

§ 784. Patent—How vacated—Within what time suit must be brought.—The circumstances under which the government may bring an action in equity to vacate and set aside a patent are outlined by the supreme court of the United States in the case of *United States v. Missouri K. & T. Railway Co.*,⁴ substantially as follows:—

If a patent should be fraudulently obtained, and such fraudulent patent, if allowed to stand, would work prejudice to the interests or rights of the United States, or prevent the government from fulfilling an obligation incurred by it either to the public or to an individual, which personal litigation could not remedy, there would be an occasion which would make it the duty of the government to institute judicial proceedings to vacate such patent. These principles apply equally where patents have been issued by mistake, and they are especially applicable where a multiplicity of suits, each one depending upon the same facts and the same questions of law, can be avoided, and where a comprehensive decree covering all contested rights would accomplish the substantial ends of justice.

This principle has, in one form or another, been enunciated by the supreme court of the United States in a long line of decisions.⁵

149 Cal. 357, 86 Pac. 968, 969; *ante*, § 393. See on this subject the language of the supreme court of the United States in *Lawson v. United States M. Co.*, 207 U. S. 1, 19, 28 Sup. Ct. Rep. 15, 52 L. ed. 65, referring to notices of location and stipulation of counsel as to such notices.

⁴ 141 U. S. 358, 377, 12 Sup. Ct. Rep. 13, 35 L. ed. 766.

⁵ *United States v. Minor*, 114 U. S. 233, 241, 5 Sup. Ct. Rep. 836, 29 L. ed. 110; *United States v. San Jacinto Tin Co.*, 125 U. S. 273, 279, 8 Sup. Ct. Rep. 850, 31 L. ed. 747; *United States v. Beebe*, 127 U. S. 338, 342, 8 Sup. Ct. Rep. 1083, 32 L. ed. 121; *Moore v. Robbins*, 96 U. S. 530, 533, 24 L. ed. 848; *United States v. Iron S. M. Co.*, 128 U. S. 673, 676, 9 Sup. Ct. Rep. 195, 32 L. ed. 571; *United States v. Trinidad C. &*

It is unnecessary to analyze the authorities or to note their special application to mining patents. The principles apply with equal force to all classes of patents. What constitutes such fraud in a legal sense as will warrant proceedings to vacate a patent issued under the mining laws, must be determined by resort to general rules invoked in other cases.⁶

Attacks are rarely made upon mining patents. The proceedings by which they are obtained, unlike those governing lands agricultural in character, afford an opportunity to adverse claimants prior to the issuance of the patent to litigate asserted hostile rights. The action of the government is more frequently sought to secure the cancellation of patents issued under the agricultural land laws, upon the ground that the lands embraced therein were known to be mineral at the date of the entry upon which the patent was based. Sometimes a patent of this character is issued where there is an absence of fraud and a court of equity has intervened to vacate it on the ground that it was is-

C. Co., 137 U. S. 160, 170, 11 Sup. Ct. Rep. 57, 34 L. ed. 640; *Mullan v. United States*, 118 U. S. 271, 278, 6 Sup. Ct. Rep. 1041, 30 L. ed. 170; *United States v. Stinson*, 197 U. S. 200, 25 Sup. Ct. Rep. 426, 49 L. ed. 724.

⁶ On this subject see generally: *Moffat v. United States*, 112 U. S. 24, 30, 5 Sup. Ct. Rep. 10, 28 L. ed. 623; *United States v. Minor*, 114 U. S. 233, 241, 5 Sup. Ct. Rep. 836, 29 L. ed. 110; *United States v. Throckmorton*, 98 U. S. 61, 69, 25 L. ed. 93; *Steel v. St. Louis Smelting Co.*, 106 U. S. 447, 1 Sup. Ct. Rep. 389, 27 L. ed. 226; *Colorado C. & I. Co. v. United States*, 123 U. S. 307, 316, 8 Sup. Ct. Rep. 131, 31 L. ed. 182; *United States v. Iron S. M. Co.*, 128 U. S. 673, 677, 9 Sup. Ct. Rep. 195, 32 L. ed. 571; *United States v. Hancock*, 133 U. S. 193, 197, 10 Sup. Ct. Rep. 264, 33 L. ed. 601; *United States v. Marshall S. M. Co.*, 129 U. S. 579, 588, 9 Sup. Ct. Rep. 343, 32 L. ed. 734, 16 Morr. Min. Rep. 205; *United States v. Stinson*, 197 U. S. 200, 204, 25 Sup. Ct. Rep. 426, 49 L. ed. 724; *Vance v. Burbank*, 101 U. S. 514, 519, 25 L. ed. 929; *Greenameyer v. Coate*, 212 U. S. 434, 444, 29 Sup. Ct. Rep. 345, 53 L. ed. 587.

sued by mistake, inadvertence, under an erroneous construction of the law, or without authority of law.⁷

Where the patentee has been guilty of fraudulent misrepresentations as to the character of the land, the United States may vacate the patent;⁸ but a bill in chancery brought by the United States to set aside a patent is not treated as a writ of error, or as a petition for rehearing in chancery, or as if it were a mere retrial of the case before the land office.⁹

The rule governing this class of cases is thus stated by the supreme court of the United States:—

We take the general doctrine to be that when in a court of equity it is proposed to set aside, to annul or to correct a written instrument for fraud or mistake in the execution of the instrument itself, the testimony on which this is done must be clear, unequivocal, and convincing, and that it cannot be done upon a bare preponderance of evidence. . . . In this class of cases, the respect due to a patent, the presumption that all the preceding steps required by the law had been observed before its issue, the immense importance and necessity of the stability

As to the nature of the fraud, who may maintain the action, pleadings and proof, see note to *Hartman v. Warren*, 76 Fed. 157, 22 C. C. A. 30; *Lee v. Johnson*, 116 U. S. 48, 49, 6 Sup. Ct. Rep. 249, 29 L. ed. 570; *Peabody G. M. Co. v. Gold Hill M. Co.*, 106 Fed. 241, 242; S. C., on appeal, 111 Fed. 817, 49 C. C. A. 637, 21 Morr. Min. Rep. 591.

⁷ *United States v. Mullan*, 7 Saw. 466, 10 Fed. 785, 791; S. C., on appeal, 118 U. S. 271, 6 Sup. Ct. Rep. 1041, 30 L. ed. 170; *McLaughlin v. United States*, 107 U. S. 526, 527, 2 Sup. Ct. Rep. 802, 27 L. ed. 621; *Western Pac. Ry. Co. v. United States*, 108 U. S. 510, 512, 2 Sup. Ct. Rep. 802, 27 L. ed. 806; *United States v. Culver*, 52 Fed. 81, and cases cited; *United States v. C. P. R. R.*, 84 Fed. 218, 221; *Germania Iron Co. v. United States*, 165 U. S. 379, 383, 17 Sup. Ct. Rep. 337, 41 L. ed. 754; note to *Hartman v. Warren*, 76 Fed. 157, 22 C. C. A. 30.

⁸ *United States v. Iron S. M. Co.*, 128 U. S. 673, 676, 9 Sup. Ct. Rep. 195, 32 L. ed. 571.

⁹ *United States v. Marshall S. M. Co.*, 129 U. S. 579, 589, 9 Sup. Ct. Rep. 343, 32 L. ed. 734, 16 Morr. Min. Rep. 205.

of titles dependent upon these official instruments, demand that the effort to set them aside, to amend them, or correct mistakes in them should only be successful when the allegations on which this is attempted are clearly stated and fully sanctioned by the proofs.¹⁰

In proceedings by the United States to vacate patents the same fundamental rules of right and justice govern nations, municipalities, corporations and individuals. The equities of the United States appeal to the conscience of the chancellor with no greater or less force than do those of a private individual under like circumstances.¹¹

The United States stands in no different relation as a suitor than any individual. When the government comes into court to submit a question to judicial determination, she is not acting in her capacity as a sovereign, but as a litigant, claiming the same rights and bound by the same rules as any of her citizens under similar circumstances.¹²

To set the machinery of the government in motion and secure the institution of such a suit, application

¹⁰ Maxwell Land Grant Case, 121 U. S. 325, 381, 7 Sup. Ct. Rep. 1015, 30 L. ed. 949, and cases cited; *United States v. Stinson*, 197 U. S. 200, 204, 25 Sup. Ct. Rep. 426, 49 L. ed. 724.

¹¹ *United States v. Northern Pac. R. Co.*, 95 Fed. 864, 880, 37 C. C. A. 290.

¹² *Lynch v. United States*, 13 Okl. 142, 73 Pac. 1095, 1096, citing *United States v. Bank of Metropolis*, 15 Pet. (U. S.) 377, 401, 10 L. ed. 774; *Brent v. Bank of Washington*, 10 Pet. (U. S.) 596, 614, 9 L. ed. 547; *United States v. Hughes*, 11 How. (U. S.) 552, 568, 13 L. ed. 809; *United States v. Throckmorton*, 98 U. S. 61, 67, 25 L. ed. 93; *United States v. Minor*, 114 U. S. 233, 240, 5 Sup. Ct. Rep. 836, 29 L. ed. 110; *United States v. Detroit T. & L. Co.*, 124 Fed. 393, 402; *Mountain Copper Co. v. United States*, 142 Fed. 625, 629, 73 C. C. A. 621; *United States v. Stinson*, 197 U. S. 200, 205, 25 Sup. Ct. Rep. 426, 49 L. ed. 724; *United States v. Mills*, 169 Fed. 686, 687; *Hemmer v. United States*, 204 Fed. 898.

must be made to the land department, of which application the patentee is entitled to notice.¹³

If, upon examination of the proofs submitted, the commissioner of the general land office is of the opinion that the showing is, *prima facie*, sufficient as the basis for an order for a hearing, he refers the matter to the secretary of the interior, recommending that such a hearing be had. If the secretary concurs in the recommendation, a hearing is ordered,¹⁴ otherwise no action is taken.¹⁵

If, upon the hearing, the proofs are "clear, unequivocal, and convincing," the secretary of the interior presents the matter to the attorney-general, with the request that the suit be instituted in the name of the United States,¹⁶ which request is usually complied with, although such course is not necessarily taken. The matter ultimately rests with the department of justice, of which the attorney-general is the head.

By act of congress, approved March 3, 1891,¹⁷ it was enacted that suits by the United States to vacate and annul any patent theretofore issued should only be brought within five years from the passage of this act, and that suits to vacate and annul patents thereafter issued shall only be brought within six years after the date of the issuance of the patent.

This statute must be taken to mean that the patent is to be held good and is to have the same effect against

¹³ In re Little Nell Lode, 16 L. D. 104.

¹⁴ In re Butte & Boston M. Co., 21 L. D. 125; In re Mary Coffin, 34 L. D. 298.

¹⁵ In re Heir of Creciat, 40 L. D. 623.

¹⁶ In re Negus, 11 L. D. 32; In re Starr, 2 L. D. 759; Mountain Maid Lode, 5 L. D. 28; Lead City Townsite v. Little Nell Lode, 17 L. D. 291; In re Abererombie, 6 L. D. 393; United States v. Rumsey, 22 L. D. 101.

¹⁷ 26 Stats. at Large, 1093, § 8; Peabody Gold M. Co. v. Gold Hill M. Co., 106 Fed. 241.

the United States that it would have had had it been valid in the first place.¹⁸

When the ground of vacating the patent is fraud, it has been held by some of the federal courts that the statute is not tolled until discovery, but runs in all cases from the date of the issuance of the patent.¹⁹

It has been said that the object of the statute is to extinguish any right the government may have had in the land and vest a perfect legal title in the adverse holder after six years from the date of the patent, regardless of any mistake or error in the land department, or fraud or imposition of the patentee.²⁰

Other courts of equal dignity, however, maintain the doctrine that the statute does not commence to run until the fraud is discovered.^{20a}

In a case where the United States could successfully maintain a suit for the vacation of a patent wrongfully obtained, a voluntary reconveyance of land so patented may be accepted.²¹

¹⁸ *United States v. Chandler-Dunbar Co.*, 209 U. S. 447, 450, 28 Sup. Ct. Rep. 579, 52 L. ed. 881.

¹⁹ *United States v. American Lumber Co.*, 85 Fed. 827, 832, 29 C. C. A. 431; *United States v. Smith & Werner*, 181 Fed. 545, 554; *United States v. Exploration Co.*, 190 Fed. 405, 406.

²⁰ *United States v. Smith*, 181 Fed. 545, 554, citing *United States v. Winona & St. Paul R. R.*, 165 U. S. 463, 476, 17 Sup. Ct. Rep. 368, 41 L. ed. 789; *United States v. Chandler-Dunbar Co.*, 209 U. S. 447, 450, 28 Sup. Ct. Rep. 579, 52 L. ed. 881.

^{20a} *United States v. Exploration Co.*, 203 Fed. 387. We understand that the question is now before the supreme court of the United States.

²¹ *San Francisco M. Co.*, 29 L. D. 397; *In re Tryon*, 29 L. D. 475.