

File No. 7900 Continued.

OPINION.

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In the course of the opinion (Page 461) the Court said "By the terms of the contract the plaintiffs are entitled to raise the ore out of the mines on the tract of 41 acres. Now a mine, properly speaking, is the pit or excavation in the earth, from which the ore is taken. The term is certainly used to include the bed or vein of ore into which the pit enters, so far as may be necessary to the working of the mine, and the whole series of shafts and subterranean passages and chambers connected with it. But neither in ordinary parlance nor in strict technical language, is a mine understood to indicate the entire ore bed with which the shaft may be connected.

As by a quarry we understand not an indefinite extent of stone or rock which may be worked, but the spot where the rock is quarried. The ore may extend indefinitely, but the mine is the pit from whence it is extracted. There is no authority given in the contract to the plaintiffs to open new mines, or to sink new shafts or slopes, except so far as such shafts or slopes may have been necessary to the proper and successful working of the mines already opened."

In *Marvel vs. Merritt*, 116 U. S., page 11, (which case relates to import duties on ore) the Court quotes the following definition of a mine from Webster's Dictionary:

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"A pit or excavation in the earth, from which metallic ores or other mineral substances are taken by digging, distinguished from the pits from which stones only are taken, and which are called quarries".

From these authorities, it seem clear to me that the lessee in opening new quarries on the land, which the City now owns, has been a trespasser, and their proceedings in these new quarries can, in my judgment, be restrained. Moreover, it appears to me, that the City is entitled to recover such damages as it may have suffered from the aforesaid trespasses.

There are several covenants in the above mentioned lease, all of which seem to me to be clear in meaning, and the lease provides expressly that in the event of the breach of any of the covenants, upon the part of the tenant, the landlord may re-enter and terminate the tenancy, and may also recover all damages sustained, provided such breach continues for fifteen days after notice thereof to the tenant. If proper notice has been given of the breach of any covenant in the lease, and the breach has continued for fifteen days beyond the time