

For the reasons herein given the motion under consideration is denied, the decision in the case of *Mercer v. Buford Townsite*, *supra*, is hereby overruled and vacated, and all decisions or regulations in conflict herewith will no longer be followed.

MINING CLAIM—VEIN OR LODE—MARBLE DEPOSITS.

HENDERSON ET AL. *v.* FULTON.

To determine whether lands containing a given mineral deposit are of the class subject to location and patent under the law applicable to vein or lode claims, resort is to be had to the language of the statute, rather than to definitions of the terms "vein," "lode," and "ledge," given by geologists from a scientific viewpoint.

The statute is to be construed in the light of the prevailing and commonly known use of the terms "vein," and "lode," as defined by miners—the result of practical experience in mining, so as to avoid any limitation in the application of the law which a scientific definition of the terms might impose; and as well in the light of the general purpose and policy which Congress had in view, namely, the protection of *bona fide* locators of the mineral lands of the United States, and the development of the mineral resources of the country.

A vein or lode, to be locatable and patentable under the mining laws, must possess the elements of rock in place bearing one or more of the minerals specified in the statute, or some other mineral that would be embraced within the added words "other valuable deposits."

Minerals of the non-metallic as well as the metallic class, wherever found in rock in place, are within the purview of the mining laws relating to veins or lodes.

Marble which does not bear any of the minerals named in the statute, or any other mineral substance of value, is not a deposit of the kind or character contemplated by sections 2320 and 2322 of the Revised Statutes, as subject to location and patent under the law applicable to vein or lode claims; but may be located and patented under the law applicable to placer claims.

*Acting Secretary Woodruff to the Commissioner of the General Land*  
(S. V. P.) *Office, June 29, 1907.* (A. B. P.)

May 27, 1903, the local officers at Los Angeles, California, allowed Stephen E. Fulton to make entry of certain alleged mineral lands described as the "Alamo Consolidated Marble Mine," Survey No. 4025, consisting of three contiguous claims, located as vein or lode claims, and situated in Sec. 28, T. 7 N., R. 2 W., S. B. M.

March 26, 1904, Walter J. Henderson and Herbert J. Findley filed a protest against the entry, on which a hearing was ordered by your office May 24, 1904.

The charges of the protest relate chiefly to the character and value of the improvements claimed to support the entry proceedings. Considerable of the testimony introduced at the hearing, had in Decem-

ber, 1904, however, relates to the character and extent of the alleged mineral deposits upon which the locations are based. This testimony is to the effect that the lands embraced in the locations contain extensive and valuable deposits of marble; that large quantities of marble have been taken from one of the claims and sold for building purposes; that no known mineral of value other than marble exists in the lands; and that the several locations were made for the marble deposits only.

September 28, 1905, the local officers, upon the evidence relating to the question of the improvements, found for the entryman, and the protestants appealed.

By decision of May 25, 1906, your office, after discussing at length the entire evidence, held the expenditure in improvements to be insufficient for patent purposes, except as to the Alamo claim, and further stated and held as follows:

An examination of the record, however, shows that the mining claims in question are valuable for deposits of marble which from the testimony and from the whole record as it now stands appears to lie in beds and not in vein or lode formation. It is nothing more than a quarry so far as can be seen from the testimony and accordingly is not subject to purchase and entry under the lode mining laws. It should have been located and entered as placer by legal subdivisions. For this reason the entry is illegal and you will advise the parties that for this reason alone the entire entry will have to be canceled.

The entryman has appealed to the Department. The appeal presents, amongst other matters, the question whether lands containing deposits of marble, valuable for building purposes, may be located and held, and patent therefor obtained, under the law relating to vein or lode claims. This question is vital, and therefore of first importance.

The first general mining statute passed by Congress was the act of July 26, 1866 (14 Stat., 251). Provision was made for locating, working and holding, and obtaining patent for, any "vein or lode of quartz, or other rock in place, bearing gold, silver, cinnabar, or copper."

By the act of July 9, 1870 (16 Stat., 217, Sec. 12), it was provided that claims usually called "placers," including all forms of deposit, excepting veins of quartz, or other rock in place, should be subject to entry and patent under like circumstances and conditions, and upon similar proceedings, as were provided for vein or lode claims.

By the act of May 10, 1872 (17 Stat., 91), the terms of the act of 1866 were enlarged in their scope. *Lead* and *tin* were included amongst the specifically mentioned minerals, and the words "other valuable deposits" were added. The act also contains, amongst other provisions not in the act of 1866, certain requirements as to the manner of locating vein or lode claims, as to the length and width of the

locations, and as to parallelism of the end lines; and it is declared that no location shall be made until the discovery of a vein or lode within the limits thereof. Rights under the location are enlarged so as to embrace not only the located vein or lode, as under the act of 1866, but in addition thereto, the exclusive right to the possession of the surface within the lines of the location, and to *all* veins, lodes, and ledges, throughout their entire depth, which apex within such surface lines. It is further provided that patent may be obtained for a vein or lode within the boundaries of a placer claim by the owner of such vein or lode, whether he be the owner of the placer claim or not.

These provisions are all incorporated in the Revised Statutes, and, so far as need be here set out, are contained in the following sections:

Sec. 2320. Mining-claims upon veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, heretofore located, shall be governed as to length along the vein or lode by the customs, regulations, and laws in force at the date of their location. A mining claim located after the tenth day of May, eighteen hundred and seventy-two, whether located by one or more persons, may equal, but shall not exceed, one thousand five hundred feet in length along the vein or lode; but no location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claim located. No claim shall exceed more than three hundred feet on each side of the middle of the vein at the surface, nor shall any claim be limited by any mining regulation to less than twenty-five feet on each side of the middle of the vein at the surface, except where adverse rights existing on the tenth day of May, eighteen hundred and seventy-two, render such limitation necessary. The end lines of each claim shall be parallel to each other.

Sec. 2322. The locators of all mining locations heretofore made or which shall hereafter be made, on any mineral vein, lode, or ledge, situated on the public domain, their heirs and assigns, where no adverse claim exists on the tenth day of May, eighteen hundred and seventy-two, so long as they comply with the laws of the United States, and with State, Territorial, and local regulations not in conflict with the laws of the United States governing their possessory title, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes, and ledges throughout their entire depth, the top or apex of which lies inside of such surface lines extended downward vertically, although such veins, lodes, or ledges, may so far depart from a perpendicular in their course downward as to extend outside the vertical side lines of such surface locations. But their right of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie within vertical planes drawn downward as above described, through the end lines of their locations, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges. And nothing in this section shall authorize the locator or possessor of a vein or lode which extends in its downward course beyond the vertical lines of his claim to enter upon the surface of a claim owned or possessed by another.

Sec. 2329. Claims usually called "placers," including all forms of deposit, excepting veins of quartz, or other rock in place, shall be subject to entry and patent, under like circumstances and conditions, and upon similar proceedings, as are provided for vein or lode claims; but where the lands have been pre-

viously surveyed by the United States, the entry in its exterior limits shall conform to the legal subdivisions of the public lands.

SEC. 2333. Where the same person, association, or corporation is in possession of a placer-claim, and also a vein or lode included within the boundaries thereof, application shall be made for a patent for the placer-claim, with the statement that it includes such vein or lode, and in such case a patent shall issue for the placer-claim, subject to the provisions of this chapter, including such vein or lode, upon the payment of five dollars per acre for such vein or lode claim, and twenty-five feet of surface on each side thereof. The remainder of the placer-claim, or any placer claim not embracing any vein or lode-claim, shall be paid for at the rate of two dollars and fifty cents per acre, together with all costs of proceedings; and where a vein or lode, such as is described in section twenty-three hundred and twenty, is known to exist within the boundaries of a placer-claim, an application for a patent for such placer-claim which does not include an application for the vein or lode claim shall be construed as a conclusive declaration that the claimant of the placer-claim has no right of possession of the vein or lode claim; but where the existence of a vein or lode in a placer-claim is not known, a patent for the placer-claim shall convey all valuable mineral and other deposits within the boundaries thereof.

From this resume of the legislation on the subject, it clearly appears that Congress, in providing for the use, occupancy, and sale of the mineral lands of the United States (other than coal lands: Secs. 2347-2352, Revised Statutes, and salt lands prior to the act of January 31, 1901, 31 Stat., 745; *Morton v. Nebraska*, 21 Wall., 660), has divided such lands into two distinct classes, namely:

(1) Those which contain veins or lodes of quartz or other rock in place bearing mineral of value, of any kind or character that may be found in rock in place;

(2) Those containing what are usually called placers, including all forms of deposit, of whatever kind or nature, other than the deposits described in the first class.

It is also apparent that Congress had in mind and fully recognized, what experience had theretofore abundantly shown, that these two classes of mineral deposits are so different in their character and formation, and so completely separate and distinct from each other, that even when found to exist in the same superficial area, they may be located and held by different persons, and patented accordingly (Sec. 2333). This principle has been recognized and followed in both judicial and departmental decisions (*Reynolds v. Iron Silver Mining Company*, 116 U. S., 687, 695-7; *Aurora Lode v. Bulger Hill and Nugget Gulch Placer*, 23 L. D., 95, 99-100; *Daphne Lode Claim*, 32 L. D., 513; *Jaw Bone Lode v. Damon Placer*, 34 L. D., 72).

The question here is whether the deposits of marble shown to exist in the several locations of the so-called "Alamo Consolidated Marble Mine," are within the first or the second class. If within the first,

the locations were rightly and lawfully made. If not within the first class, they necessarily fall within the second, and the locations are unlawful and the entry can not stand.

The question as to what constitutes a vein or lode within the meaning of the legislation referred to has been, in various forms and under varying conditions, frequently before the courts. The first case of importance on the subject is that of Eureka Consolidated Mining Company *v.* Richmond Mining Company, commonly known as the *Eureka Case*, decided in 1877, by the Circuit Court for the District of Nevada (4 Sawyer, 302, 310-312). In the course of its opinion, by Justice Field (sitting at Circuit), the court said:

The act of 1866 provided for the acquisition of a patent by any person or association of persons claiming "a vein or lode of quartz, or other rock in place, bearing gold, silver, cinnabar or copper." The act of 1872 speaks of veins or lodes of quartz or other rock in place, bearing similar metals or ores. Any definition of the term should, therefore, be sufficiently broad to embrace deposits of the several metals or ores here mentioned. In the construction of statutes, general terms must receive that interpretation which will include all the instances enumerated as comprehended by them. The definition of a lode given by geologists is, that of a fissure in the earth's crust filled with mineral matter, or more accurately, as aggregations of mineral matter containing ores in fissures. (See Van Cotta's Treatise on Ore Deposits, Prime's Translation, 26.) But miners used the term before geologists attempted to give it a definition.

The court quoted with approval from the testimony of one of the expert witnesses in the case, who was for many years in the service of the general government as Commissioner of Mining Statistics, as follows:

The miners made the definition first. As used by miners, before being defined by any authority, the term lode simply meant that formation by which the miner could be led or guided; it is an alteration of the verb lead; and whatever the miner could follow, expecting to find ore, was his lode. Some formation within which he could find ore, and out of which he could not expect to find ore, was his lode.

It was then further said:

Cinnabar is not found in any fissure of the earth's crust, or in any lode, as defined by geologists, yet the acts of Congress speak, as already seen, of lodes of quartz, or rock in place, bearing cinnabar. Any definition of lode, as there used, which did not embrace deposits of cinnabar, would be as defective as if it did not embrace deposits of gold or silver. The definition must apply to deposits of all the metals named, if it apply to a deposit of any one of them.

Those acts were not drawn by geologists or for geologists; they were not framed in the interests of science, and consequently with scientific accuracy in the use of terms. They were framed for the protection of miners in the claims which they had located and developed, and should receive such a construction as will carry out this purpose. The use of the terms vein and lode in connection with each other in the act of 1866, and their use in connection with the term ledge in the act of 1872, would seem to indicate that it was the object of the legislator to avoid any limitation in the application of the acts, which a scientific definition of any one of these terms might impose.

It is difficult to give any definition of the term as understood and used in the acts of Congress, which will not be open to criticism. A fissure in the earth's crust, an opening in its rocks and strata made by some force of nature, in which the mineral is deposited, would seem to be essential to the definition of a lode, in the judgment of geologists. But to the practical miner the fissure and its walls are only of importance as indicating the boundaries within which he may look for and reasonably expect to find the ore he seeks. A continuous body of mineralized rock lying within any other well-defined boundaries of the earth's surface and under it, would equally constitute, in his eyes, a lode. We are of opinion, therefore, that the term as used in the acts of Congress is applicable to any zone or belt of mineralized rock lying within boundaries clearly separating it from the neighboring rock.

In the case of *Iron Silver Mining Company v. Cheesman* (decided in 1885, 116 U. S., 529, 533-534), the Supreme Court, speaking on the same subject, said:

What constitutes a lode or vein of mineral matter has been no easy thing to define. In this court no clear definition has been given. On the circuit it has been often attempted. Mr. Justice Field, in the *Eureka Case*, 4 Sawyer, 302, 311, shows that the word is not always used in the same sense by scientific works on geology and mineralogy, and by those engaged in the actual working of mines.

After quoting the definition given in the *Eureka Case*, the court further said:

This definition has received repeated commendation in other cases, especially in *Stevens v. Williams*, 1 McCrary, 480, 488, where a shorter definition by Judge Hallett, of the Colorado Circuit Court, is also approved, to wit: "In general it may be said that a lode or vein is a body of mineral, or mineral body of rock, within defined boundaries, in the general mass of the mountain."

*United States v. Iron Silver Mining Company* (128 U. S., 673), involved a construction of section 2333 relating to veins or lodes within placer claims. Referring specially to that section and to section 2329 in connection therewith, the court, after defining the term "placer claim" as commonly used, said:

By "veins or lodes," as here used, are meant lines or aggregations of metal embedded in quartz or other rock in place. The terms are found together in the statutes, and both are intended to indicate the presence of metal in rock. Yet a lode may and often does contain more than one vein. In *Iron Silver Mining Co. v. Cheesman*, 116 U. S., 529, 533, a definition of a lode is given, so far as it is practicable to define it with accuracy, and it is not necessary to repeat it. What is important here is, that the amount of land which may be taken up as a placer claim and the amount as a lode claim, and the price per acre to be paid to the government in the two cases, when patents are obtained, are different. And the rights conferred by the respective patents, and the conditions upon which they are held, are also different. Rev. Stat. Secs. 2320, 2322, 2333; *Smelting Co. v. Kemp*, 104 U. S., 636, 651; *Iron Silver Mining Co. v. Reynolds*, 124 U. S., 374.

In the case of *Jupiter Mining Company v. Bodie Consolidated*

Mining Company (11 Fed. Rep., 666, 675), the Circuit Court for the District of California, speaking of the provision in section 2320 which declares that "no location of a mining claim shall be made until the discovery of a vein or lode within the limits of the claim located," said:

A vein or lode authorized to be located is a seam or fissure in the earth's crust filled with quartz, or with some other kind of rock, in place, carrying gold, silver, or other valuable mineral deposits named in the statute.

See also *North Noonday Mining Co. v. Orient Mining Co.* (1 Fed. Rep., 522).

In *Book v. Justice Mining Company* (58 Fed. Rep., 106, 120-127), the Circuit Court for the District of Nevada, speaking through Judge Hawley, said:

This statute was intended to be liberal and broad enough to apply to any kind of a lode or vein of quartz or other rock bearing mineral, in whatever kind, character, or formation the mineral might be found. It should be so construed as to protect locators of mining claims, who have discovered rock in place, bearing any of the precious metals named therein, sufficient to justify the locators in expending their time and money in prospecting and developing the ground located. It must be borne in mind that the veins and lodes are not always of the same character. In some mining districts the veins, lodes, and ore deposits are so well and clearly defined as to avoid any questions being raised. In other localities the mineral is found in seams, narrow crevices, cracks, or fissures in the earth, the precise extent and character of which cannot be fully ascertained until extensive explorations are made, and the continuity of the ore and existence of the rock in place, bearing mineral, is established . . . . When the locator finds rock in place, containing mineral, he has made a discovery, within the meaning of the statute, whether the rock or earth is rich or poor, whether it assays high or low. It is the finding of the mineral in the rock in place, as distinguished from float rock, that constitutes the discovery, and warrants the prospector in making a location of a mining claim.

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Various courts have at different times given a definition of what constitutes a vein or lode, within the meaning of the act of Congress; but the definitions that have been given, as a general rule, apply to the peculiar character and formation of the ore deposits or vein matter, and of the country rock, in the particular district where the claims are located. There is no conflict in the decisions; but the result is that some definitions have been given in some of the states that are not deemed applicable to the conditions and surroundings of mining districts in other states, or other districts in the same state.

After stating that the definitions of a vein or lode, as given in the authorities, are instructive, and worthy of consideration, the court further says that the application of such definitions to any given case must be determined by reference to the special facts which existed in the particular mining district where the veins or lodes under consideration were located, in connection with the facts of the case before the court.

In the case of *Migeon v. Montana Central Railway Company* (77

Fed. Rep., 249, 254-5), Judge Hawley, sitting as circuit judge, stated and held as follows:

There are four classes of cases where the courts have been called upon to determine what constitutes a lode or vein within the intent and meaning of different sections of the Revised Statutes: (1) Between miners who have located claims on the same lode, under the provisions of section 2320; (2) between placer and lode claimants, under the provisions of section 2333; (3) between mineral claimants and parties holding town-site patents to the same ground; (4) between mineral and agricultural claimants of the same land. The mining laws of the United States were drafted for the purpose of protecting the bona fide locators of mining ground, and at the same time to make necessary provision as to the rights of agriculturists and claimants of town-site lands. The object of each section, and of the whole policy of the entire statute, should not be overlooked. The particular character of each case necessarily determines the rights of the respective parties, and must be kept constantly in view, in order to enable the court to arrive at a correct conclusion. What is said in one character of cases may or may not be applicable in the other. Whatever variance, if any, may be found in the views expressed in the different decisions touching these questions arises from the difference in the facts and a difference in the character of the cases, and the advanced knowledge which experience in the trial of the different kinds of cases brings to the court.

The views thus expressed were restated by the same judge (again sitting as circuit judge), in the case of *Shoshone Mining Company v. Rutter* (87 Fed. Rep., 801, 807).

In *Hayes et al. v. Lavagnino* (1898; 53 Pac. Rep., 1029), the supreme court of Utah, upon a somewhat extended discussion of the subject and the citation of numerous authorities, stated its conclusion, in the syllabus prepared by it, as follows:

In practical mining, the terms "vein" and "lode" apply to all deposits of mineralized matter within any zone or belt of mineralized rock separated from the neighboring rock by well-defined boundaries, and the discoverer of such a deposit may locate it as a vein or lode. In this sense, these terms were employed in the several acts of Congress relating to mining locations.

In *Beals v. Cone* (1900; 62 Pac. Rep., 948, 952-953), the supreme court of Colorado said:

Many definitions of veins have been given, varying according to the facts under consideration. The term is not susceptible of an arbitrary definition, applicable to every case. It must be controlled in a measure, at least, by the conditions of locality and deposit. *Cheesman v. Shreeve* (C. C.) 40 Fed. 787. The distinguishing feature between a vein and the formation enclosing it may be visible. It must have boundaries, but it is not necessary that they be seen. Their existence may be determined by assay and analysis. *Id.*; *Hyman v. Wheeler* (C. C.) 29 Fed. 347; *Mining Co. v. Cheesman* 116 U. S. 529, 6 Sup. Ct. 481, 29 L. Ed. 712. The controlling characteristic of a vein is a continuous body of mineral-bearing rock in place, in the general mass of the surrounding formation. If it possess these requisites, and carry mineral in appreciable quantities, it is a mineral-bearing vein, within the meaning of the law, even though its boundaries may not have been ascertained.

The views expressed by text writers on the subject are also important, and should be here stated.

(Lindley, in his work on Mines, discusses the subject at length and cites many authorities (Vol. 1, Secs. 286 to 301, inclusive, and Secs. 322 and 323). At page 582 (Sec. 323) he says:

The act of July 26, 1866, provided for the acquisition of title to veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, or copper. By necessary intendment it excluded all other classes of metallic substances, as well as all which were non-metalliferous. The placer law of July 9, 1870, extended the right of entry and patent "to claims usually called 'placers,' including all forms of deposit, excepting veins of quartz or other rock in place."

The act of May 10, 1872, provided in terms for the appropriation of lands containing veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other *valuable deposits*.

This is preserved in the Revised Statutes, which also contain the provisions of the placer law of 1870, heretofore referred to. Therefore, under the existing law we find the classification to be as follows—

(1) Lands containing veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other *valuable deposits*;

(2) Claims usually called "placers," including all forms of deposit, excepting veins of quartz or other rock in place.

In another part of his work, after stating that to determine the proper manner of appropriating public lands containing valuable mineral deposits it is necessary first to determine whether or not the deposits are found in veins or lodes of quartz or other rock in place, and that if so found the method of appropriation differs from that applicable to other deposits, and that the nature and extent of the rights conferred also differ, the author further says (Sec. 299):

A vein, or lode, is necessarily "in place." The condition of being "in place" is one of its essential attributes. The term "quartz or other rock in place," as used in section twenty-three hundred and twenty of the Revised Statutes, refers to its constituent elements, or the "filing" of veins and lodes. Experience has shown that mineral substances in veins, or lodes, are not always found in quartz. Sometimes the vein material is composed mainly of the same character of rock as the inclosing walls—the occurrence of mineral being in the form of impregnations, penetrating the country rock, or the mineral may be but a replacement of the original rocks. So the statute recognizing that while the material of most veins consists of quartz, yet, as this is not universally true, the alternative, "or other rock in place," was introduced. As quartz in a vein is rock in place, the statute would have been equally as comprehensive if instead of saying "veins, or lodes, of quartz or other rock in place," it had simply said "veins, or lodes, of rock in place."

In Snyder on Mines, after a brief discussion of the subject, and after observing that no general definition controlling in all cases can be given, that author epitomizes his views as to what lands may be located as vein or lode claims, and what as placer claims, as follows (p. 307):

*First.* That any lode, vein or deposit of rock in place between defined or definable boundaries containing any of the precious or economic metals or min-

erals, excepting coal, whether metallic or non-metallic, should be held to be and is locatable and patentable as a lode claim.

*Second.* That placer includes all forms of mineral or metal-bearing earth not comprehended by the term "rock in place," and that it is again subdivided into—

(a) Gold-bearing gravel or placer, whether it be found in gravel beds, that is, the beds of ancient rivers or glaciers, or whether it be in the slide or drift of the mountain side or beneath the surface of a river, lake or sea.

(b) All other forms of valuable deposit of mineral or metal-bearing earth, including all forms of building or other stone deposits that are not within defined boundaries, whether they are mineral or metal bearing, or classed as non-metallic or merely as building stone.

In Barringer & Adams on the Law of Mines and Mining, at pages 437-438, it is said :

Lode claims are described in the statute as "mining claims upon veins or lodes of quartz or other rock *in place* bearing gold, silver, cinnabar, lead, copper, or other valuable deposits" (Rev. Stats. 2320), and as "mining locations . . . on any mineral vein, lode, or ledge situated on the public domain" (Rev. Stats. 2322). The primary requisite of such a claim, therefore, "is that *it shall be upon a lode or vein of mineral-bearing rock.*" The meaning of these terms hence becomes of vital importance. The definitions thereof adopted by the courts are not the definitions of the geologists. These words are used in the statutes in the signification which they convey, not to the scientific man, *but to the practical miner.*

A lode, therefore, in the above clauses means a body of mineral-bearing rock lying within walls (which should be well defined, but sometimes are not) of neighboring rock, usually of a different kind, but sometimes of the same kind, and extending longitudinally between those walls in a continuous zone or belt.

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The only essential quality of the rock included within the boundaries is that it must contain a trace of valuable mineral. It may be loose and friable, or very hard. Still it is vein matter if it is inclosed within the country rock. Thus the two essential elements of a lode are (a) the mineral-bearing rock, which must be in place and have reasonable trend and continuity, and (b) the reasonably distinct boundaries on each side of the same.

In Morrison's Mining Rights, pages 150, 153, it is said :

The word "lode" and the word "vein" are used indiscriminately in the acts of Congress as well as in the popular language, to signify the same thing. In Bainbridge on Mines, the text, page 2, defines them in the same sentence: "A mineral lode or vein is a flattened mass of metallic or earthy matter, differing materially from the rocks or strata in which it occurs."

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Whatever a miner would follow with the expectation of finding ore, or similar phrases, have been adopted as a practical test of what is to be considered a lode under the Act of Congress.—Eureka Co. v. Richmond Co., 9 M. R., 578; Harrington v. Chambers, 1 Pac., 362. Any body or belt of mineralized rock is a lode.—Book v. Justice Co., 58 Fed., 106; Shoshone Co. v. Rutter, 87 Fed., 801.

At page 192 of the same work, in speaking of the distinction between lode and placer claims, the same author says :

But the U. S. Mining Acts make an arbitrary division of all minerals into two classes, to wit: lodes and placers. All deposits of metallic minerals in place

are called, when located, lode claims, and all deposits of other minerals, in place or not in place, are placers. Arbitrary as this division is, it is the only construction allowable to the statute, was at once adopted by the Land Office and has been followed by the Courts.—Gregory v. Pershbaker, 15 M. R., 602.

There are no reported departmental decisions which bear directly on the question. As long ago as 1873, however, in a circular letter issued to surveyors-general and registers and receivers (Copp's U. S. Mining Decisions, 316-319), Commissioner Drummond, of your office, referring to the statutes relating both to vein or lode claims and to placer claims, and observing the importance of a construction by the land department of the phrase "veins or lodes of quartz or other rock in place," to prevent mistakes in locating the two classes of minerals, and stating that there was no reason for supposing that the terms of the lode statute were employed in their strict geological signification, held that "all lands wherein the mineral matter is contained in veins or ledges, occupying the original habitat or location of the metal or mineral, whether in true or false veins, in zones, in pockets, or in the several other forms in which minerals are found in the original rock, whether the gangue, or matrix, is disintegrated at the surface or not, are embraced within the terms "veins or lodes of quartz, or other rock in place."

From these authorities, and many others that might be cited, the following propositions are fairly deducible:

(1) That to determine whether lands containing a given mineral deposit are of the class subject to location and patent under the law applicable to vein or lode claims, resort is to be had to the language of the statute, rather than to definitions of the terms "vein," "lode," and "ledge," given by geologists from a scientific viewpoint.

(2) That the statute is to be construed in the light of the prevailing and commonly known use of the terms "vein," and "lode," as defined by miners—the result of practical experience in mining, so as to avoid any limitation in the application of the law which a scientific definition of the terms might impose; and as well in the light of the general purpose and policy which Congress had in view, namely, the protection of *bona fide* locators of the mineral lands of the United States, and the development of the mineral resources of the country. The definitions by the courts are not the definitions of geologists; and the terms are to be considered as used in the signification which they convey to the practical miner, and not in the sense generally used by the scientific man.

It may well be further stated, as a proposition equally supported by the authorities, that the amount of land which may be located as a vein or lode claim and the amount which may be located as a placer claim, and the price per acre required to be paid to the Government in the two cases when patents are obtained, and the rights conferred

by the respective locations and patents, and the conditions upon which such rights are held, differ so materially as to make the question whether mineral lands claimed in any given case belong to one class or to the other, a matter of importance both to the Government and to the mining claimant. And, it is also true, mineral lands of either class can not be lawfully located and patented except under the provisions of the statute applicable to such class. Veins or lodes may be located and patented only under the law applicable to veins or lodes. Deposits other than veins or lodes are subject to location and patent only under the law applicable to placer claims.

Some of the authorities hold the view that only minerals of the metallic class are within the statute relating to veins or lodes; but the great weight of authority is the other way; and the Department is of opinion that the latter is the better view. That the statute is broad enough to embrace minerals of the non-metallic as well as the metallic class, wherever found in rock in place, was distinctly held, after careful consideration and full discussion, in the case of *Pacific Coast Marble Company v. Northern Pacific Railroad Company* (25 L. D., 233, 241-243). See also 1 Lindley on Mines, Secs. 86, 323; 1 Snyder on Mines, Sec. 337.

With practical unanimity the authorities are to the effect that to constitute a vein or lode within the meaning of the statute the mineral deposit must be borne in rock in place. Mineral-bearing rock, in place, or equivalent terms, are invariably used in defining what the law contemplates as a vein or lode. "Quartz or other rock in place bearing gold, silver," etc., are the terms used in the statute. Two distinct constituent elements of vein matter or substance are clearly recognized as essential: the *rock*, and the *mineral* borne in the rock. To this extent, therefore, a general definition applicable to all cases may be given, namely: that a vein or lode, to be locatable and patentable under the mining laws, must possess the elements of rock in place bearing one or more of the minerals specified in the statute, or some other mineral that would be embraced within the added words "other valuable deposits."

That it has been difficult, if not impracticable, to give any broad and general definition controlling as to all features and in all cases is beyond doubt, but the difficulty has not been with respect to the terms "quartz or other rock," but rather with respect to the term "in place," as applied to a given deposit of mineral-bearing rock. As to this feature of the statute the varying conditions existing in different States and mining districts have resulted in apparently inharmonious definitions by the courts. But there is no substantial conflict. The definitions are simply predicated upon different conditions, each upon the peculiar situation, formation, and boundaries of the ore deposits or vein matter, in the particular mining district

where the claims involved were located. The authorities recognize that definitions have been given in some of the States and mining districts that would not be applicable to conditions in other States or mining districts.

Further than as above indicated it is not here necessary, nor is it intended, to give any general definition of the terms under consideration. In view of the authorities, and of the considerations already stated, the Department is clearly of opinion that the deposits of marble in the claims in question are not vein or lode deposits within the meaning of the statute, and that the lands embraced in the entry are therefore not subject to location and patent under the provisions applicable to vein or lode claims. This is not because the deposits are not "in vein or lode formation," as stated in your office decision, but rather, or at least primarily, because the deposits are not of the kind, or character, contemplated by sections 2320 and 2322. The marble involved is not mineral-bearing rock in the sense of the statute. There is no claim or contention that it contains even a trace of any of the minerals named in the statute, or of any other mineral substance, distinct from the rock itself.

The lands can be located and patented, therefore, only under the laws applicable to placer claims. As strengthening this view, and as unmistakably showing the mind of Congress as to the manner of obtaining title to lands containing valuable deposits of marble, or building stone, it is important to refer to the act of August 4, 1892 (27 Stat., 348), wherein it is expressly declared that lands chiefly valuable for building stone shall be subject to entry "under the provisions of the law in relation to placer-mineral claims."

It would serve no useful purpose to pursue the subject further. It is clear that the entry in question was unlawfully allowed and must be canceled. This conclusion renders it unnecessary to consider any other question raised by the appeal.

As modified by the views herein expressed, the decision of your office on the one question considered is affirmed.

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#### MINING LAWS AND REGULATIONS THEREUNDER.

##### CIRCULAR.

The circular of United States mining laws and regulations thereunder, approved July 26, 1901 (31 L. D., 453), reapproved for reprinting in pamphlet form May 21, 1907, without substantial change therein except the substitution of amended paragraphs 18, 37, 44, 90 and 147, and the insertion of legislation relating to mineral lands enacted since the former approval of said circular.