

is made the duty of the adverse claimant, within thirty days after filing his claim, to commence proceedings in a court of competent jurisdiction to determine the question of the right of possession, and to prosecute the same with reasonable diligence to final judgment; and a failure to do so is to be deemed a waiver of his adverse claim. After judgment has been rendered in such proceedings, the party entitled to the possession of the claim, or any portion of it, may file a certified copy of the judgment-roll with the register of the land-office, together with a certificate of the Surveyor-General that the requisite amount of labor has been expended or improvements made thereon, and the description required in other cases; and must pay to the receiver five dollars an acre for his claim, together with the proper fees; and then the whole proceedings and the judgment-roll are to be certified by the register to the Commissioner of the General Land-Office, and a patent thereupon issued for the claim, or such portion thereof as the applicant, by the decision of the court, shall appear to be entitled to.

It will thus be seen that if an adverse claim is made to the mining ground for which a patent is sought, its validity must be determined by a local court, unless it be waived, before a patent can be issued. There would seem, therefore, to be more cogent reasons, in cases where a patent for such ground is relied upon, to maintain the doctrine which we have declared, that it cannot be assailed in a collateral proceeding, than in the case of a patent for agricultural land.

But it is unnecessary to pursue the subject further. The judgment of the court below must be reversed and the cause remanded for a new trial; and it is

*So ordered.*

MR. JUSTICE MILLER and MR. JUSTICE HARLAN dissented.

NOTE.—*Smelting Company v. Ray*, error to the Circuit Court of the United States for the District of Colorado, was argued at the same time as the preceding case, and by the same counsel for the plaintiff in error, and by *Mr. Thomas M. Patterson* for the defendants in error.

MR. JUSTICE FIELD remarked that, as it presented the same questions there determined, the judgment of the court below must be reversed and the cause remanded for a new trial.

MR. JUSTICE MILLER and MR. JUSTICE HARLAN dissented.