Crandall. Jamieson, the real defendant in the case, had a ranch adjoining, upon which he had settled in 1851; and the springs rising in Wood's ranch, after uniting and forming a natural channel, flowed through the lands of the latter, and was used by him for the purposes of irrigation until this action arose. The plaintiff, under his bill of sale from Woods, claimed all the water accruing from the springs, without any regard to its natural channel. The Chief Justice stated the question involved to be, "Whether a party who locates upon and appropriates public lands belonging to the United States is entitled to the streams and watercourses naturally flowing through such lands, as against persons subsequently appropriating and using the waters of said streams." The Court decided the question in the affirmative. The arguments used by the Chief Justice may be summarized thus:—By the common law, the owner of land on one side of a watercourse owns to the middle of the stream; and if on each side, he owns the bed of the stream, and is entitled to the use of the flowing water, the property in the water consisting rather in its use than in the fluid itself. But this riparian ownership must be exercised, so that the least possible amount of damage shall be inflicted on others; and to this end the law has laid down the use of water to be twofold,—firstly, natural, to quench thirst, water cattle, and other domestic purposes, which purposes must be first supplied; secondly, artificial, for the use of mills, manufactories, and the like, not indispensable to man's existence. There was this difficulty, however, in this case, that the defendant was not the owner in fee. This point is thus disposed of by the Court:—"The defendant, having appropriated land over which a natural stream flowed, he is to be held as having appropriated the water of such stream, as an incident to the soil, as against those who subsequently attempt to divert it from its natural channel for whatever purpose. He who locates upon the public land becomes the owner thereof, as against every one else but the Government, and is entitled to all the privileges and incidents which appertain to the soil, subject to antecedent rights."

The case of Esmond *v.* Chew is a dispute between two miners using the water of the same stream upon which their claims were situated. The defendant first took up his claim in the bed of the stream; and the plaintiff's claim adjoined it lower down. The defendant worked his claim so as to injure the plaintiff by constructing a flume over it, and depositing his tailings on it to such an extent as to cover it up. The rule laid down was, "That every person mining in the same stream is entitled to use, in a proper and reasonable manner, both the channel of the stream and the water flowing therein; and where, from the situation of different claims, the working of some will necessarily result in injury to others, if the injury be the natural consequence of the exercise of this right, it will be *damnum absque injuria*, and will furnish no cause for action to the party injured." With regard to the priority of right to the use of water, when not dependent upon the property in the land, it is held that the survey of the ground, putting in stakes along the line, giving public notice, and actually commencing and diligently pursuing the work, is as much a possession as the nature of the subject will permit, and form a series of acts of ownership which are conclusive of right. But if the work is commenced by parties who have not the means to carry it out in a reasonable time, they will not be allowed, as against subsequent appropriators, to urge the want of means as a reason for not prosecuting the work.

II.—*Tenure of Mining Claims.*

Under this heading, I have included, and intend briefly touching upon, the three sub-divisions following:—

1st. Mining Rules, Regulations, and Customs.
2nd. Title to Mining Claims.
3rd. Methods of Working.

Mining Rules, Regulations, and Customs.

Upon the acquisition of the State of California, and the subsequent discovery of gold, the Government of the United States remained passive, allowing the population flocking thither to adopt a system of mining regulations of their own. When, shortly afterwards, the State Government became organized, it simply continued the state of things it found existing at the time, and in this way it has come to pass that the laws of the miners themselves have practically and virtually become the laws of the State. These rules and regulations have been adopted from the mining laws of Spain and Mexico, "by which the right of property in mines is made to depend upon discovery and development; that is, discovery is made the source of title, and development, or working, the continuance of that title." In the early days of the diggings, the large influx of miners from the Western Coast of Mexico and from South America, as well as from Cornwall, necessarily dictated the system of working to Americans, who were almost entirely inexperienced in this branch of industry, and the consequence is that in the several local codes we can trace not only the Mexican Ordinances, the Spanish Royal Ordinances, but also the Regulations of the Stannary Convocations among the Tin Bounders of Devon and Cornwall, and the High Peak Regulations for the lead mines in Derby. Such has been the origin of the mining rules and regulations now existing throughout the State of California. Springing up from necessity in the early days, they have since been matured by practical experience, made applicable to the wants and requirements of the various districts, by implication recognized by the General Legislature, and adopted by the Courts as rules of law. These regulations are necessarily numerous, as each district has its own laws. Mr. Ross Browne, in his Report to the Secretary of the Treasury upon the "Resources of the United States west of the Rocky Mountains," estimates the number of these districts in the State of California. He thus describes the nature of the regulations:—"There are not less than five hundred mining districts in California, two hundred in Nevada, and one hundred each in Arizona, Idaho, and Oregon, each with its set of written regulations. The main objects of these regulations are to fix the boundaries of the districts, the size of the claims, the manner in which the claims shall be marked and recorded, the amount of work which must be done to secure the title, and the circumstances under which the claims are considered abandoned, and open to occupation by new claimants. The districts," he goes on to say, "usually do not contain more than one hundred square miles, and frequently not more than ten. In lode (quartz) mining, the claims are usually two hundred feet long on the reef; in placers (alluvial), the size depends upon the character of the diggings,