

## Syllabus.

was the real party in interest, and conducted both suits, and had recovered, in the first suit, in the name of a trustee, and in the second, in his own name, as "*cestui que trust*" of the equitable estate—as where one suit was in a real or fictitious lease from John Doe, and the other in the name of Richard Roe. The jury were instructed that if they believed the evidence that Patterson was the real party in both suits, the two verdicts and judgments were conclusive.

But the plaintiff below having deraigned title from the warrantee, and the plaintiff in error having shown no title, the question as to the estoppel was of no importance, as the court were bound to instruct the jury, that without its aid their verdict should be the same.

The plaintiff in error, having failed to show any error in the record, the

JUDGMENT IS AFFIRMED.

## HUGHES v. UNITED STATES

1. The equity of a preëmption claimant of land under the laws of the United States who has complied with the conditions imposed by those laws, obtained his certificate by the payment of the purchase-money, and retained uninterrupted possession of the property, cannot be defeated by one whose entry was subsequent, although he has fortified his title with a patent; such person having notice sufficient to put him on inquiry as to the interests, legal or equitable, of the preëmption claimant.
2. A decree dismissing a bill for matters not involving merits is no bar to a subsequent suit.
3. A court of equity will set aside a patent of the United States obtained by mistake or inadvertence of the officers of the land office, on a bill filed for that purpose by the government when the patent *primâ facie* passes the title.
4. Open, notorious, and exclusive possession of real property by parties claiming it is sufficient to put other persons upon inquiry as to the interests, legal or equitable, held by such parties; and if such other persons neglect to make the inquiry, they are not entitled to any greater consideration than if they had made it and had ascertained the actual facts of the case.

APPEAL from the Circuit Court of the United States for the Eastern District of Louisiana.

## Statement of the case.

The United States in 1848 filed an information in the nature of a bill in equity in the court just named, against one Hughes, for the repeal and surrender of their patent for a tract of land issued to him in 1841; tendering back to him the purchase-money. The case was thus:

By the act of Congress of April 12th, 1814, every person who had inhabited and cultivated a tract of land lying in that portion of the State of Louisiana which had composed the Territory of Orleans, or in the Territory of Missouri, in cases where the land was not rightfully claimed by any other person, and who had not removed from the State or Territory, was entitled to the right of preëmption in the purchase of the land, under conditions and regulations prescribed by a previous act, passed with reference to certain settlers in Illinois. The same right was extended by the act to the legal representatives of the original occupant. Under this act one Goodbee, in 1822, applied to the register and receiver of the land office of the district to become a purchaser of a tract supposed to contain about one hundred and sixty acres, which had been occupied and cultivated by one Beedle, in 1813, under whose settlement he claimed. His right to pre-empt the tract was recognized by the officers, and, the required price being paid, the usual certificate was issued to him. The land at this time was designated as lot number one, under a special system of surveys authorized by the act of March 3d, 1811. It was some years later before the general system of surveys into ranges, townships, and sections, was extended over the country; and when this took place, the legal subdivision embraced about fifteen acres in excess over the one hundred and sixty. To this excess, as part of the original lot, Goodbee's right of preëmption under the regulations of the General Land Office also attached.

At the time he made his entry, Goodbee was in the open and exclusive possession of the premises, and either he or his grantees subsequently continued in such possession, and cultivated the land, and erected valuable and permanent improvements thereon.

In 1823, the President, by proclamation, ordered the sale

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Statement of the case.

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of the public lands of the district. The proclamation was general in its terms, embracing all the lands, without excepting such as had been previously preëmpted or reserved, but the parcels preëmpted or reserved were designated by proper entries in the register of the land office. The tract occupied by Goodbee was thus designated, and was not offered at the public sale which took place.

In 1836 Hughes entered this tract at private sale, designating it by section, township, and range,—the proper description under the completed public surveys. The officers of the land office, overlooking, from the difference in its description, the fact that the tract had been previously sold to Goodbee, gave him the usual certificate of purchase and payment, upon which, in April, 1841, a patent was issued by the United States.

To the bill or information filed below, Hughes demurred. The court gave judgment sustaining the demurrer. This judgment having come on appeal here, at December Term, 1850,\* was reversed, the demurrer overruled, and the patent to Hughes decreed null and void, and ordered to be surrendered. This decree was afterwards, by consent, set aside, and the cause remanded to the Circuit Court, with leave to the defendant to *answer*, and for further proceedings according to equity. He accordingly did answer; the grounds of defence now set forth being that he had obtained, in the State courts of Louisiana, two several judgments in two distinct suits.

The first was, ejectment brought by him against one Sewall, tenant in possession and claimant of the title under Goodbee, which suit had gone in his favor.

The second one was brought against him by this same Sewall and one Hudson (both claimants under Goodbee), who sought to set aside the patent to Hughes, on the same allegations of fraud, as it was alleged, and the same exhibition of documents, that at their instance were now set forth by the United States, in the bill or information filed in the Circuit Court of the United States.

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\* 11 Howard, 552.

## Opinion of the court.

This second suit was dismissed for want of jurisdiction and absence of proper parties—so far as the petition related to the relief sought by the bill in the present suit—and it was dismissed generally, because it was defective, uncertain, and insufficient in the statement of the cause of action.

In the suit of *Hughes v. Sewall*, judgment was given in favor of Hughes, on the ground that the court could not, in that action, look behind the patent to inquire into the equities of the parties. The Supreme Court of Louisiana affirmed this judgment on appeal, but granted a stay of execution until the validity of the patent could be judicially ascertained.

The Circuit Court of the United States below was of opinion that no sufficient defence was shown by the judgments set up, as above stated, and that the United States were entitled to the relief prayed for, and it decreed accordingly.

The case came here by appeal, and was submitted by *Mr. Stanbery, A. G., and Mr. Ashton, Assistant A. G., for the United States, and by Mr. Carey, contra.*

Mr. Justice FIELD delivered the opinion of the court.

This suit is brought to vacate the patent to Hughes, and compel its surrender for cancellation. It proceeds upon the ground that the patent was issued in violation of the rights of Goodbee, or parties deriving title under him, and that its existence impairs the ability of the government to fulfil its engagements to him.

By the act of April, 1814, the United States had extended to Goodbee the privilege of purchasing the land, and had prescribed the mode of proceeding to make the purchase, and fixed the price to be paid. When this mode was pursued, and the price was paid, a contract was completed between him and the government, which the latter was bound to execute by a transfer of the title. The patent to Hughes, subsequently issued, stood in the way of an efficient and just execution of this contract. Its operation was either to divest the United States of the legal title, or, by clouding the title,

## Opinion of the court.

to impair the security which would otherwise flow from their conveyance. When this case was here on demurrer,\* the patent was considered by the court to be a valid instrument conveying the fee of the United States, and, until annulled, as rendering them incapable of complying with their engagement to Goodbee or his alienees. Whether regarded in that aspect, or as a void instrument, issued without authority, it *primâ facie* passed the title, and, therefore, it was the plain duty of the United States to seek to vacate and annul the instrument, to the end that their previous engagement might be fulfilled by the transfer of a clear title, the only one intended for the purchaser by the act of Congress.

The power of a court of equity, by its decree to vacate and annul the patent, under the circumstances of this case, is undoubted. Relief, when deeds or other instruments are executed by mistake or inadvertence of agents, as well as upon false suggestions, is a common head of equity jurisdiction.

The patentee cannot complain of the proceeding, for the open, notorious, and exclusive possession of the premises, by the parties claiming under Goodbee, when the patentee made his entry and received the patent, was sufficient to put him upon inquiry as to the interests, legal or equitable, held by them; and if he neglected to make the inquiry, he is not entitled to any greater consideration than if he had made it and ascertained the actual facts of the case.

The judgments recovered by Hughes in the State court of Louisiana—one in an action brought by him against Sewall, and one in an action brought against him by Sewall and Hudson—constituted no bar to this suit. The first case was ejectment against Sewall, who was at the time in the occupation of the land, and judgment passed in Hughes's favor, on the ground that the court could not, in that form of action, go behind the patent and inquire into the equities of the parties. On appeal, the judgment was affirmed by the Supreme Court of the State, but was accompanied with

\* 11 Howard, 568. See, also, Jackson v. Lawton, 10 Johnson, 23.

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a stay of execution until the validity of the patent should be judicially ascertained.

The second case was a petitory action, brought by Sewall and Hudson, claimants under Goodbee, having for its object the vacation of the patent, the annulment of the above judgment against Sewall, then pending on appeal in the Supreme Court of the State, the recovery of damages, and the obtaining of an injunction. No judgment was passed upon the merits of any matter alleged. The petition was dismissed for want of jurisdiction and the absence of proper parties, so far as it related to the special relief sought by this suit—the vacation and surrender of the patent—and it was dismissed generally on the ground that it was “defective, uncertain, and insufficient in the statement of the cause of action.”

It requires no argument to show that judgments like these are no bar to the present suit. In order that a judgment may constitute a bar to another suit, it must be rendered in a proceeding between the same parties or their privies, and the point of controversy must be the same in both cases, and must be determined on its merits. If the first suit was dismissed for defect of pleadings, or parties, or a misconception of the form of proceeding, or the want of jurisdiction, or was disposed of on any ground which did not go to the merits of the action, the judgment rendered will prove no bar to another suit.\*

## JUDGMENT AFFIRMED.

[See, as to the second point of the syllabus, *United States v. Stone*, 2 Wallace, 525.—REP.]

## MITCHELL v. ST. MAXENT'S LESSEE.

1 A writ of *feri facias*, tested and issued after the death of the party against whom the judgment is recovered, is void, and confers no power on the ministerial officer to execute it.

\* *Walden v. Bodley*, 14 Peters, 156; 1 Greenleaf's Ev., §§ 529 and 530, and authorities there cited.