his life and die in poverty.

Adolph Sutro, by his correspondence, his publications, and his travels, has made the resources of Nevada and the Pacific slope known to the miners of Europe, from the most illustrious engineers down to the humblest miner in the drifts and galleries. He told them of the inexhaustible wealth of the Comstock Lode and the great and diverse mineral deposits of the Pacific coast. He raised our credit by showing that in one deposit, the Comstock Lode, we had more silver than had ever been found in a single deposit in any part of the world. He showed the capitalists of the continent that these resources were being developed, and he brought back from them the teachings of experience, indorsed by the greatest names of the scientific world, saying to the American people that until they make a tunnel such as Mr. Sutro proposes, their silver mining is what is known in other countries as miners' piracy, or piratical mining. Under the present imperfect and costly system of mining we are taking from the Comstock Lode only the richest ores, those that can be profitably hoisted one thousand feet and more by steam, in a land where fuel is so scarce that it is gathered miles away and transported upon mules' backs. We are thus wasting, and worse than wasting, the wealth of our country by our expensive mining. I cannot, of course, in ten minutes proceed further in this line of remark.

"Gentlemen on the other side have spoken for the owners of mines. I propose to speak for the miners, the men who, with pick and shovel, extract the ore, and forty-five per cent. of whom die of miners' consumption, which seizes them and penetrates their vitals before they are admonished of its approach, and who die in their youth, or in the vigor of their young manhood, prostrated by the heat and poisoned by the atmosphere of these mines. These industrious men are subscribing to stock in the Sutro Tunnel Company. *They swarm behind Mr. Sutro, and beg Congress to vest all the rights in him that will enable him to redeem them from the terrible doom to which the so-called miners' friends would still condemn them.*

"Sir, I brought with me from one of these mines a bit of blackened ore, blackened by the smoke of a fire that smothered and burned forty-five of these men in the mine. Had there been a tunnel such as Mr. Sutro is constructing, they would have been breathing pure air while at work; and though the lumber of the mine might have been burned, the miners could have dropped below the fire and escaped."

The Hon. Chas. W. Kendall, who is now also found amongst the enemies of and arrayed against this great work, on the 21st of February, 1873, on the floor of the House of Representatives, spoke as follows:

These, sir, are the instructions under which I ask the aid of Congress in behalf of this important work. These are the solemn and deliberate acts of the Legislature of the State I represent. And claiming some acquaintance with the people of Nevada and with their wants and desires, I declare, here in my place, that these memorials and resolutions faithfully represent the great body of that people, irrespective of party or politics.

Sir, I was pained to see in the minority report upon this bill by the honorable gentleman from California [Mr. SARGENT] this paragraph:

"It [the Sutro Tunnel] is simply a huge job, got up by speculators to tax

the miners on the Comstock Lode, without conferring any adequate or substantial benefits in return."

Sir, in behalf of the people of my State, thus repeatedly speaking through their Legislature, I repel the unworthy imputation, and assert that this enterprise is in the interest of the people—the working, tax-paying people of the State; and it is an enterprise, too, than which none more deserving was ever asking aid before the American Congress.

I know I shall be pardoned if I refer to myself in the course which this debate has taken through remarks of gentlemen who oppose this bill. In the last canvass in that State I advocated this, with other local measures, everywhere before the people. I advocated it openly and frankly as a candidate for re-election to the place I now hold. And with what result? I was the only candidate upon our State Democratic ticket who was not defeated.

While the Grant electoral ticket swept the State by over two thousand majority, my own vote reversed that, and gave me nearly one thousand over my competitor, a gentleman of distinguished ability, of the highest personal character and popularity, but who was either opposed to or non-committal in regard to this enterprise. And still further, it has been said that property owners of Virginia City and Gold Hill, towns adjacent to this Sutro Tunnel, will be ruined.

Now, people in this country are supposed to understand their own interests, and to be capable of guarding them at least against damage from their own voluntary acts. The people of both these towns are strongly Republican in party politics. I advocated this measure in the popular assemblages. On the eve of the election, before an audience of near two thousand people at Virginia City, I used this and similar language:

"Starting near the Carson river, four miles away, an adit level is penetrating the depths of the greatest and richest silver mines on the globe. Deep down under the place where you now sit, nearly suffocated with foul air, are hundreds of miners at work who understand better than I can explain the advantages to our mining interests of this gigantic enterprise. I care not, I have not stopped to consider, whether this work is under the auspices of Sutro, or Brown, or Smith, or any one else. I have advocated the encouragement of this enterprise, too, in accordance with the instructions and request of your own Legislature."

Yet, here I received a majority over my opponent. Now, sir, I surely will be understood as mentioning these matters not from any feeling of personal vanity, but only as answering the objection about the depreciation and ruin of the property to which reference has been made.

This work is in the interest of labor and the laboring men of my State, and indeed of every mining State and Territory.

The Hon. Selucius Garfiede, of Washington Territory, on February 23, 1873, in the House of Representatives, said:

But the question arises, may this bill, if it be enacted into a law, be reasonably expected to produce this result? No man who has lived for any considerable length of time in the mining districts of the country can avoid reaching the conclusion that the great cause of the exceeding slowness, if I may so speak, of the production of the precious metals is the cumbersome and laborious processes adopted in working the mines, together with imperfect reduction of the ores, by which a large percentage of the contained metals is lost. I remember some twenty years ago to have passed through some of the most productive silver mines in America. I recollect to have stood on the brink of the shaft of the celebrated Cerro Pasco mine in Peru; and I saw there some of the primitive processes of mining. Every bucketful of water, every particle of ore raised from those mines, came from a depth of fifteen hundred feet

upon the backs of Peruvians. Each man was loaded with his goat skin of water or metal, as the case might be. The result was that the work was one of exceeding labor and exceeding slowness. Twenty years ago, in the barbarous regions of Peru, I heard the same argument made against progress that I have heard upon this floor in the year 1873. The man there who, amid toil and sweat, was climbing up those ladders with fifty pounds of ore, denounced the then proposed idea of a tunnel in most unmeasured terms. It was proclaimed that if the mountains were tapped and the water allowed to run out of itself, one half of the labor of the city of Cerro Pasco would be destroyed. And, sir, they refused to permit it. The old process was continued until the cost of production equaled and finally exceeded the value of the product. Then the mining companies were compelled to stop work and close the mines, for the ignorance and prejudices of the people refused to permit them to perforate the mountain with a tunnel and drain the mines.

Those mines lay idle for three years. Starvation came upon the people. The city was rapidly becoming depopulated. Necessity then accomplished that which the people had refused. The result was that they themselves, with all their ignorance and superstition and blindness, were compelled to yield to the necessities of the case and allow the tunnel to be driven. The mines were then tapped below the working level; the water flowed off of itself, and again mining became possible and profitable.

The Cerro Pasco Tunnel was driven for drainage only. Nearly two miles of solid rock were cut through for the one purpose of getting rid of the water. The formation of the country and other conditions were not favorable for the other purposes to which the Sutro Tunnel can and will be devoted.

Notwithstanding the grand success of the tunnel, and the utter overthrow of popular prejudice thereby, the people still insisted on elevating the ores from those mines to the surface, not by the steam engine, not by the appliances of modern ingenuity, but upon the backs of men. That condition went on for ten years longer. The mighty agency of steam was refused. The mob of Cerro Pasco threatened to destroy any machinery which should be there erected, until again the cost of production equaled the value of the product, when again the prejudices and superstitions of the age had to break down before dire necessity. To-day the steam engine is at work at the mouth of the mines of Cerro Pasco; again production has become profitable; and again the city is prosperous.

Mining upon the Comstock Lode in Nevada has nearly reached the same point of unprofitable production. Already the vast deposits of low-grade ores, which constitute the chief value of all fissure mines, have to be left in position or removed as barren rock. The cost of production is rapidly reaching the value of the thing produced; and with the enlightened policy which has been advocated here to-night, it will be but a short time before the vast mines of Nevada will become as valueless as those of Cerro Pasco were in 1850. I might go on and give illustrations of a similar character from other mines which I have visited in different parts of the world. But, sir, it occurs to me that the common sense and intelligence of Congress will recognize the truth of these propositions without spending further time upon their illustration.

The idea of a tunnel is not a new one. This is no new-fangled or far-fetched thought of Mr. Sutro. It is a system of mine-working which addresses itself to the common sense and is sustained by the experience of all the more intelligent miners of the world. The opposition to this work rests upon the most remarkable and absurd basis ever unearthed in the history of congressional investigation. The volume of evidence made up before the Committee on Mines and Mining, which I have read with some care, is a sample of the curious literature of the present century.

We are told in plain terms that it is cheaper to hoist a ton of rock fifteen hundred feet from the bowels of the earth to the surface than it is to drop that rock down to a tunnel by its own gravity. We are told it is cheaper to pump water fifteen hundred feet into the air than to pull a plug out of the

bottom and let it run out. We are there told, sir, it is better to work in a temperature of one hundred degrees Fahrenheit than to work at seventy degrees; that miners can produce more metal, grander results, more profitable consequences, than they could with wholesome, cool atmosphere in which to labor.

The Hon. James W. Nye, in a speech delivered in the United States Senate, January 20, 1871, spoke as follows:

The mining operations which are now carried on in this country are, to a large extent, merely of a speculative character. It is a search for rich bodies of ore, while poor ones remain untouched. The result is that there are as many blanks as in a lottery, while the prizes are scarce in the same proportion.

A most striking example is found in the working of the Comstock Lode, the most productive mineral vein at present worked in the whole world, and probably the most important one which has ever been discovered. It has yielded since its discovery ten years ago over one hundred and twenty million dollars' worth of gold and silver bullion. The working of these mines is carried on in so expensive and wasteful a manner that only ores assaying at least twenty dollars per ton can be extracted in order to pay expenses, while many million tons of a lower grade are left behind in the mines to remain there forever, or until a more economical system of mining is adopted.

Under the prevailing mode of mining the mines are entered by perpendicular shafts, of which there are thirty or forty along the whole length of the Comstock Lode, which has been explored for a distance of nearly four miles. Upon these shafts steam engines are erected, some very powerful ones, for the purpose of pumping the water, hoisting the ore, and letting the miners up and down. As these shafts extend in depth it becomes more difficult and expensive to pump the water; for no matter in what portion of the mines the same occurs, it all finds its way to the bottom of the shafts, and has to be pumped from that point. As a consequence we find that after ten years of mining on the Comstock Lode there are now in operation fifty-three steam engines for the purposes of pumping and hoisting, at an enormous expense, the country being devoid of coal, the only fuel to be obtained being wood at a cost of twelve dollars per cord. But it is not only the expense of fuel, but the numerous staff of engineers and firemen, and the wear and tear of machinery, which makes the cost foot up several millions per annum.

The most serious obstacle, however, which is encountered in deep mining, is the rapid increase of temperature, the thermometer standing at many points in the lowest workings of these mines (twelve hundred feet beneath the surface) as high as 110°. The heat at these points is almost suffocating, and its evil effect is still further increased by a lack of oxygen, which hardly allows a candle to burn, and in that foul and heated atmosphere, filled with noxious gases, thousands of miners spend their prime of life in order to earn a living, contracting the seeds of consumption, which carries off a large percentage at an early age. The natural increase of heat amounts to one degree to every sixty feet of descent. This is largely increased in this locality by the heat generated by the decomposition of large masses of mineral, while the breathing of several thousand miners and the burning of thousands of candles, still further increases the same.

That, under these circumstances, the labor performed by a miner must be very limited appears quite evident; and it has been estimated that in such places the labor accomplished is but one-fourth of that which could be done in a cool, healthful atmosphere. Considering, then, that miners get four dollars in gold for a day's work of eight hours, while they can perform but two hours' labor, a day's wages amounts to sixteen dollars. Indeed, mines must contain almost solid silver to make them profitable with such a waste of money. *In a humanitarian point of view such a barbarous state of affairs should not be suffered to exist while these evils might easily be removed.*

The mining system proposed by Mr. Sutro, by means of a great tunnel or adit, will remove all these difficulties. He proposes to construct a horizontal tunnel, commencing at the very base of the mountain, near Carson river, and having a westerly direction, which will cut the Comstock Lode, at a distance of four miles, at right angles, and at a perpendicular depth of about two thousand feet. After reaching the lode the tunnel will be continued to the right and left, under and along the lode, for three miles more. The shafts which now exist may then be continued downward until they connect with the tunnel.

The value of such an exploration, in a scientific view, can hardly be estimated. Our knowledge of geology is largely based upon the workings of deep mines. How interesting and important would it be to make an examination on this continent of the most productive deposit in the world to a much greater depth than has ever been reached before! The scientific men of Europe would carefully watch the progress of the work and the developments which will be made, at greater depth than have been reached by explorations of a thousand years. Millions of dollars have already been expended by the Federal Government and by those of the different States upon superficial geological surveys. This work will be a practical, absolute, and positive survey into the very bowels of the earth of greater practical value than any heretofore carried out.

Mr. President, I may be asked by what authority this fund can be set aside for this purpose. My answer is that the same authority which authorizes the Government to make appropriations for geological surveys upon the surface, from which the theory of geology is deduced, and by which we must be guided—the same law and right and power which justifies that exists for making geological surveys under the earth.

I hope, Mr. President, that this bill will receive that consideration at the hands of the Senate which it so richly deserves. Its benefits are not confined to any locality, but it embraces the whole nation. The gold that we dig from our mountains falls into the lap of New York as naturally as the products of the fields of Indiana find their market there. Therefore, the fact that we produce and the East gets the fruit of our production, returning for it its equivalent, to be sure, robs it of all local interest, and makes it a question as important and as general as a question of commerce or of protection to manufactures. I hope that this bill will find that favor with the Senate which I am sure it will with the mass of the people, and which will eventuate in its passage.

The Hon. R. C. McCormick, of Arizona, on February 21, 1873, thus refers to the management of the work:

And now a word regarding the management of the work to this time. With the method, the skill, and the thoroughness with which it has been prosecuted in every department, and at every step, I was most favorably impressed, by my personal observation, but a little over two months since. I found the tunnel open for over three thousand feet, and walking through it, was surprised to see the care with which it had been excavated and timbered. Its width is sufficient to admit of a double track for ore cars, and its height will insure ample ventilation, while its grade is such as to afford complete drainage.

The total length of the tunnel will be eight miles. From its mouth to the Comstock Lode, which it will strike at a depth of two thousand feet, the distance will be about four miles. On this line four shafts are to be sunk, which, at a depth varying from five hundred to fifteen hundred feet, will reach the tunnel level, allowing the work to be prosecuted (after their completion) from nine faces instead of one, thus insuring a ninefold progress compared with the present. These shafts are provided with large hoisting engines, immense pumps, and extensive buildings; as during the sinking of the shafts and the

construction of the tunnel, from the bottom of these, the rock excavated has to be hoisted, while the works must be kept clear of water, the removal of which forms the largest expenditure in the construction of the tunnel. The great amount of machinery employed all along the line necessitates constant repairs; and a machine-shop, provided with all manner of tools, is located at the mouth of the tunnel, while other structures, too numerous to be mentioned, have been erected at various points, and for much of the time during the past year a force of five to six hundred men has been engaged in active operations upon the tunnel.

The Engineering and Mining Journal, of New York, than which there is no better authority upon all that relates to mining in this country, in a review of the recent annual report of the Sutro Tunnel Company, used the following complimentary language, which more than confirms all I have said of the management:

"We need not repeat what we have frequently had occasion to point out, that this is one of the greatest and most important mining enterprises ever undertaken in the world. As an engineering plan, we have always given it our hearty approbation. We think it ought to be carried out, as it would greatly benefit the mining industry. * * * * *

"The progress thus far made appears to be decidedly creditable to the projector and engineers of the work. The organization of the office seems efficient, and the work has progressed so far with few delays. In fact, the progress made is very flattering; and if the coming work answers the expectation formed of it, we shall have had in this country one example at least of a well-conducted great mining enterprise on the largest scale."

Single-handed I have for years had to contend against the misrepresentations of this vast *corporation*. Unceasing have been its efforts to destroy the great work to which I have devoted my life; and I ask now, in behalf of the miners and laboring men of our State; I ask in behalf of all the people of the United States, who are deeply interested in the production of the precious metals; I ask in behalf of science, to which these explorations will give valuable contributions; I ask in behalf of the *honor* and *good faith* of the American nation, that this amendment may become the law of the land, so we may have that protection to which we are entitled, and so that the completion of that great work may be secured, to which the Hon. Mr. Strickland, on the floor of the House of Representatives, in his closing remarks, referred to as follows:

"The undertaking is a gigantic one, I confess; it is such a tunnel as the world has never yet known. And if it shall bore that mountain for six miles two thousand feet below the surface, revealing an amount of wealth which was never brought to light in this country before, it may well be considered a gigantic project; and it will be very unjust in my judgment—and I trust the judgment of the House will also so determine—to stop this project in its incipient stages, when it is but commenced, by giving these parties the power to destroy it; to destroy an undertaking *the most magnificent of any now in progress on this continent.*"

Having been personally assailed, I hope I may be pardoned if, in conclusion, I give a quotation from a speech of the Hon. N. P. Banks, of Massachusetts, personal to myself:

MR. ADOLPH SUTRO.

Let me say a word of Mr. Sutro. It is sometimes the case that a man by dedicating himself to a great work, although prompted by personal or private interest, becomes a public benefactor. Mr. Sutro is a man who appears to stand in this position. He came among us a stranger. He came here to advocate an idea that was not only unacceptable, but repulsive to many persons who felt deep interest in the mining districts of the country. Such was its effect upon my own mind. Year by year for eight years he has grown in the respect of members of this House. They have sustained him, I believe, in every request he has made. He has met opposition such as few other men have encountered in their plans, but he has adhered with singular fidelity to his views, and stands triumphant against that opposition. It is because his cause is just. And I am sure I can say with entire sincerity, that if the members of the House could find time to examine the numerous statements in connection with this subject, official or otherwise, they will find that Mr. Sutro's representations and opinions upon the subject are not only supported, but that they might have been made stronger than he has made them in the presentation of his own case.

He has, therefore, not only an important national interest to recommend him, but he has besides the advantage of the honorable reputation he has made in his intercourse with committees and members of the House. It is truth which protects him—the truth which is the life of nations and the strength of men wherever and in whatever contest they are engaged. So long as he is thus supported, whether his success shall come sooner or later, the House, I am sure, will be willing to sustain him in every just and proper representation he may make.

He represents the people of the Pacific coast. With few exceptions, the masses of the people and the greater number of the Representatives of the Pacific coast are with him. Every territorial delegate and nearly all the members on this floor from the mineral sections of the country—there are, I believe, but few exceptions*—are his supporters against the claims and the clamor of speculators and capitalists, who have interests adverse to those of the people. Wherever the people of these States or Territories are fully represented, they will stand generally in favor of the project he has sustained with so much enthusiasm and energy. Upon such representations the House, I believe, will give this question a fair and candid consideration. * * * It has been well said, if we do justice to others we shall be just to ourselves. It is for justice we plead—justice to those who pursue an arduous and hazardous calling, and an enterprising and, I believe, honest man, struggling for the promotion of important interests to which he has dedicated his life, hoping, like other benefactors of the race, to win an honorable name, an adequate reward for his labors.

"For justice every place a temple,
And every season summer."

Respectfully submitted.

ADOLPH SUTRO.

WASHINGTON, D. C., May 8, 1874.

* This was in the last Congress. In the present one, some of these same Representatives, for unaccountable reasons, appear as the opponents of this great work.

PRELIMINARY REPLY TO THE ARGUMENTS OF THE OPPONENTS OF THE SUTRO TUNNEL.

If not objected to, I hope I may be permitted to reply at this time to the arguments of the opponents of the Sutro Tunnel, which, *although I have not seen them yet*, I am quite familiar with, having heard them a hundred times from persons connected with the Bank of California, and refuted them as often. I feel confident that the same statements will again be produced, for they are the best which ingenuity could devise where there is no case.

1. *They, the mining companies, did not understand the meaning of the third section of the Sutro Tunnel act until after Mr. Sutro had explained it, many years after.*

Immediately after the passage of the law, in the year 1866, Mr. Sutro extensively circulated a pamphlet fully explaining the compulsory character of the third section; the mining companies became thereby so well convinced that the tunnel would be a profitable undertaking that they commenced freely to subscribe to the stock, which the Bank of California, after its warfare was inaugurated, made them repudiate.

The Nevada Legislature was so well pleased to see the enterprise on a sound basis, that a vote of thanks was given to Mr. Sutro, and Congress memorialized to further aid the work.

2. *The framers of the law did not understand the construction which could be put upon it.*

Senator Stewart had but a short time previous to the passage of this act been president of the Sutro Tunnel Company, and was so imbued with the importance of the work, and so anxious for its welfare, that he himself drafted the third section in such a manner that, as he stated, the mining companies should never escape from it.

3. *That Mr. Sutro himself did not understand the true meaning of the law, for he asked for an extension of time on the contracts.*

Mr. Sutro always considered that the law of Congress was one thing and the contracts another; while the former might have secured certain independent rights, others might have existed under the contracts, which it might have seemed well to preserve. How Mr. Sutro understood the law has already been shown by statements in his pamphlets.

4. *That not understanding the law, the mining companies erected costly machinery, and have already drained the mines.*

Any one with common sense knows that a mine cannot be drained by perpendicular shafts. The water may be pumped out by powerful machinery; but the moment it stops, the mine fills with water. But they claim they are below the water belt, and it is no longer troublesome. On that subject, reference is made to the testimony taken by Congress, when it was shown that the superintendent of one of the mines, who had declared to the commissioners "that Washoe is a dry country," had been writing daily letters to his superior officers at San Francisco during four years, showing that, notwithstanding the most strenuous efforts at pumping, his mine was drowned out during all this time.

5. *That the time for the utility of the tunnel has passed, since some of the shafts have reached below the tunnel level.*

After the completion of the tunnel, *all* the water, whether flowing from above or pumped from below its level, will be discharged through it. It will, under all circumstances, save 2,000 feet of pumping. The true advantages of the tunnel cannot be realized until *all* the shafts have reached the tunnel level, for it is only after that time that ore can be lowered into it, and the benefits of ventilation derived.

6. *That a toll of two dollars per ton will be an oppressive charge.*

The parties who make this assertion are at the present time making a clear profit of at least twelve dollars per ton on each of one thousand tons of ore per day, or a clear profit of twelve thousand dollars for every twenty-four hours. The Sutro Tunnel will so much cheapen transpor-

tation and reduction, that the profits of these parties will be much curtailed after the completion of the tunnel, hence the opposition. Two dollars per ton will be a mere bagatelle for the immense benefits derived.

7. *That the Sutro Tunnel is a monopoly.*

The Sutro Tunnel has the monopoly of boring through three miles more of solid rock without the income of a single dollar. It is rather cool for the California Bank ring, the most overgrown monopoly in the United States, to call others a monopoly. We do not have a right to collect a single dollar until the tunnel shall be completed to the Comstock Lode.

8. *That claimants to outside mines are opposed to the Negley amendment.*

Is it likely that outside claimants are opposed to a law which makes the rich companies on the Comstock Lode define their boundaries, so they can no longer claim and swallow up their smaller neighbors for miles each side whenever their claims prove valuable? These poor parties claim that they are *not* on the Comstock, while the big companies say they are. Pass the Negley amendment, and everybody will be secure.

9. *That it is a hardship to be compelled to take out patents.*

The productive mines are the only ones under this amendment which must take out patents. The only productive mines at the present time are the Belcher and the Crown Point. From these come all the opposition. They have divided in clear profits \$9,000,000 in the last three years, and now refuse to pay the paltry sum of \$500 each they owe the Government for the land. The former is owned by the Bank of California, the latter by Senator Jones and his friends. One has subscribed \$43,680, the other \$48,000, towards a fund to destroy the vested rights of the Sutro Tunnel Company.

10. *They at the same time claim that the tunnel will never be completed.*

If that be the case they will not have to pay any toll or

royalty, and it is astonishing to see the eagerness, notwithstanding, with which these parties oppose the work.

All the above statements have been refuted many times; but since this is the only basis the opposition has to go on, they still hold to their assertions, or else their occupation would be gone.

ADOLPH SUTRO.

WASHINGTON, D. C., *May* 9, 1874.

ARGUMENTS

ADVANCED BY THE

ENEMIES OF THE SUTRO TUNNEL.

The only person appearing to be interested in the passage of Senate Bill, No. 16, is Mr. Sutro, representing the Sutro Tunnel Company.

Being the attorney of the Mining Companies upon the Comstock Lode now engaged in litigation with the Tunnel Company, I have thought it proper to ask permission to state to the committee, in that capacity, wherein the proposed legislation interferes with what my clients conceive to be their rights.

The bill before the committee, as it originally passed the Senate, was of but little importance. It simply provided that where applications for patents have already been filed, they should be prosecuted with a certain degree of diligence, in default of which the proceeding should be dismissed. In this there was nothing which affected in any manner the rights of the applicant to the mining claim. There was certainly nothing which could in the remotest degree affect the interests of the Sutro Tunnel Company.

The amendment attached in the House at the instance of Mr. Sutro is entirely foreign to the purpose and to the provisions of the original bill. While it has a single aim, it has a double aspect, and affects two different classes of interest, or rather the same interest in two different ways.

First, it requires all persons claiming upon the Comstock Lode to make application for patents within six months, and to make final proof and payment within twelve months from the passage of the act. The penalty for not doing this is a forfeiture of the claim. The injustice of this provision is forcibly pointed out by the Commissioner of the General Land Office in his letter to the chairman of the Committee on Mines and Mining, a copy of which I herewith transmit.

To the cogent reasons against this harsh and invidious legislation given by the commissioner, I will add another.

Instead of there being any peculiar cause why the miners of the Comstock Lode should be forced to apply for their patents, there is a special reason why they, more than all others, should not be subjected to this requirement. It is well known that many controversies still exist in respect to those claims, one class regarding their lineal boundaries, and another larger class respecting their lateral extension, involving the vexed question of one or more lodes. If application is made for a patent, the law requires the immediate litigation of all adverse claims. The inevitable result of this law would be the initiation of a large number of troublesome and expensive lawsuits. Experience has shown that, in nine cases out of ten, time and development settle these controversies, not only without the expense, but much more satisfactorily than by a resort to the courts. Unless the Government wishes to force unnecessary litigation upon those miners, who have already had much more than their share, it will leave the claimant to judge as to the time when the explorations warrant him in applying for a patent.

Its second aspect, and that to which, so far as the purpose of its author is concerned, the first is only incident, regards the relations existing between the Sutro Tunnel Company and the Mining Companies upon the Comstock Lode. In order that the bearing of the proposed legislation upon this question may be understood, it will be necessary to state briefly the facts, showing the present status of the controversy.

In the spring and summer of 1866, certain contracts were entered into between the Tunnel Company and most of the Mining Companies. These

contracts were all in the same form, and I present with this statement a copy of one of them—that made with the Chollar Potosi Mining Company.

The articles to which I wish to call special attention are the following:

ARTICLE I. The parties of the first part, in consideration of the premises, and in consideration of the covenants and agreements hereinafter mentioned, to be kept and performed by the party of the second part, covenant and agree to and with the party of the second part, that the parties of the first part will, on or before the first day of August, 1867, commence, and with reasonable energy and vigor, and at their own expense, run, excavate, and complete the tunnel and lateral drifts hereinafter mentioned, and put the same in condition for use, in accordance with the provisions of the said act of the Legislature of the State of Nevada, and with the covenants in this agreement contained, for the purpose of draining the mines on the said Comstock Lode and furnishing other conveniences for working the same.

ART. III. The parties of the first part covenant and agree that the work shall be commenced at the time specified, by running the tunnel from the foot-hills of Carson Valley; and also by simultaneously sinking at least three shafts of sufficient capacity on the line of the tunnel, and when the shafts have reached the depth required for the level of the tunnel, then to drift in both directions from the bottom of each shaft, so that there shall be at least seven places of excavation going on, from the time that all of the shafts shall reach the requisite level, all the time until the tunnel is completed, unless connections between some of the shafts are sooner made; and the said work at all times shall be prosecuted continuously and without any interruption, except from unavoidable accident, until the completion of the tunnel, and of the works which under this agreement are to be considered as draining the mine of the party of the second part; and in case of any such interruption occurring, the cause thereof shall be removed or remedied and the work resumed without delay.

And the parties of the first part covenant and agree that, on or before the first day of August, 1867, there shall have been subscribed, in good faith and by apparently responsible persons, at least the sum of three millions of dollars, for the purpose of carrying on and completing the said tunnel and the lateral drifts hereinafter mentioned; that of said sum at least ten per cent. shall have been actually paid in cash; that during the first year in which the work shall be prosecuted, commencing on said first day of August, 1867, there shall be expended upon, or on account of the work, not less than the sum of four hundred thousand dollars, and during each succeeding year thereafter, until the work shall be completed so as to drain the mine of the party of the second part within the meaning of this agreement, not less than the sum of two hundred thousand dollars; provided that this amount can be advantageously expended after the completion of the main tunnel, and that they, the parties of the first part, will, within thirty days after the expiration of each year, furnish to the party of the second part a full, true, and correct statement of the expenditures made on account of the work during such year, verified by the oath of the managing agent and secretary or book-keeper of the parties of the first part.

ART. IV. If the work shall not be commenced on or before said day, and with said sum of three millions of dollars subscribed, and ten per cent. thereof actually paid in cash, as hereinbefore provided, or if, after so commencing, the parties of the first part shall during any year fail to expend on account of the work the sum of money hereinbefore agreed to be expended during such year, this agreement shall, at the option of the party of the second part, cease and determine, and thereafter be of no effect.

At the time these contracts were executed, the shafts on this lode were down to a depth of from 400 to 600 feet, and large bodies of water were being encountered. Should similar, or as was possible, increasing bodies of water continue to be met with in descending, there was reason to fear that the mines could not be drained by machinery without great expense and difficulty, and

hence these contracts for a tunnel were entered into. But it was also evident that the tunnel, to be serviceable, must be speedily completed; hence the stringent provisions of the 3d and 4th articles above quoted.

Sutro never in any manner complied with the conditions of these contracts. Instead of commencing work on the 1st day of August, 1867, in the vigorous manner required in article 3d, for more than two years after that date nothing whatever was done. It was not until October, 1869, that a feeble commencement was made by putting at work nine or ten men at the mouth of the tunnel. At the present time, after four years of real or pretended effort, but little has been accomplished. I cannot say precisely, but am assured that not one tenth of the work necessary to its completion according to the contracts has been performed.

In the meantime the Mining Companies have become satisfied that the tunnel, if constructed, would be of no utility; and for seven years past they have acted upon the supposition that the contracts were void by reason of the failure of the Tunnel Company to observe its covenants.

As early as the summer of 1867, the developments indicated to the mining superintendents that the water belt did not extend below the depth of 600 feet; and the correctness of this opinion has since been fully demonstrated, as while many shafts have now reached the depth of 1,600 or 1,700 feet, and some that of 2,000 feet, no considerable amount of water has been encountered below the 600-foot level.

About the date of August, 1867, Sutro, being in no condition to fulfill his agreement, sought to obtain from the Mining Companies an extension of the time for commencing the work. A blank for these extensions was prepared by him for signature, a copy of which can be found in a book called the Sutro Tunnel Book, (p. 188,) published by him. It recites that "in consideration of the sum of one dollar and other considerations, the company covenants that said party of the second part shall have, and is hereby granted an extension of time for one year from and after the period specified in articles 1st, 3d, 4th, and 5th of a certain contract entered into between the parties hereto on — day of —, 1866."

The Mining Companies, with one or two exceptions, refused to sign this extension. They exercised the option given them by article 4th, and repudiated the contracts, and from that time on have treated them as void. They have proceeded to develop their mines without reference to the projected tunnel, and by the use of the best and most expensive machinery in the world, have already descended 300 feet below the level of the proposed tunnel, and demonstrated that it would be of no possible value.

On the 25th day of July, 1866, the Sutro Tunnel act (Statutes, 1866, p. 242) was passed by Congress. The first two sections, giving a right of way and donating land at the mouth of the tunnel, are unimportant. The state of facts which suggested the third section was this: There were two, perhaps three, of the claimants upon the lode who had refused to enter into the contract. Their claims, however, as well as one or two claims in front or east of the lode, were so situated that the benefits of the tunnel, if run according to the contract, must necessarily enure to them equally with the contracting companies.

For the purpose of making these parties do what was thought to be equitable, the third section was prepared and incorporated into the act in these words:

"SEC. 3. *And be it further enacted*, That all persons, companies, or corporations owning claims or mines on said Comstock Lode, or any other lode, drained, benefited, or developed by said tunnel, shall hold their claims subject to the condition (which shall be expressed in any grant they may hereafter obtain from the United States) that they shall contribute and pay to the owners of said tunnel the same rate of charges for drainage or other benefits derived from said tunnel or its branches as have been or may here-

after be named in agreements between such owners and the companies representing a majority of the estimated value of said Comstock Lode at the time of the passage of this act."

This section attracted no attention until about the time that work was commenced, in the autumn of 1869. Then for the first time (at least to the knowledge of the Mining Companies) Sutro commenced to claim for it a different and broader interpretation, to wit, that instead of having the effect to coerce a few intractable companies to pay as others for that which they could not avoid receiving, it in fact abrogated the conditions of the contracts actually made, and imposed an absolute royalty of \$2 per ton upon all ore which should be extracted after the completion of the tunnel; that the agreements were simply referred to for the purpose of fixing the amount, but that the obligation to pay the same when thus ascertained was created directly by the law, and was independent of the performance of the conditions precedent contained in the contracts.

This interpretation of the language of this section (which, in the absence of a knowledge of the facts, was not entirely without plausibility) was loudly and widely asserted by Sutro, and was used by him to sell his stock in the East, where the facts were not known, and to influence the always sensitive mining stock market in San Francisco.

To prevent this the Mining Companies, in February, 1870, caused to be introduced in Congress a bill explanatory of this section, and declaring that it should not be construed to interfere with the contracts.

This bill was reported upon adversely by the Mining Committee of the House, and subsequently defeated by a vote in that body, many members placing their opposition to the measure upon the ground that the section as it stood could not be construed to impair in any manner the contracts.

Since that time there has been no legislation touching this subject, except that, in nearly every bill relating to mining, Mr. Sutro has procured to be inserted a proviso that nothing therein should be construed to impair the rights of the Sutro Tunnel Company under the law of 1866.

Such being the facts, the motive of Mr. Sutro in urging the adoption of the amendment requiring the companies to take out patents I suppose to be this: the sections of the tunnel act above quoted contain this clause: "subject to The conditions which shall be expressed in any grant they may hereafter obtain from the United States." Any patent, therefore, which should be issued, would contain this provision. I do not suppose that any lawyer has ever advised Mr. Sutro that the insertion of this clause in a patent in any way strengthens his legal claim to a royalty from the company receiving the same. It is obvious that it is the law and not the patent which fixes the legal rights of the parties. But Mr. Sutro seems desirous that there should be, as often as possible, and in as many forms as possible, a recognition of some present force in this law of 1866. He desires it to be restated in a patent for the same reason that he desires in the present amendment a double statement, that the legislation is to be subject to the conditions of the Sutro Tunnel act. Understanding that the companies maintain that this law is practically obsolete, that it has no longer any function to perform by reason of the failure upon his part to fulfill the agreements upon which its vitality depended, he asks that Congress may be constantly recognizing and reaffirming it, in order that he may point to such legislation as a subsequent declaration by that body in favor of the construction of the act which he claims.

Inasmuch as this is the only conceivable purpose of the insertion of these clauses in this and other mining bills coming before the Senate, I feel justified in asking of this committee a careful examination of the section referred to, and that if the same is to be reaffirmed, such reaffirmation shall be accompanied with a distinct statement by this committee of the proper construction of the act thus expressly continued in force.

In the hope that this may be done, and that thus, so far as Congress is

concerned, Mr. Sutro may be relieved from the necessity of further importunity, and my clients from the obligation of constant vigilance, I submit the following suggestions as to the true scope and meaning of the 3d section of the act of 1866:

It is claimed by the Sutro Tunnel Company that this section imposes upon the contracting Mining Companies a royalty independent of the contracts, and dispenses with the necessity of the performance of the precedent conditions fixed by the contracts on the part of the Tunnel Company. I deny that it has any such force.

The general principles governing the construction of statutes do not require any repetition here. The object to be arrived at is the ascertainment of the intention of the Legislature. This intention is to be deduced from the language employed in relation to the subject-matter, and in connection with the circumstances under which the legislation is had. In cases of peculiar obscurity other rules are sometimes applied, but there is nothing in this section calling for their statement; for I claim that when we know the circumstances, and regard the subject-matter and the language, there is no obscurity.

First. When we know the fact that the passage of the act and the execution of the contracts were contemporaneous; that while the bill was pending the contracts were being signed; that by the terms of the contracts nothing was required to be done under them for more than a year, and that therefore nothing had or could have intervened between the execution of the contract and the passage of the law, changing in any way the relations of the parties, it is difficult to believe that Congress intended by the law to destroy or in any way impair the agreements. It would have been fraudulent and treacherous on the part of Sutro to have sought or even permitted such legislation.

Second. When we know the further fact that while most of the Comstock Companies had signed the contract, two or three of them (as well as one or two outside claimants) had refused, whose claims were nevertheless so situated that they would necessarily reap the benefit of drainage by the tunnel, if completed, we have the key to this section, and its object and scope become apparent. It had but one purpose, and that was to bind these companies to the terms of the contracts which they had refused to sign, and thus prevent them from shirking their share of expenses for benefits which they would necessarily share with the contracting companies. Let the section be read carefully, and it will be seen that every word is consistent with this purpose and no other.

Third. The language of the section is utterly irreconcilable with the theory that it was intended to abrogate or impair the contracts, and impose by law a royalty or charge contrary to their terms.

1st. If such had been the intention, why refer to the contracts at all? It would have been much simpler to have named the amount and imposed the charge directly, than to have employed the circumlocution of "charges named in agreement," &c.

2d. If it was intended to impose a charge by law, why make it dependent on the signing of agreements by the majority in value of the companies upon the Comstock Lode? It is obvious that, unless a majority of the companies signed some sort of agreement, the section would have no force. Is it possible that it was thus left optional with the majority to defeat or vitalize the section by making or refusing to make contracts, and that yet so soon as the requisite number of agreements should be executed, then by the law the stipulations and covenants in those agreements should be abrogated?

3d. Again, the charges referred to are those "named or to be named in agreement," &c. Future agreements are placed in the same category with those already made. Is it anything less than absurd to say that a Mining Company choosing to contract with the Tunnel Company after the passage of the act could not make such terms and conditions to its agreement as it should

choose, or that, having fixed such conditions, they should be in whole or in part annulled by the law so soon as the requisite majority in values should be reached?

If so intolerable a construction cannot be maintained with regard to future contracts, then it cannot with regard to those already made; for the two are classed together in the same phrase, and precisely the same force given to the one as to the other.

4th. The law alone, independent of agreements, creates no liability. It has no force except in connection with contracts. The only obligation it imposes is that certain companies shall pay "the same rates of charges as are named in the agreements." It is not to pay the number of dollars or cents, or to pay the amount, but "the same rate of charges." It is impossible to ascertain a "rate of charges" without a definition of that for which the rate is fixed. If it is for drainage, we must have a definition of this term; if for transportation, the character and extent of the transport which calls for the rate. In this case, in order to ascertain the "rate of charges," it would obviously be necessary to resort to all those sections of the contract which define what the Tunnel Company must do in order to entitle it to receive a certain rate—the sections which define the character of tunnel and side drifts which must be made, the manner in which they shall be made, and the point in relation to each claim which they must reach; for without knowing all these it is impossible to say what is or is not the "rate of charges named in the agreement." These provisions make more than half of the actual contracts. Now, I ask, can we take half of an entire contract and repudiate the other half? Can the Tunnel Company be bound by a portion of the stipulations and escape from the residue? If the conditions of manner and place are still in force, has that of time lost its validity? The rate of charges named in this agreement was fixed for a work done not only at a certain place and in a certain manner, but at a certain time, this last condition being, throughout the contract, treated as of at least equal importance with either of the others. The one is just as effectual a limitation, just as essential a portion of the definition of the term "rate of charges," as the other.

Suppose an action to be commenced at any future time by the Tunnel Company against, for example, the Chollar Potosi Mining Company: what must the plaintiff aver and prove? It is evident that a statement of the law alone, and an averment of the performance of its provisions, will be utterly insufficient. The law does not pretend to define what the Tunnel Company must do before it shall be entitled to recover. It not only fixes no time within which the work shall either be commenced or completed, but it does not state what, with reference to any particular company or all companies, shall be deemed a completion of the work, or anything in reference to the manner in which it is to be done, in order to create a liability on the part of the Mining Company. Looking to the law alone, a suit for the royalty can be commenced to-day, when the tunnel is not within three miles of the claim, as well as when it shall have reached or passed its boundaries. The plaintiff can make no case without pleading, and introducing in evidence the contract, nor, as necessarily follows, without pleading and proving a compliance with its essential stipulations.

I deem it unnecessary to pursue further the analysis of this section. There is no ambiguity in its language. There is not one word in it which can be tortured into an attempt by Congress to interfere in any manner with any of the terms or conditions of the contracts made with the Mining Companies, or to relieve the Tunnel Company from their performance, or from the forfeiture consequent upon a non-performance. That at the time of the passage of the act, and for a long time afterwards, Mr. Sutro understood that the stipulations of the contracts, and particularly that as to time, were still in force, is made evident by his attempt, in the summer of 1867, to procure an extension for one year of the time within which the work was to commence. No explanation can be given of this application consistently with a belief on his

part that the law of Congress had relieved him from the obligation to comply with this condition.

So far, then, as regards the Sutro controversy, the case presented to the committee by this bill is this: The parties differ about the construction of an act of Congress. Sutro claims that the act gives him an absolute royalty independent of his contracts, and this the Mining Companies deny.

If Sutro is right, then the law is operative, and its continued unimpaired existence a matter of consequence. If, on the other hand, the Mining Companies are right in their construction, then this law has become virtually a dead letter, for it is evident that the non-contracting companies, to which in their opinion it alone relates, cannot be bound otherwise than as the contracting companies are bound. Under these circumstances Mr. Sutro desires that proposed mining legislation shall be encumbered with declarations that it is to be subject to the law in question.

The propriety of this legislation does not depend solely upon the legal effect which it may have in the courts of law, where the controversy must eventually be settled. That it will be referred to there, that it will be insisted in argument that these various re-enactments are a *quasi* indorsement by Congress of the construction given to this act by the Tunnel Company, is beyond a doubt. But the inexpediency and injustice of such legislation is independent of its technical legal force. Mr. Sutro and his coadjutors are engaged in a scheme to fasten upon the mining community a most onerous tax. The seriousness and expense of the litigation which this attempt involves will depend largely upon the amount of money which they may procure to be invested in the tunnel enterprise. The peculiar phraseology of the 3d section of the act of 1866, requiring, as it does, for its correct understanding, a knowledge of the state of facts to meet which it was enacted, and also, for an appreciation of its present value, a knowledge of the fact that the agreements referred to therein have become void by reason of the laches of the Tunnel Company, has already enabled Sutro, by misrepresentations of its character, to sell a portion of his stock and obtain money to be used partly in a show of work upon the tunnel and partly in manufacturing, by a flood of libellous publications, a false opinion at Washington and elsewhere. The enactment of the similar clauses in this bill will be used for the same purpose.

Again, one of the inevitable results of such legislation, and one of the objects which it has in view, is to affect the value of these mines and the stock representing them, and to create opportunity for speculation, by reason of the consequent fluctuation in their values. Should the proposed royalty of \$2 per ton be imposed upon these mines, it would, taking as a basis the number of tons extracted the past year, amount to a tax of about \$1,200,000 per annum. When it is to be considered that this burthen is to be charged upon a property ranging in estimated value from \$20,000,000 to \$45,000,000, according to quality and quantity of ore bodies discovered, and that it is to be charged for no corresponding benefit whatever, (for the only people whom Sutro succeeds in convincing of the utility of this "great work" are those who know nothing about it,) it is not strange that a mere threat of its imposition should affect the confidence of the multitude of stockholders, scattered, as they are, over the whole Pacific coast. Every time that Congress enacts that certain legislation is "always subject, however, to the conditions of the Sutro Tunnel act, approved," &c., it is heralded everywhere, by Mr. Sutro and his speculating associates, as another direct congressional affirmation of his right to collect the royalty of \$2 per ton.

We think we have a right to protest against such legislation. We have no wish to interfere with any of the legal rights of the Sutro Tunnel Company. We ask for no further legislation. No one has ever been misled with regard to our position. We have taken pains at all times within the past seven years, and on all occasions when the same seem to be called for or proper, to state publicly the facts in regard to this tunnel scheme, and its repudiation by our entire mining community, in order that no equities might

be created by our silence in favor of its managers or their dupes. If, in the face of these repeated warnings, the magnificent prospect of \$1,200,000 a year shall induce speculators to hazard their money in the construction of a work for which no one but themselves has any use, then the Supreme Court of the United States will eventually determine whether they have gained a splendid monopoly or have lost their stake.

But we object to this scheme being further encouraged by Congress, and earnestly urge that if this law of 1866 is to be revived by the proposed legislation, it may be accompanied by such an explicit declaration on the part of this committee of the real meaning and proper construction of the law referred to as shall put it out of the power of misrepresentation to deceive capitalists in New York and Germany or mining stockholders on the Pacific coast.

C. J. HILLYER,

Attorney for Mining Companies.

SENATE BILL 16. REPLY TO ARGUMENT FOR SUTRO.

Hon. G. F. EDMUNDS,

Chairman Judiciary Committee of Senate.

1st. The first point to which I wish in reply to call attention is, that the counsel for Mr. Sutro, in his argument, does not pretend that there was anything in the original Senate bill which called for or in any way made necessary the proposed amendment. He leaves the treatment of this proposition (entirely a legal one) to his client. The latter introduces the subject by saying: "Fortunately I returned in time to discover the iniquity, which was not understood by my best friends, none of whom, *though able lawyers*, could see the scope of that bill until it was pointed out." (See pamphlet, p. 29.) If the committee will read the four paragraphs in which Mr. Sutro proceeds to point out the "scope" of this bill, they will not wonder at the obtuseness of the able lawyers referred to. The points made are too trivial to justify a detailed consideration, and I will make only one suggestion, which disposes of them all. "An applicant for a patent has a right at any time to withdraw his application and dismiss the proceeding. If, therefore, there had been any desire on the part of these companies or any others to arrest proceedings upon applications already made, they would hardly have taken the long road through Congress when they could reach the same point by a letter to the register of the land office. I do not know by whom or at whose instance the bill was introduced, but I venture to say that its author never thought of Mr. Sutro or his tunnel, and quite likely was ignorant of the existence of both.

In fact there is no relation between the bill and the amendment, and the latter must stand or fall upon its merits as an original measure. As such it is advocated by the counsel of Mr. Sutro upon grounds which I propose briefly to examine.

2d. The 1st and 2d points in the argument of Judge Black (pamphlet, p. 3) are not of particular importance.

The proposition in the 3d point, as to the absence of any right or title in the mineholders, is much too broadly stated. They had a title good as against all the world, except the Government of the United States,—a title having its source in an implied license,—upon the faith of which millions of dollars had been invested—a title recognized and protected by all the courts, State and Federal—and of such practical worth that the reception of a United States patent would not at any time have perceptibly influenced the market

price of any mine upon the lode. It was this title upon which the contracts took effect, and which, under the clause making the obligations in the contract a lien upon the mines, afforded ample security for the performance of these obligations.

But if, as I suppose, the only object of counsel in stating this proposition is to establish the complete authority of Congress over these mines, and the power of that body to have imposed upon them such burdens as it might see fit, then I will avoid discussion, and concede the point as fully as it is claimed. The real question is not what Congress *could* do, but what it *did* do.

3d. The substance of the 4th point is in the assertion that, by the passage of the Sutro Tunnel act, "the faith of the Government was pledged that Sutro should have for his work what the Mining Companies had agreed to give him, *to wit, two dollars per ton.*" If the sentence had closed with the words, "agreed to give him," I should have nothing to say except to indorse the statement. But between the clause "what the Mining Companies had agreed to give him" and the "two dollars per ton" there is a chasm which cannot be bridged by a mere "to wit." The companies never agreed to give Sutro two dollars per ton, or any other sum. They agreed to give him two dollars per ton for certain future considerations, and upon certain conditions, and not otherwise.

4th. I do not care to question the legal proposition stated in the 5th point. But there is the same looseness and indirectness in its application in argument as in the preceding paragraph. When the counsel says "the contract between Sutro and the miners is referred to in the act merely as the *measure of the compensation*" his language is unintelligible without a definition of what he means by "measure of compensation." Measure of compensation for what? For doing what Mr. Sutro in the contracts had agreed to do? Then I agree with the counsel. For doing something different or less than this? Then we are at issue. It is useless to attempt by any generality or circuitry of speech to evade this, the real and only material question. Either Congress (to assume as correct that its action was induced by a want of power in the Mining Companies to bind the property as well as the person) came, by its legislation in aid of this incapacity, and ratified and confirmed these contracts by making their obligations a perpetual lien upon the land, or it exerted its authority to override them, and to annul in whole or in part their terms. Either it permitted the majority in value of the Mining Companies to determine upon what terms they desired this tunnel, or it substituted its judgment for theirs, and fixed the terms differently. In the one case the rights of the parties are measured by the conditions of the agreements: in the other by some different rule established by the law. The counsel admits that the law alone does not furnish this rule. To ascertain any "measure of compensation," a resort to the contract is indispensable. If so, must the contract be taken in whole or in part? If the latter, what portion is to be taken, and what left?

The counsel has not undertaken the task of making this distinction. He probably found that to a lawyer the difficulties were insuperable. If not, I am sure he will whenever he addresses himself to the task. His client, however, has indicated his views upon this point by commencing his copy of the agreement with its 12th article. (See pamphlet, p. 8.) That is, in his view the contract should be divided precisely at the point where the obligations on his part cease, and where those of the companies begin.

But I am not disposed to criticise the point selected. If the contract is to be severed, it may as well be here as elsewhere—as well take any section, or any half dozen sections, or any six lines, as take anything less than the whole agreement as the parties made it.

5th. The remaining (7th, 8th, 9th, 10th and 11th) points I will consider together, as they all relate to one question, to wit, the propriety of forcing these Mining Companies to take out patents.

To that large portion of these paragraphs in which the learned counsel kindly volunteers to advise the Mining Companies as to their own interests, I will only say that the advice is declined for two reasons: 1st. That evidently, from what is said, he is not sufficiently familiar with the subject to be competent to give them counsel of any value; and 2d. That it will be ample time to proffer it when it shall have been solicited. I will add that if he really believes, as he says, that these companies have no title, and that their mines are open to re-location, there is a much more brilliant, or at least lucrative, professional field open to him upon the Pacific coast than any I know of in the East.

So far as the proposition to force applications for patents affects the rights of Sutro, it is a subject of legitimate argument. The learned counsel says that it is *due* him, and says, "The United States promised that he should have the assurance of his rights expressed in patents to the grantees of the mines." The statement is remarkably inaccurate. All that Congress has ever said is this, in the 3d section of the tunnel act: "Subject to the condition which shall be expressed in *any grant they may hereafter obtain* from the United States." Certainly this language cannot be tortured into any promise to Sutro that any patent should ever be issued or applied for. To claim such a promise and to talk about *bad faith* in not keeping it, seems to me to be to have mistaken the committee before whom this case is being argued.

6th. I have searched the argument in vain to find how it is claimed that this amendment will benefit Sutro, or why he desires it. The counsel says "this amendment will not create any new rights," and I agree with him. If so, why urge its adoption? He says "it merely provides for the *proper definition* of those already granted and vested." Why can it not be at least *suggested* to us in what respect those "granted and vested" rights need to be defined, and in what manner this amendment prescribes for them a "proper definition?" In my judgment, simply because no reason could be given which would appear respectable before this committee. The real purpose of the amendment is that pointed out in my former argument, and therefore not such as would occur to a lawyer or become him to advocate.

7th. Previous to the passage of the mining law of 1866, (14 U. S. Stats., p. 251,) the Mining Companies held their claims, as I have said, by possession under an implied license from the Government. By the first section of that act (substantially re-enacted in the act of 1872) this possessory title was perfected by substituting for the implied license to occupy the direct sanction of the Government. While this section does not give to the miner a fee simple title, it gives a title for his purposes equally good. So long as he occupies according to the prescribed regulations, the mine is his *property*, protected by the Constitution, and under the guardianship of the courts, as other property. If he chooses to abandon it, it reverts to the public domain. If, on the other hand, he desires to segregate it perpetually, he is permitted by the acts referred to to apply for and obtain a patent. Nowhere is this made obligatory. It is a provision for his benefit, and not for that of the Government—a privilege, and not a duty. And it is plainly not for the interest of the Government to compel or even further to encourage these applications for patents. The real value to the Government of its mineral lands lies in the gold and silver product which they yield. Its true policy is, therefore, that which will most stimulate exploration, and this is effected by the least possible monopoly of ownership consistent with the stability of title necessary to quiet the fears of capital. The present law most happily reconciles these conditions. It protects fully the prospector, so that he does not feel compelled to segregate his claim from the public domain, and for his security promises that whenever, in his opinion, it shall be warranted by the explorations, he may obtain a complete title. To illustrate its operation, as well as that of the proposed amendment, take a claim upon the Comstock lode. Its present owner sinks his shaft to the depth of 500 feet, runs his side drifts,

finds nothing, and, being impoverished or discouraged, stops work. If he has a patent the mine is locked up for all time, or until he changes his mind, or his heirs revise his judgment. If, on the other hand, he has only the occuputory title given by the first section of the mining act when he stops work, his claim is abandoned or, by the mining rules, soon forfeited. Another explorer, having more money, more skill, or more faith, re-locates the claim, and recommences the search, either to find a mine which enriches the nation or to give place, in his turn, to a third who desires to make the attempt. It is very easy to see in which of these systems the Government will find its advantage, and I cannot believe it will depart from its settled policy of not forcing upon the miner the absolute ownership of its mineral lands.

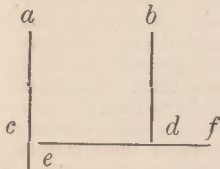
I have said all that I wish in reply to the argument of Mr. Sutro's counsel. I have only one or two general remarks to make in respect to the portion of the pamphlet contributed by Sutro. Its object is to convince the committee that he has some equities which entitle him to consideration and sympathy. Let us see. The Mining Companies, at one time, with limited experience and limited explorations, thought the tunnel would be useful, and encouraged its construction. Afterwards they, with fuller experience and deeper developments, became of the opinion that it was not needed, and that money expended in its construction would be wasted. They so told Mr. Sutro. At that time he not only had done no work, and raised no money, but was in no condition to do either. They further told him that the agreements were broken, and that they would pay him nothing for the tunnel if made. Thus two years passed by, and still no work was done. The developments continued to make plainer the uselessness of the tunnel. Everybody interested was convinced of this except Sutro. Now, I ask, could any equities be acquired by Sutro by commencing work under these circumstances? Granting that he had acquired the legal right to exact the royalty, is there anything which calls for sympathy in the cold-blooded speculation of causing others to expend money in a work of no actual value, simply because he and they could make these miners pay double the amount by way of a tax upon ores? I know that Mr. Sutro claimed that these miners did not know their true interests, and did not understand as well as he the value of his tunnel. To one who knows the speaker and those of whom he speaks, the assumption is as ridiculous as it is egotistical. Compared with the mining superintendents and engineers on the Comstock Lode, Sutro is a mining quack. With no practical experience, all that he knew theoretically on the subject at the time of the inauguration of the tunnel enterprise he learned from them, and what he has since gathered from foreign books they have used and thrown away. The authors of these books would, if about to write again, come to these gentlemen on the Comstock Lode, not only for their facts and figures, but for their conclusions and the theories of scientific mining. A moment's thought must convince any one that mines such as those upon the Comstock Lode must have drawn to them the best mining and engineering talent in the world, for talent goes where it is most in demand and best paid.

To say that these Mining Companies did not understand their true interests, is as absurd as to say that, understanding them, they, through such petty consideration as ill-will to Sutro, or through any other influence, refused to act upon this knowledge. If the tunnel had been needed, they would have taken care that it should be speedily constructed.

If such were his equities when he commenced work, what are they to-day? The uselessness of this tunnel, which six years ago was inferred by scientific opinions, is to-day practically demonstrated. The Savage shaft is now down 2,100 feet below the Gould and Curry croppings. The tunnel level is 1,800 feet below those croppings; that is, *the shaft is 300 feet below the level of the tunnel*. Many other shafts are down about to the tunnel level, and all in operation will have passed it before the possible completion of that work. What becomes of all Sutro's talk about the necessity of his tunnel for draining these mines? If he will only commence his tunnel on the other end

next the lode, and change its grade, the mines will now drain his tunnel. When his tunnel reaches the lode, he will find it as dry as the hillside where it was started. There will never be any water in it except what he may procure to be poured or pumped into it.

Sutro has claimed that it would aid ventilation. The mining engineers have always denied this, and, in fact, it is not necessary to be a mining engineer, or even a practical miner, but only to know those elements of pneumatics which one learns at school, to refute this claim. Two shafts, however deep, connected at the bottom, create a current of air, in the same manner as would a tunnel connecting with the bottom of a shaft. Most of the shafts on the lode are already connected, and where this is not done, the connections are being rapidly made. The system of ventilation by these connections is as perfect as it would be with the tunnel. If the tunnel were made, ventilation would still only be obtained by connections, the expense of which it would not lessen by one dollar. It is true that there always are, and always must be, portions of a mine unventilated, except by mechanical appliances. Any drift uncompleted to a connection, and of which one end is therefore closed, will contain bad air, for however strong a current may pass by its open end, it will not enter unless mechanically forced. To illustrate:



If a c and b d are parallel perpendicular shafts, connected by the drifts c d at bottom, there will be as strong a current of fresh air passing through the entire circuit as if a tunnel entered the bottom drift e d at any point. But in c e , (the perpendicular continuation of a b), or d f , (the horizontal continuation of c d), the air will be bad, because e and f being in solid rock, fresh air, however abundant at c and d , will not enter those drifts. All that Sutro

has said about the advantages of this tunnel for ventilation has been either the result of ignorance or a deliberate misrepresentation.

The only other purpose for which it is claimed the tunnel is being run is that of exploration. If this is its object, the situation has been most unfortunately selected. As to the Comstock Lode, the miners are already at work 300 feet below its level. Whatever news Sutro is, through his tunnel, to get of the condition of this lode, he will best obtain by sitting at its mouth and questioning the miners as they come up on the cage from a thousand feet below. If it be for the ground east of the lode, then it is of less use than it would be in almost any other hillside in the State, because the space traversed by the tunnel is already better prospected and better understood than any other of equal size in the mining district. Miners can point out to Mr. Sutro now the only two veins of any importance which will be cut by the tunnel, and tell him quite accurately their characteristics. Why select for an exploring tunnel a district already explored? It is as if Dr. Livingstone, instead of going to Africa, should have come to New York.

The utter worthlessness of this tunnel for drainage or ventilation, and its insignificant value for exploration, are facts made *patent* by the developments, and which Sutro cannot change or obscure by any talk about a "California Bank Ring," or by cruelly perpetuating in print silly speeches of members of Congress reflecting his ignorance and prejudice. Sutro, in face of the fact that its gratuitous construction would not add one dollar to the value of any mine upon the lode, avers the intention of himself and his associates to expend millions in building it, because a law of Congress will enable them to tax this and other millions upon the owners of the mines. If he can do this: if he has, as he asserts, the Mining Companies already bound, with the law to stand by as a policeman and protect him while he thus rifles their pockets, there seems at least to be no such equity in the transaction as calls for sympathy or encouragement on the part of Congress.

Respectfully,

C. J. HILLYER,
Attorney for Mining Companies.

PERSONAL.

I ask indulgence for what may be called a personal explanation, because my name occurs in connection with its subject-matter.

After copying a certain agreement, (pamphlet, p. 32,) Mr. Sutro says: "This agreement bears upon the face of it that it is intended for *corrupt* purposes."

If the committee care enough for this charge to believe or disbelieve it, I ask them to read carefully the agreement, and I will state the circumstances under which it was made.

While I was in San Francisco last fall, in view of the fact that this claim by Sutro of the right to impose a heavy tax upon these mines was being used for speculative purposes, and that by inaction of the Mining Companies capitalists might be misled to invest money in his scheme, it was thought best, if possible, to litigate the claim at once. After some discussion as to whether the claim was such as to constitute a cloud upon title, or was within our State statute an "adverse interest," which might be litigated, it was determined that an action should be commenced. In order that all interested might share equitably the expense, some organization was necessary. Five gentlemen well-known in San Francisco, and fairly representing the different mining interests, were selected, in whose hands the litigation was placed, and who were empowered to raise by assessment in fixed proportions the funds necessary to conduct it. To fix the proportions, a basis was necessary, and that of the market value of the stock on the day the agreement was drawn was adopted. The figures in the agreement limiting the possible amount of assessment of each company are calculated upon this basis. To the aggregate amount of these figures but little attention was paid, (except that it should be large enough,) for the reason that in any event only such portion could be raised as the committee should find necessary, and this was, as is seen, carefully limited to the "*legitimate expenses of litigation.*"

I had been the attorney of many of these companies for six years in Virginia City, and Judge Mesick is their attorney at that place at present, and hence, I suppose, our employment. There was no secrecy about this agreement. It was signed, or authorized to be signed, at open meetings of the boards of trustees of near thirty different Mining Companies, was spread upon the minutes, and open to the inspection of thousands of stockholders. Corruption funds are not raised in this manner. The high character of the trustees is, of itself, (to those who know them,) sufficient guaranty against an improper use of this money. But independently of this, such use is practically impossible. The precise amount received by this committee must be known to the entire community. Every dollar paid out must be accounted for by them to thirty different boards of trustees. They are forbidden to use the fund for any other than legitimate expenses; and not only each of these thirty companies, but each of their stockholders, may demand on account of its disbursement. The idea of a secret expenditure, when the secret is shared by a thousand men, is preposterous.

Again, Mr. Sutro cannot mean that this fund is to be used for corrupting the courts, for he says that no suit will or can be commenced. He must mean, then, that it is for corrupting Congress. But we had then, and have now, nothing to ask of Congress. We could not have anticipated this amendment. Besides, Sutro knew very well, (or might have known, simply by taking the trouble to inquire at San Francisco,) that no money whatever had in fact been raised. None has yet been raised, though I understand that very recently a small percentage for the payment of attorneys' fees (who as yet have received nothing) has been levied, which I hope is true.

Mr. Sutro also knew perfectly well that, while this amendment was passing through the House, there had been no lobbying, legitimate or otherwise, by any one except himself, in respect to it.

I have never myself said one word to any member of Congress on the subject, nor have I ever been requested to do so, or to do anything else than present an argument to this committee. There is not, and there never has been, any reason to suppose that this agreement had any other purpose than that expressed upon its face. If these companies had any use for a corruption fund, it would have been easy for them to raise it without publishing it to the world.

The truth is, that Mr. Sutro is so constituted that all opposition to him is, in passing through the medium of his mind, refracted into corruption. His nature and habits are such that he cannot comprehend how any one having the money with which to bribe, and an apparent interest to subserve by it, should for any reason refuse to engage in the business. I ought not, perhaps, to complain of this illustration of his peculiarities, for without it I should have been almost the only man in any way connected with these Mining Companies whom he has not publicly villified.

C. J. HILLYER.

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