

pion, 63 Fed. Rep. 544; Harrington vs. Chambers 1 Pac. Rep., 375; Erhart vs. Boaro, 113 U.S. Sup. Ct. Rep. 527. In Davis v. Webbald, 139 U. S., it was held that the exemptions of "mineral lands from pre-emption and settlement and for public purposes do not exclude all lands in which mineral may be found, but only those where the mineral is in sufficient quantity to add to their richness and to justify expenditure for its extraction, and known to be so at the date of the grant; and Field, J., remarks: "There are vast tracts of country in the mining states which contain precious metals in small quantities, but not to a sufficient extent to justify the expense of their exploitation. It is not to such lands that the term 'mineral' applies—citing Alford v. Barnum, 45 Cal. 482; and Merrill v. Dixon, 15 Nev. 401; Cowell v. Lammers, 10 Saw. 246, 257; U. S. v. Reed, 12 Saw. 99, 104—and many other cases, showing that the expression 'mineral lands,' means only lands which are valuable for mineral purposes, that is, which will pay to work, and not lands in which you may find 'a trace' of mineral (as described by some of the witnesses in this case) and sometimes more, but which do not demonstrate themselves to be worth working." As remarked in Alford v. Barnum, 10 Morrison's mining reports, 422: "The mere fact that portions of the land contained particles of gold and veins of gold bearing quartz rock, would not necessarily impress it with the character of mineral bearing land. It must, at least, be shown that the land contains metals in quantities sufficient to render it available and valuable for mining purposes."

The authorities above quoted, and many others which could be cited to similar purport, seem precisely to fit the evidence in this case, of which there is but little conflict. Mr. Kelly, one of the plaintiffs' witnesses, tells us that the mineral veins in the vicinity of the Paris Belle appear to be divided into a belt; a belt of barren rock, and another belt of veins; that these veins follow a general trend in one direction. For instance, the most valuable mines so far discovered and worked, the "War Eagle," "Josie," "Le Roi," and "Centre Star" appear to have a general dir-

ection to a certain point indicated by the "Nickel Plate" where they stop, and to the south of which you find no mineral vein until you get across the country, and start on the rise on the other side of the stream, when you again find what appears to be another belt of veins running in the same direction, and having all the characteristics of the belt of veins traced on the other side. That between those two belts we have a large section of diorite or country rock, which is similar in character to the material which forms the walls of the veins where discovered. The country rock carries a certain amount of iron, but not in quantities which would make it valuable for mining purposes, but the particles of iron do not of themselves indicate the proximity of a vein.

Speaking of the "Paris Belle," with which he is quite familiar, Mr. Kelly says that the rock in that shaft is the same ordinary diorite or country rock which composes this intermediate belt; that in the little seams or counter-checks in the rock, white iron is to be found, and sometimes there may be gold in some of them; but not as indicating a vein but being merely the ordinary mineralization which covers the entire country. To the same effect is the evidence of Mr. Funiell. Mr. Noel originally located the property on the theory that wherever you found a contact between two classes of rock you would find a vein, but finding no vein in this case he abandoned the claim as valueless. The defendants' witness, Cronan, admits that there is no wall, he says that the rock bearing mineral of the "Paris Belle" is country rock, but he says also that diorite, or country rock, is the mineralized rock of the "Paris Belle." He says he found mineral in place on the "Paris Belle"; but when asked what is "mineral in place" he defines it merely as "mineral in rock" as distinguished from "mineral in clay" or any other formation. What he means, then, when he tells us that he found "rock in place" in the "Paris Belle" is merely this, that he found rock with mineral or a trace of mineral in it, which nobody doubts that he did, or that, in fact, anyone could find the same thing to a greater or less extent in the country rock. But that is very far from saying