each of the cases cited in support of the rule, there was some cause of proceeding instituted. The party there did not show any particular occasion with reference to which the inspection should be granted, and the court refused to interfere. There appears, therefore, to be no instance in which a rule has been granted like that now applied for. In the same case, Littledale, J., said—

I think the members have no right on speculative grounds to call for an examination of the books and documents, in order to see if by possibility the company affairs may be better administered than they think they are at present. If they have any complaint to make, some suit should be instituted, some definite matter charged; and then the question will arise whether or not the court will grant a mandamus. * * * If the master and wardens have been improperly elected, the parties *moving* for this rule may apply for a *quo warranto*, but I think they have no right to call for an inspection of the books merely to see whether they can find any ground for further proceedings.

Taunton, J., said among other things—

There is an express rule that to warrant an application to inspect corporation documents there must actually have been a suit instituted; *but it is necessary* that there should be *some particular matter in dispute*, between members, or between the corporation and the individuals in it; there must be some controversy, some specific purpose in respect to which the examination becomes necessary.

Patterson also expresses a like opinion. All the judges were of the same opinion and the rule was discharged.

Counsel for the plaintiff has attempted to break the force of these authorities by calling them English. He insists that there is a marked difference between the government of that country and this. There the power, he says, is derived in theory, from the king. Here, it is inherent in the people. This comparison is without any significance in this argument. None of the cases cited derive any support from the English theory of government.

I now refer to an American case —People *vs.* Walker, 9 Mich., 328. A stockholder in a corporation asked for a mandamus to compel the custodian of the corporation records to permit him to inspect them. He asked this simply on a showing that he was a stockholder, and for that reason was desirous to examine the books to see the condition of the company. The court denied the writ—and Martin, C. J., in giving judgment, says:

I have examined all the cases to which we have been referred, and can find none where the writ was granted to enable a corporator to *gratify idle curiosity*. The principle seems to be, and very properly too, that the party asking the writ must have some interest at stake which renders the inspection necessary.

King *vs.* Northleach & Co, Roads 5 B & Ad. 978; Mayor of Lynne *vs.* Denter, 1 Term R, 689; Barnstable *vs.* Latley, 3 Jd, 306; Rex *vs.* Lucas, 10 East, 235; Rex *vs.* Tower, 4 M & S, 162.

There is not a case to be found in the books, English or American, that I have been able to find, and my search has been thorough, holding any different doctrine, except the case of the People *vs.* Cornell (47 Bart.) decided alone, at special term, by Judge Barnard. He assumes to support a decision granting a very liberal privilege of inspection by citizens in certain early English cases. Not one of them, however, will serve in any such argument. I have examined them; and I cite for the support of the doctrines laid down in Greenleaf. The following are specimens of these cases: Rogers *vs.* Jones, 5 Dow. & Ry. 484. A mandamus was granted to the steward of a manor *to allow inspection of the court rolls to two tenants litigating a right of common in the manor.*

King *vs.* Bobb, 3 Term R., 582. A rule had been granted for an information in the nature of *quo warranto* against A. to show by what authority he claimed to be mayor of G. on the relation of some of the corporators. Another rule *in that cause* for inspecting all the books, papers, &c., *relating to the election and office of mayor*, in the office of the town clerk, was granted. The order had been framed for general inspection, without the restriction to the election and office of mayor. The clerk on whom it was served, however, confined the inspection to those subjects, and the court held that a sufficient compliance. Herbert *vs.* Ashborner, 1 Wilson, 279.

In a note to 1 Chitty's R., 477, the case is thus stated:

Rule to show cause why the defendant should not have liberty to inspect the books of the sessions of the corporation of Kendale. It is objected that the party is not entitled to see the books unless he can show to the court by affidavit that they contain matter relating to the matter in question, which is whether the park land be within the town or corporation of Kendale *sed per curiam*. There are public books which every body has a right to see; and the rule was made absolute without hearing the other side. (See concluding part of the note.)

When brother Baskin read People *vs.* Cornell he held the book with the air of triumph. He would have your honor believe that English authorities are subversive of popular rights, here is something American—decided on a new departure in the right direction. But, as before remarked; that case does not bear inspection on this announcement, for it assumes to be founded on English cases. No American cases are cited, and what is particularly unfortunate, the argument based on this case is that it is no authority. It has been *reversed*, 35 How. P. R., 31. The opinion cited was that of a single judge at special term; on appeal to the general term, the decision was reversed by the Court, with no evidence of dissent, though Judge Barnard was one of the court. There was no written opinion, but the briefs on both sides are given. The mandamus was opposed on the arguments and authorities which I have presented. It was asked for on the arguments presented by Mr. Baskin this morning, including that drawn from our republican theory of government. The reversal of the judgment of the special term is a disapproval of the arguments here made in behalf of this plaintiff, and an affirmance of the soundness of the argument drawn from all the authorities against his right to inspect these records. There is not a case, except that *overruled case*, that supports the plaintiff's claim, not one to be found anywhere, where the common law prevails. I can find none; I hazard nothing in saying that no such case exists. My brother Baskin has closed his opening without referring to any. The general expression, to be found in the early cases and in the text books, are to be understood, as Lord Tenterden said, "with reference to the facts and subjects under discussion." I repeat, therefore, that the plaintiff's claim of the right of inspection, upon no other ground, and for no other end than to make himself acquainted with what the books contain, is simply preposterous.

Brother Baskin says the examination of these books is a *natural right*! Then there is an addition to be made to the list, as these rights are defined in the books; it must now be said a man has a natural right to his personal liberty, to breathe the fresh air of heaven, and to take copies of all city records! He claims also that the individual citizens have the right to copy and inspect these records because they own them. Not so; they do not own them. The books belong to the corporation. No member of the corporation in his individual capacity has any proprietary interest whatever in them. Here is a street railway. Suppose the road bed, the franchise and the rolling stock to belong to a corporation of which brother Baskin and myself are members. Suppose some other person tortiously to take possession of this property, could we in our own names sue for the wrong? Certainly not. The relation of this Plaintiff to the city corporation and its books is the same. The corporation alone has property in the books. He has none, and only an indirect interest in having such books kept.

But it being a public corporation, every resident of the city, at least, has a right of access to the city records *when such occasions arise as to make them needful*—when he has a dispute in which they are wanted as evidence, or when he has duties to perform which render resort to them necessary. The plaintiff has shown no such occasion for access to them. Your honor may say, as Lord Denman did, "that it is wrong to withhold books from a respectable citizen who is a tax payer and wants to see them," yet your honor, like his lordship, must also conclude "that mandamus can only issue on legal cause, and here none exists; for Courts are not organized to enforce mere civilities." A mere desire to know something of the city government, a mere curiosity, though a laudable one, is not sufficient ground. The rule deducible from all the authorities is that when a person has no personal *interest at stake, he cannot be considered as having sufficient interest* to entitle him to inspect the documents of a public body, if, by law, he is excluded from all control over the matter to which they relate. 2 Phil. Evi., 184.

The 63 vol. of the English Common Law reports has been referred to for a case recognizing the right of an inhabitant or resident to prosecute for some misconduct in office, affecting the entire people. Your honor, I will not dispute that doctrine, although the authorities are not uniform, and perhaps the only rule on that point which can be gathered from is this —that where no officer is specially appointed to institute proceedings, any person, as relator or otherwise, may institute proceedings for the crime, and bring the offender to justice. But how? In his own name? No, your honor; he has a right to institute proceeding in the *name of the People*. He has no right to bring an action to obtain a judgment for himself, in respect to the infinitessimal disadvantage that he may suffer. He must be able to represent the whole people and institute proceedings in their name; and that was the case there. It was Rex *vs.* the Bishop of Canterbury. But this is not the people of Salt Lake City, against these officers, but it is Courtland C. Clements, against them, who brings these proceedings in his individual name. If the court shall hold, as insufficient, the reason he assigns for demanding this mandamus—his mere curiosity or desire for more knowledge, then certainly he does not show that he has any such interest as will entitle him to institute any proceedings as a detective, or of an inquisitorial character, against these men to expose maladministration.

JUDGE MCKEAN. Am I to understand you, Judge, that it is improper to commence this proceeding in the name of Clements, but that if he had any grounds for action at all he could have done it in the name of the people of the United States in the Territory of Utah?

MR. SUTHERLAND. If it is complained that the funds of the city have been unlawfully expended, or that there is any official misconduct, the city, as a corporation, must bring the suit, or it must be brought in the name of the whole people whose rights are affected by the supposed misconduct. On the face of these proceedings the public would seem to have no concern in them, except that part of the community mentioned as a *public meeting* and a *committee*. It is to be inferred from what is stated that the plaintiff is so eager in his pursuit of knowledge, that he has been able to convene enough of his friends to organize such a meeting; and that he imparted to that meeting so much of his own enthusiasm that it appointed a formidable committee of forty-five to second his request to be let into the mysteries of municipal book-keeping; that these friends have supported his request, on his account, that he might have these books and records to minister to his insatiate craving for knowledge. He has based his application on no other ground, and it can be supported only on the theory that I have stated—it concerns only him; he asks the privilege of copying the records only that he may know what they have to teach.

Whatever may be said in argument, here or elsewhere, about the proceedings instituted in this case being to detect and punish misconduct in office, is wholly irrelevant to the matter now pending. But if there could be injected into this record an allegation that it is suspected that the defendants have misapplied the funds of the city, or are otherwise guilty of official misconduct; and that the plaintiff, joining in this conjecture, claims the right as a taxpayer to make this examination as a detective; and that he is moved thereto, also, by many persons out of office who live here, still his application would have to be refused:

First, because the plaintiff and all whom he represents, being unofficial persons, who are by law excluded from all control over the matters to which these records relate, have no privilege of inspection. And,

Second, no question is pending to afford an occasion according to law for such inspection, for an inspection is never granted except pursuant to express statute, in quest of cause of complaint; and,

Third, the plaintiff is not a party beneficially interested in such inquiries.

If enough were true and ascertained to commence any proceeding, and such an examination were sought in aid of it, the plaintiff would not be the party, or one of the parties to a proceeding. If preventive means to stay unlawful disbursements, or to punish any malfeasance already committed, should be taken, the plaintiff would not and could not appear on that record at all. I refer now, on this head to Wellington Petitioners, 16 Pick., 87. In that case a petition had been made to the respondents as highway commissioners, asking that a certain road should be laid out on what was called Cambridge Common; and the commissioners not proceeding as the petitioners desired, they applied for a mandamus to compel them. Shaw, Chief Justice, delivered the opinion.

Undoubtedly the general rule is, that a private individual can apply for a writ of mandamus only in a case where he has some *private or particular interest to be subserved or some particular right to be pursued* or protected by the aid of this process, independent of that which he *holds in common with the public at large*, and it is *for the public officers exclusively to apply where public rights are to be subserved.*

I refer now to Bates *vs.* Overseers of the Poor, 14 Gray, 163, in which there was a petition for a mandamus. In that case a town meeting, which I suppose may be regarded as at least equivalent to the public meeting held here, appointed a committee, perhaps something less than forty-five, to settle with certain officers of the township, and directing that the books of the officers should be kept in the town-house in the safe; and that they have access to them for the purpose of ascertaining the state of the finances. They not having the access which the popular vote bespoke for them they applied to this court for a compulsory writ to give them that access. Hoar, J, delivered the opinion.

The court is of the opinion that the demurrer of the respondent to this petition for a mandamus must be sustained, and the petition dismissed. The petitioners show no interest or title in themselves to the books of the overseers of the poor of the town of Plymouth, such as would make them proper parties to this application. They are a committee chosen by the town for the purpose of auditing the accounts of the overseers of the poor of the preceding year, and authorized by the vote of the town to demand and receive from the respondents, who are the overseers of the poor for the present year, the books of account belonging to the town, which are held by such overseers in their official capacity. But the books are not the books of the petitioners, the vote of the town had not made them so, and the petitioners are not public officers, entitled by virtue of their office to the custody of the books, or charged with any public official duty respecting them. If the books are wrongfully withheld from their possession, the wrong is to the principal, and not to the agent, and the principal must seek such appropriate redress as his case requires.

I refer to Doolittle *vs.* the Supervisors of Broom Co., 18 New York, 155.

MR. BASKIN: I don't dispute that doctrine.

MR. SUTHERLAND: while the counsel for plaintiff assents to these propositions I feel more confidence in presenting them to your honor; but, your honor, if these propositions are granted and recognized as sound, this plaintiff has no standing in this court on any other ground than his claim of the right to see these records in order to make them a matter of intellectual study. He can not, to serve the public, have any right in his own name to institute these proceedings, and I desire to make that point plain, and I therefore refer to this case — where a taxpayer attempted to enjoin the supervisors from dividing a municipality into three parts. Derio, J., delivered the opinion of the court, that the complainant had no such interest as entitled him to file the bill, holding the same doctrine that had been declared in Massachusetts.

The case of Davis against the Mayor of New York, 14th New York, 507, and Roswell against Draper, 14 New York, 319, are to the same effect. I now refer to Drake against the regents of the university, 4 Mich., 98. An application was made in the name of a private citizen to compel an official board to perform a duty supposed to be imposed by law. The court held the applicant not qualified to institute the proceedings, it could only be done in the *name of the people.*

Russell *vs.* Inspector of State prisons, 4 Mich., 187, was an application for mandamus to compel the officers of the prison to desist from teaching convicts wagon-making, contrary to law. It was disposed of in the same manner.

Miller *vs* Grady, 13, Mich. 540, was an application by a tax-payer for an injunction to prevent a municipal board from auditing certain alleged illegal claims, by which the complainant apprehended he would be affected as such taxpayer. The court decided he was not qualified to file the bill. Campbell, J., said, in delivering the opinion of the Court:

The interests of men in good government are joint, and not several. The single voter or taxpayer *has no voice in public affairs.* He can only exercise his influence as one of a lawful majority, and then only by his vote. The men whom he aids in electing or who are elected in spite of him, represent the common will, which is the only will that governs. And grievances which afflict the community must be redressed by those to whom the law has entrusted the duty of interference. There are some evils that cannot be redressed at all, because the discretion of the officers producing them cannot be reviewed, and the people must bear the consequences of selecting such servants. But whenever redress is attainable it must be sought for by some other minister than a self-appointed private party, in whom the people or their agents have not vested any supervisory power.

In conclusion I repeat that if the defendants showed the books and records in question to the plaintiff, and permitted him to read or copy them, it would be a *mere favor*, a mere *politeness;* but I deny that, according to law, he can compel them to do it. No court in Christendom ever granted a mandamus to merely gratify a man's curiosity.

NOTICE.

TO Edward McGarry and N. B. Eldred, their personal or legal representatives, and all others whom it may concern: You are hereby notified that I have performed the labor, and made the improvements on the Jordan Silver Mining Company mine, or Jordan Lode, in West Mountain Mining District, Salt Lake County, Territory of Utah, required by law, being co-owner thereof with you, and you have failed to contribute your proportion, and there is now due on account thereof from each of you, said Edward McGarry and N. B. Eldred, $180, for labor improvements on said claim prior to 1873; therefore you are further notified that if at the expiration of one hundred and eighty days from the date of this notice you fail or refuse to contribute your said proportion, your several interests in said claim will become my property, pursuant to Sec. 5 of the Act of Congress, approved May 10, 1872, entitled "An Act to promote the development of the mining resources of the United States."

JOHN W. KERR.

Dated at Salt Lake City, April 9th, 1874.

d117 1t w11 90 days