of chancery, provides that "every defendant who shall be summoned, served with a copy of the bill or petition, or notified as required in this act, shall be held to except, demur, plead, or answer on the return day of the summons; * * * or in case of service by copy of the bill, or by notice, at the expiration of the time required to be given, or within such further time as may be granted by the court; or, in default thereof, the bill may be taken as confessed." It is, therefore, clear from the statutes of Illinois that these defendants were required to plead; and by the federal statutes in regard to the removal of cases they were required to file their application for removal on the 5th day of September. But it is insisted that, inasmuch as the time for these defendants to plead was extended by an order of court, and application for removal was made before the expiration of that extension, therefore the application for removal was made in apt time. I do not concur in this view. The statute requiring the application for removal to be made at or before the time the defendant is required to plead has been held to be imperative. *Austin* v. *Gagan*, 39 Fed. Rep. 626; *Velie* v. *Indemnity Co.*, 40 Fed. Rep. 545; *Rogers* v. *Van Nortwick*, 45 Fed. Rep. 513. These defendants, then, were in default, and had lost their right of removal on the 13th day of September, when the rule extending the time to plead was entered in pursuance of the stipulation of the complainant; and I cannot see how this stipulation, or the order of court made in pursuance thereof, can be construed to restore to the defendants the right of removal which they had lost. The complainant may have been entirely willing that these defendants should have the right to put in any defense which they might have in the state court, but a mere agreement to that effect is not and cannot, in justice, be held to waive or restore to the defendants the right of removal which they had lost. For these reasons the motion to remand is sustained, without considering or passing upon the question whether or not the case presents a separable cause of action which would entitle these defendants to remove the case.

O'KEEFE *et al.* *v.* CANNON *et al.*

(Circuit Court, D. Montana. November 14, 1892.)

1. QUIETING TITLE—MINING CLAIM—PLEADING—ALLEGATIONS OF FACT AND LAW.
   In a suit to quiet the title to certain mining lands, an allegation in the answer that the lands do not contain known minerals in lode deposits, of sufficient value to pay for working them, is a statement of fact, not a conclusion of law.
2. SAME.
   An allegation that respondents are owners of said land by virtue of a certain conveyance is a conclusion of fact, and not of law.
3. SAME—DATE OF APPLICATION FOR A PATENT.
   An allegation that the respondents' application for a patent to the premises as placer ground was made before the location of a lode alleged to exist therein is sufficient, without alleging the date of such application.
4. SAME—LANDS WITHIN CITY LIMITS.
   An allegation that the lands are within the corporate limits of a city, and that the respondents are the owners and occupiers of the surface, without any claim

that the city has acquired title to them or taken any steps to do so, or that they have been usually occupied as a place of business, is impertinent, for it does not show that the lands may not be taken as a mining claim if valuable for the minerals therein contained.

In Equity. Bill by Will O'Keefe and John D. Brayman against Charles W. Cannon, Theodore H. Kleinschmidt, and Edward W. Knight, Sr., to quiet the complainants' title to certain mining lands. On objections to the answer. Sustained in part.

J. A. Carter, for plaintiffs.

Toole & Wallace, for defendants.

KNOWLES, District Judge. Plaintiffs filed their bill of complaint against defendants, which presents a suit for the quieting of their title to certain mining ground described in the bill. Defendants filed their answer to said bill, and to this answer plaintiffs have filed certain objections. The first objection is that the following allegations in the answer constitute nothing but the statement of conclusions of law, namely:

"Defendants, further answering, allege that said lands never contained, and do not now contain, known minerals in lode deposits of any value sufficient to justify expense of exploitation or expenditure in the effort to extract the same, and that these defendants are the owners and possessed of the said N. ½ of N. ½ of the S. E. ¼ of sec. 31, under and by virtue of a grant and conveyance thereof from the Northern Pacific Railroad Company, and by reason thereof are the owners of, and the whole thereof."

These allegations are not legal conclusions, but allegations of fact. The allegation that it does not contain known minerals in lode deposits of any value sufficient to justify expense of exploitation or expenditure, in the effort to extract the same, is but one mode of alleging that the ground is nonmineral. It has been held by the supreme court that ground of this kind is nonmineral. The allegation that the defendants are the owners of said land by virtue of a conveyance from the Northern Pacific Railroad Company is certainly not a legal conclusion, but one of fact. The allegation of ownership, without stating how the ownership was acquired, is the allegation of a fact. It was not necessary to state the date of the conveyance by said company. That is not the point presented, but as to whether it became the owner by such conveyance.

The objection that defendants do not state in their answer the date of their application for a patent to the premises as placer ground is not material. It is stated that it was prior to the location of the Banker's Daughter lode. This was sufficient. The patent obtained subsequently from the government would relate to this date, and it might be determined at that date as to whether the said lode was then known to exist. If it was, it would be excluded from the grant made by the patent; if not, it would pass with the placer patent. All that it was necessary to allege was that the application was made prior to the location of said lode.

The third objection is that the following allegations are impertinent:

"And for a further and additional separate answer these defendants allege that all of the premises described in complainants' bill were, prior to the pre-

tended location of the alleged Banker's Daughter lode, ever since have been, and now are, part and portion of the city of Helena, county of Lewis and Clarke, and state of Montana, the same being an incorporated city; and said premises, and the whole thereof, then did, and ever since have been, and now do, lie within the corporate limits of the said city; and that these defendants were at the date last aforesaid, ever since have been, and now are, the owners and actual occupants of the surface ground of said premises, and the whole thereof, and have actually had the possession thereof during all the period last aforesaid."

There is no claim in these allegations that the city has acquired any title to said premises, or taken any steps to acquire the same through its officers. It is not claimed that the same has been reserved by any order of the president of the United States. There is no claim that it has been usually occupied as a place of business, or in fact any allegation in the above that would show that it might not be taken as a mining claim if valuable for the minerals therein contained. This objection is therefore good, and this allegation should be stricken from the answer.

MILLER *v.* CLARK *et al.*

(Circuit Court, D. Connecticut. August 8, 1892.)

No. 619.

1. APPEAL—DISMISSAL—PROCEEDINGS BELOW—JURISDICTION OF CIRCUIT COURT.
One of six legatees entitled under the will to equal shares in the residuary estate filed a bill against her colegatees to compel them to pay to the executor $5,377.83, which they claimed by gift *inter vivos* from the testatrix. The circuit court dismissed the bill on the merits, and, plaintiff having appealed, the supreme court dismissed the appeal, holding that the interest of plaintiff was only one sixth of that sum, and insufficient to give that court jurisdiction. *Held*, that this decision was also decisive against the jurisdiction of the circuit court, and on a bill of review the original decree should be reversed, and the bill dismissed for want of jurisdiction, without prejudice; but plaintiff is not entitled to have the proceedings erased from the docket.

2. SAME—COSTS.
In thus reversing its decree and dismissing the bill, the circuit court had no power to order restitution of the costs of the appeal, the same having been paid by plaintiff in pursuance of the mandate of the supreme court.

3. SAME.
Nor, under the circumstances, would the circuit court order restitution of costs paid by plaintiff under its original decree dismissing the bill on the merits, for plaintiff was in fault in invoking a jurisdiction to which she had no right to resort; and for the same reason the costs of the bill of review should not be taxed in her favor.

In Equity. On motion for judgment on a bill of review.

The original proceeding was a suit brought by Martha A. Miller, as legatee under the will of Mrs. Irene Clark, against five other legatees, who were entitled with her to equal shares in the residuary estate. The purpose of the bill was to compel defendants to pay to the executor $5,377.83, which they claimed by gift *inter vivos* from the testatrix. The court ren-