

*Romie v. Casanova*, 91 U. S. 380; *McStay v. Friedman*, 92 U. S. 723; *Hoadley v. San Francisco*, 94 U. S. 4.

The conveyance by a patent of a vein or lode whose top or apex is within the limits of a mining claim, and whose apex is cut by the end lines of the claim, is as complete and full as the conveyance of the surface of the claim or of any piece or parcel of agricultural land. The grant is of this vein or lode throughout its entire depth, extended downward vertically, although it may so far depart from a perpendicular in its course downward as to extend outside the vertical side lines of the surface location. Rev. St. U. S. § 2322. As far as this lode or vein is concerned, it is in the nature of the conveyance of a mine which may be carved out of any portion of land embracing the same. If there is any dispute as to the question of boundaries, this is a question of fact. If there is any dispute as to whether any portion of land is that conveyed, it is a question of fact. If there is any dispute as to whether a given parcel of land is a vein or lode, we consult men experienced in mining, and determine the question as a fact, and not as a matter of law. If we wish to learn what is a "vein," "lode," or "ledge" containing precious metals, we must take the ordinary signification of these words as used by practical men devoted to the calling of mining. Should we have to go to scientific men for a definition of these words, this would not make it a question of law. If it is said that the object is to ascertain in what sense the term was used in the act of congress, and therefore a legal question to be determined by the federal courts as a federal question, the answer is that, if this should be maintained, then, whenever a party should allege that he wished to determine the meaning of any term, such as an acre of land, or a section of land, as used in an act of congress, then a federal question would be presented. This would hardly be contended for. Finding, as I do, that no federal question is presented in this case, the motion to remand this cause to the state court from which it came is hereby sustained; and it is so ordered.

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LARGEY v. BLUE BIRD MIN. CO., Limited.

(Circuit Court, D. Montana. February 3, 1892.)

At Law. Action by Patrick A. Largey against the Blue Bird Mining Company, Limited. Heard on demurrer to the complaint. Demurrer sustained. *F. T. McBride* and *Toole & Wallace*, for plaintiff. *Forbis & Forbis*, for defendant.

KNOWLES, District Judge. The property described in the complaint in this case is the same as that described in the case of *Blue Bird Mining Co. v. Largey*, 49 Fed. Rep. 289, which, having been removed from the district court of Silver Bow county, Mont., was remanded by this court back to said state court, for the reason that no federal question was involved in determining the same. Precisely the same points, as involving federal questions, which were presented in

that case are presented in this. The decision in that case, then, as to this question settles this. The opinion in that case discusses all the questions presented in this. The view of the court, as expressed in the former case, is that no federal question was presented under the facts alleged. The defendant demurred to the complaint upon the ground that this court had no jurisdiction of the case presented. The demurrer is sustained, and the cause is dismissed, at plaintiff's cost.

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CENTRAL NAT. BANK OF BOSTON v. HAZARD *et al.*

(Circuit Court, N. D. New York, February 26, 1892.)

1. STATE AND FEDERAL COURTS—CONFLICT OF JURISDICTION—INJUNCTION.

A state court has no authority to enjoin the proceedings of a federal court, or of the parties thereto, in a suit in which the federal court has first acquired jurisdiction of the controversy and the *res*.

2. SAME.

When a federal court has ordered the sale of a railroad, and its officer has advertised the same for sale, that court has complete dominion thereof, so as to exclude all interference by a state court.

3. SAME—VACATING DECREE.

A proceeding in a state court to set aside a former decree thereof for fraud in its procurement is an original suit, and does not revive the dominion exercised in the former suit over the *res*, so as to exclude the jurisdiction of a federal court which has attached in the mean time.

4. COURTS—JURISDICTION IN REM—SALE OF PROPERTY.

The dominion of a court over a railroad sold by its decree entirely ceases upon the conveyance thereof to the purchasers.

In Equity. Suit by the Central National Bank of Boston, in its own behalf and in behalf of all other certificate holders, against Rowland N. Hazard, William Foster, Jr., and others, to declare and enforce the lien of certain receiver's certificates against the Lebanon Springs Railroad Company. Heard on petition for an order directing an officer of the court to proceed with a sale of the railroad property, in accordance with a decree heretofore entered. Granted.

*Esek Cowen*, for petitioner.

*E. W. Paige*, for defendants.

WALLACE, Circuit Judge. The petitioner asks the court to set in motion one of its officers *pro hac vice*, who, by a decree made on the 24th day of March, 1887, (30 Fed. Rep. 484,) was directed to sell at public auction, after giving due notice of the time and place of sale, according to law and the practice of this court, certain real and personal property consisting of the railroad, rolling stock, etc., which formerly belonged to the Lebanon Springs Railroad Company. The petitioner invokes the action of the court because a decree has been made by the supreme court of the state of New York in a suit brought subsequent to the rendition of the decree of this court, which, among other things, perpetually enjoins and restrains the parties in this suit from proceeding with the sale of the property under the decree of this court. The petitioner was not a