

## Syllabus.

usual connection with another which is known, and on this principle the jury should have been allowed to consider this evidence.

As this case will have to go back for a new trial, and as the point was raised in the court below, it may be proper to observe that no witness can be asked what the course of trade is in reference to this particular business. This would be either opinion or hearsay. He can only be allowed to tell his personal experience on the subject about which he is called to testify. It is only through the aggregated testimony of all the witnesses that the fact can be proved, which so connects itself with the plaintiffs' business as to require from him an answer.

**JUDGMENT REVERSED, AND A VENIRE DE NOVO.**

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**MEADER ET AL. v. NORTON.**

1. Nothing more is contemplated by proceedings under the act of Congress of March 3d, 1851, to ascertain and settle private land claims in California, than the separation of lands owned by individuals from the public domain. A decree confirming a claim to land rendered in such proceedings, even when followed by a patent of the United States, is not conclusive upon the equitable rights of third persons. They can assert such rights in a suit in equity against the patentee and parties claiming under him with notice.
2. In a suit at law a patent is conclusive evidence of title against the United States and all others claiming under the United States by a junior title. Until the patent issues the fee is in the government, but when it issues the legal title passes to the patentee. Persons therefore claiming the land against the patent cannot have relief in a suit at law, but courts of equity have full jurisdiction to relieve against fraud or mistake, and that power extends to cases where one man has procured the patent which belonged to another at the time the patent was issued.
3. In 1839 three sisters obtained from the governor of the Department of California a grant of land, which was approved by the Departmental Assembly, and official delivery of possession was given to them. Some years afterwards the husband of one of the sisters, named Bolcoff, suppressed or destroyed this grant and fabricated a pretended grant to himself of the land, and also certain other papers intended to prove the

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genuineness of such fabricated grant. Upon these papers the sons of Bolcoff, he having died, obtained a confirmation of their claim, under said pretended grant, to the land, the land commissioners acting upon the supposition that the fabricated papers were genuine, no question as to their genuineness being raised before them; and upon such decree a patent of the United States issued to the claimants. The fabricated character of these papers being discovered, the grantee of the rights of the three sisters brought a suit in equity to have the defendants holding under the patentees declared trustees of the legal title, and to compel a transfer of that title to him: *Held*, that the suit would lie, and that upon proof of the fabricated character of the papers the complainant was entitled to a decree against all the defendants who had purchased with notice of the claim of the sisters, and had not obtained conveyances or releases from them.

4. Laches and the statute of limitations cannot prevail as defences where the relief sought is grounded on a charge of secret fraud and it appears that the suit was commenced within a reasonable time after the evidence of the fraud was discovered.

APPEAL from the Circuit Court for the District of California.

This was a bill in equity, filed in the court below by C. E. Norton, to have the defendants, Meader and several others, declared trustees of certain real property situated in the State of California, and to obtain a decree that they convey to him the legal title held by them to the premises. The case as presented by the record was thus:

Three sisters, named respectively Maria Candida, Maria Jacinta, and Maria Los Angeles Castro, on the 13th of February, 1839, applied by petition to J. B. Alvarado, then Mexican governor of the department of California, for a grant of the land known as the Rancho El Refugio, situated in that part of California now known as the county of Santa Cruz.

This petition was immediately referred by the governor to the administrator of the adjoining mission with directions to make a report upon the same. On the 10th of March following that officer reported that the land solicited could be granted, and on the 16th of the same month the governor made a provisional concession of it to the petitioners; a concession which was subject to further action

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in the premises. To guide him in such further action, the governor directed the prefect of the district to report to him upon the subject. The prefect reported that a grant in fee of the land solicited could be made to the parties, as it was vacant and was not claimed by any one. Accordingly, on the 8th of April following (1839), the governor made a formal cession of the land to the three sisters by name, referring to the previous proceedings, and declaring them owners in fee and directing that the proper grant or title papers (*titulo*) issue to them, and that the proceedings in the case be retained for the information and approval of the Departmental Assembly. These proceedings were numbered 131. In the order of concession of the governor, the name of one of the sisters, Maria de los Angeles, was erased, and over the erasure was written the name of José Bolcoff. This concession or grant of the governor was approved by the Departmental Assembly on the 22d of May, 1840. The approval in the records of the Assembly has in it the number, 131, and gives the date of the concession, and mentions the three sisters by name as the parties to whom the concession was made. On the 13th of June following the governor ordered a certificate of the approval to be given to the three sisters.

At this time one José Castro was prefect of the first district, within which district the land granted was situated, and he kept a record or minute of the grants of land made in his district. His book of registry is now in the archives in the custody of the Surveyor-General of the United States for California. In this registry is entered a minute that on the 8th day of April, 1839, the governor granted to the three sisters the place called El Refugio. In this registry there is also a similar minute of eight other grants, all of which are found in the archives, and each has a memorandum indorsed upon it that it has been entered in the registry. The memoranda on these eight grants and the entries in the registry correspond.

There is also in the archives an index of grants made between 1838 and 1845, by a clerk in the office of the secre-

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tary of state of the department, and under his direction, which is commonly known as "Jimeno's Index." This Index gives the number of the expedientes, the names of the grantees, and the designation of the land granted. Upon the index against No. 131 is the entry of a grant of land designated as El Refugio, and the name of José Bolcoff is written over an erasure. It was admitted that originally the names of the three sisters were written there.

This was the documentary evidence which the complainant produced to show that a grant of the rancho El Refugio was issued to the three sisters, under whom he claimed by sundry mesne conveyances. Parol evidence produced by him related chiefly to the possession of the premises since the concession of the governor, and various alleged admissions and acts of the sisters. It was also in evidence that in 1839 or 1840 the possession of the land was officially delivered to the three sisters, and that in this proceeding, called a delivery of juridical possession, José Bolcoff appeared on behalf of the sisters, and represented them.

The defendants asserted title to the premises through José Bolcoff; and of some portions of the premises they also alleged a conveyance or release from the sisters.

As documentary evidence of title they produced—

*First.* A paper purporting to be a grant of El Refugio to José Bolcoff, by Governor Alvarado, bearing date on the 7th of April, 1841.

It was shown that there was no trace of any such document as this in the archives of the department, except what appeared over the erasure in the index of Jimeno.

*Second.* A certificate of Governor Alvarado, dated July 28th, 1841, stating that the grant made on the 8th of April, 1839, in favor of José Bolcoff, was approved on the 22d of May, 1841, by the Departmental Assembly, and purporting to quote the language of the proceedings of that body. The certificate concluded by stating that it was issued to the party interested for his security, in consequence of the decree of the 13th of June preceding, existing in the expediente,

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It is to be noticed by the reader that the certificate states that the grant made on the 8th of April, 1839, in favor of José Bolcoff was approved on the 22d of May, 1841, while the alleged grant to Bolcoff produced bears date the 7th of April, 1841. The certificate purported further to quote the language used by the Departmental Assembly in this approval. It was shown that there was no session of the Assembly in 1841; at least, that there was no evidence in the archives of the department that there was a session in that year, and if the year was erroneously given, and the approval of May 22d, 1840, was intended, that related only to the grant to the three sisters, who were therein designated by name, and no such language as that given was found on the journals of the Assembly.

*Third.* A document purporting to be a record of juridical possession, given to Bolcoff, July, 1842.

This document bears the signature of the prefect of the district and two attesting witnesses. It appeared in evidence that one of the witnesses was unable to write, and that the body of the entire document was in the handwriting of Bolcoff. The other witness testified that he added his signature in 1851, when the document was presented to him by Bolcoff, with a request that he should sign it, inasmuch as he had not done so when the possession was given; that at this time the document had not the signature of the prefect or of the other witness, and Bolcoff stated that he was going to them for their signatures. Both of these witnesses testified emphatically that there never was but one juridical possession of the premises, and that this was delivered to the sisters. Bolcoff made oath before the land commission, that the document was signed by all the parties in the year 1842.

*Fourth.* A *diseño* or sketch of the tract *El Refugio*; and

*Fifth.* A patent of the United States, bearing date on the 4th of February, 1860, issued to Francisco and Juan Bolcoff upon the confirmation of the alleged grant to José Bolcoff.

In 1822 one of the sisters, Maria Candida, intermarried with José Bolcoff, and in 1839 Maria de los Angeles inter-

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married with one Majors. The three sisters lived together as members of the family of Bolcoff upon the land granted, Los Angeles until her marriage, and Jacinta until 1850, when she became a nun, and had not since resided upon the premises. Since some time in 1850, Majors and his wife had occupied a portion of the tract, claiming possession under the concession to the sisters.

In 1852, Francisco Bolcoff and Juan Bolcoff, sons of José Bolcoff, presented a petition to the board of land commissioners, created under the act of Congress of March 3d, 1851, to ascertain and settle private land claims in California, for a confirmation of the claim to El Refugio, asserted by them under the alleged grant to their father. In support of their claim they relied upon the alleged grant of Alvarado, of April 7th, 1841, his certificate of approval by the Departmental Assembly, the record of juridical possession, and the sketch, which are mentioned above, with parol evidence of possession and cultivation. *No question was raised before the board as to the genuineness of these documents, and in January, 1855, the claim was confirmed.* An appeal from the decision was dismissed, and on the 4th of February, 1860, a patent of the United States was issued thereon.

In 1852 Majors presented for himself and on behalf of his wife a petition to the board for a confirmation of her claim to one-third of the tract, under the cession to her and her sisters. In support of the claim they produced the petition to the governor, the reports thereon, the provisional grant of March 16th, 1839, the formal concession of April 8th, 1839, and the order of the governor of June 13th, 1840, that a certificate of the approval of the Assembly be issued to them.

The board rejected this claim, holding, in substance, that there was no evidence that any grant was issued to the sisters; that the decree of concession found in the archives was not proof of the delivery of a title to the parties interested; that until a document as evidence of the concession was issued and delivered to the grantees the favorable action of the Departmental Assembly did not establish their title, and

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the concession was not completed, and the property continued part of the public domain, subject to the disposition of the authorities of the government. And the board observed that this was the view of the governor and Departmental Assembly, as he had, notwithstanding the decree of concession to the sisters, made two years afterwards, a grant of the same land to Bolcoff, which had been approved by the Assembly.

The entire decision proceeded upon the supposition that the documents offered as evidence of Bolcoff's title were genuine, and that the officers of Mexico possessed the power to re-grant lands which had been once granted, without their previous surrender by the first grantee, where the final title-papers had not been issued to the grantee, although such grant had been approved by the Departmental Assembly. The board in its opinion also spoke of a want of proof of performance of the usual conditions of cultivation and inhabitation; but this view was held upon the supposition that the residence and cultivation of Bolcoff and his wife, and that of her sisters, were under different grants. The commissioners held, in confirming his claim, that the proof showed cultivation of and residence upon the land. Subsequent to the action of the board upon these claims, the registry of the prefect was discovered, and this discovery and other circumstances led to a critical inspection and examination of the documents upon which the claim of Bolcoff was founded, and finally to the bringing of this suit.

The position taken by the complainant was this: that a former grant, a *título*, or some documentary evidence of title based upon the concession of April 8th, 1839, was on the same day issued to the three sisters; that this *título* or grant passed into the custody of Bolcoff, and was some years afterwards suppressed or destroyed by him, with the intent to defraud the sisters of the property granted to them, and to secure the title to himself; that in the execution of this intent, the documents presented to the board of commissioners, the grant purporting to be issued to him, the certificate of the approval of the Departmental Assembly, and

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the record of juridical possession, were fabricated by him, or others at his request, and the erasures made in the decree of concession to the sisters, and in Jimeno's Index; and that a claim confirmed, and a legal title obtained by these means, should be controlled for the benefit of parties equitably entitled to the property.

The defendants in the court below did not deny that the decree of concession was made to the sisters, but they contended that the interest of the sisters was exchanged with Bolcoff for an interest in a tract of land of which he had obtained a grant, and that in consequence of this exchange the grant of El Refugio was issued at their request to him instead of being issued to them. The agreement was stated to have been this: that Majors and wife should relinquish to Bolcoff their interest in El Refugio, and allow him to obtain a grant therefor in his own name; and in exchange for this that Bolcoff should relinquish to Majors his interest in a ranch known as St. Augustine, of which he had obtained a grant in 1833, and allow Majors to obtain a grant for the same, he paying Bolcoff in addition the sum of four hundred dollars. And it was alleged that this agreement was made after the intermarriage of Majors and Maria de los Angeles, and immediately carried into execution; that Majors and wife took possession of St. Augustine, and that afterwards, on the 7th of April, 1841, Maria Candida went personally to the governor and stated the agreement, when the governor, at her request, issued the grant to Bolcoff alone, and that the erasures in the decree of concession and in the Index were at that time made by Jimeno, the secretary of state.

This statement of the defendants was contradicted by Majors, and was inconsistent with facts disclosed by the records. Majors obtained the ranch St. Augustine from Bolcoff by direct purchase, and the transfer to him was made before his marriage, and before the sisters had petitioned for El Refugio. The transfer to him is indorsed on the expediente of St. Augustine in the archives, and bears date on the 14th of January, 1839.

The alleged grant to Bolcoff of April 7th, 1841, made no

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allusion to any purchase or exchange with the sisters, or of any abandonment of their rights. It recited that he himself had *petitioned* for El Refugio.

The court below held that the documents upon which the claim of Bolcoff was founded were all false, and were fabricated by Bolcoff, or some one at his instigation, to defraud the sisters of their property and secure the title to himself; that by the false and fabricated documents, and the suppression or destruction of the grant to the sisters, a confirmation of the claim under the alleged grant to Bolcoff was obtained, and the legal title secured to his children; when in truth the real title was in the three sisters, and should have been adjudged to them; and it held that, under these circumstances, the patentees and all persons holding under them with notice of the claim of the sisters, should be decreed to surrender the title.

Besides insisting upon the genuineness of the alleged grant to Bolcoff, and other documents produced in support of his title, the defendants relied, as a defence to this suit, upon the following grounds:

First. That the claim of the complainant was a stale claim, and barred by the statute of limitations.

Second. That the complainant had no standing in court, by reason of the non-presentation of the claim of two of the sisters to the board of land commissioners for confirmation, and the rejection, by the board, of the claim of the other sister. And,

Third. That the defendants were *bona fide* purchasers of some portions of the property for a valuable consideration, without notice of the claim of the sisters; and for other portions had conveyances or releases from them.

The court below held:

1st. That to claim any benefit of the statute of limitations the defendants were required to state facts sufficient to bring the case within its operation, and then to insist that by reason of those facts the remedy of the complainant was barred, and that this had not been done by them in this case.

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2d. That the presentation or non-presentation by the sisters of their claim under the grant to the board of land commissioners had nothing to do with the equitable relations between them and third parties; which relations were never submitted to the board for adjudication.

3d. That whilst equity would reach the perpetrator of the fraud in this case, and parties acquiring the property under him without consideration or with notice of the rights of the real owners, it would extend its protection to purchasers in good faith for a valuable consideration without such notice.

The court below therefore directed that an interlocutory decree in favor of the complainant be entered and a reference be had to a master to report which of the defendants were *bond & fide* purchasers, without notice of the claim of the sisters, and what parcels were so purchased, and also of what parcels the interest of the sisters or of any of them had been conveyed to the defendants, with all necessary particulars; and that upon the coming in and confirmation of his report a final decree be entered directing the defendants to transfer to the complainant their title to all parcels, and undivided interests in parcels, not thus acquired and held.

The case accordingly went to a master, and his report having been confirmed a final decree was entered, from which the defendants appealed to this court.

*Messrs. W. H. Lamon and W. G. M. Davis, for the appellants; Mr. W. M. Stewart, contra.*

Mr. Justice CLIFFORD delivered the opinion of the court.

Claims to lands in California by virtue of any right or title derived from the former government were required to be presented to the land commissioners, and authority was vested in the commissioners to decide upon the validity of such claims and to certify their decisions, with the reasons for the same, to the district attorney for the district.

Applicants for such confirmations were required to present their claims to the commissioners when sitting as a

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board, but the act of Congress made no provision for notice to any adverse claimant, and the proceedings before the commissioners were wholly *ex parte* unless opposed by the district attorney.

Power to review such decisions was vested in the District Court, on petition of the claimant in case of rejection, or of the district attorney in case of confirmation.\*

Specific regulations were enacted as to the form of such petitions, and the provision was that the District Court should proceed to render judgment upon the pleadings and evidence in the case, and upon such further evidence as might be taken by the order of the said court, and that the court on application of the party against whom judgment was rendered should grant an appeal to the Supreme Court of the United States.

On the fifth of May, 1852, a petition signed by the attorneys of Francisco Bolcoff and Juan Bolcoff was filed with the land commissioners, setting up title to the rancho El Refugio, as grantees of their father, José Bolcoff, and asking for a confirmation of their claim under the act of Congress passed to settle such private claims to lands in that State. They represented that the tract was granted to their father during Mexican rule by the governor of that department under the colonization laws ordained by the supreme government.

Pursuant to the requirements of the act of Congress they filed with their petition their documentary evidences of title, consisting of the following documents: (1.) A paper bearing date on the seventh of April, 1841, purporting to be a grant of the rancho El Refugio to José Bolcoff by Juan B. Alvarado, governor of the department at the date of the supposed grant. (2.) The certificate of Governor Alvarado, dated the twenty-eighth of July, 1841, stating that the grant made on the eighth of April, 1839, in favor of José Bolcoff, was approved on the twenty-second of May, 1841, by the Departmental Assembly. (3.) A document dated the twenty-

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\* 9 Stat. at Large, 633.

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sixth of July, 1842, purporting to be a record of juridical possession of the tract given to the supposed grantee by the proper Mexican authorities. (4.) The *diseño* or sketch of the tract described in the petition addressed to the governor by the original donee.

Proof of the handwriting of the persons whose names purport to be signed to the documents was introduced by the petitioners, and as no question was made as to the authenticity of the documents they were received as genuine and treated as such in the hearing, and the commissioners entered a decree in favor of the petitioners, confirming the claim.

Both parties concede that an appeal was taken on behalf of the United States to the District Court, but it was never prosecuted to effect and was subsequently dismissed.

Patents may be issued for all claims confirmed by the commissioners where no appeal was taken, the claimant complying with the conditions specified in the thirteenth section of the act providing for the adjudication of such claims; that is, he must present to the general land office an authentic certificate of such confirmation and a plat or survey of the land duly certified and approved by the surveyor-general. Such an application was accordingly made by the confirmees to the commissioner of the general land office, and he, on the fourth of February, 1860, issued a patent in due form to the persons in whose favor the decree was entered and to whom the certificate of confirmation was granted. Title to the land is claimed by the appellants under that patent.

Attention will now be called to the evidences of title under which the appellee claims in this case. On the thirteenth of February, 1839, three orphans, daughters of Joaquin Castro, a deceased Mexican citizen, to wit, Maria Candida, Maria Jacinta, and Maria de los Angeles, presented their petition to Juan B. Alvarado, governor of California, asking for a grant of the rancho El Refugio. Reference of the petition was made to the administrator of the adjoining mission and he having reported, on the sixteenth of March,

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1839, that the land could be granted, as the land was not necessary to the mission, the governor, on the same day, made a provisional grant of the same to the petitioners and referred the expediente to the prefect of the district, as was the usual course in respect to such applications. Immediate attention was given to the subject by that officer, and on the twentieth of the same month he reported to the governor that the land was vacant, and recommended that the grant should be issued to the petitioners.

Evidently the several documents constituting the complete expediente show a full compliance with all the requirements of the colonization laws, and it is quite clear that the case was so understood by the governor, as on the eighth of April, in the same year, he issued the concession in which the petitioners are declared to be the owners in fee of the land. Specific boundaries are given to the tract granted and the directions in the same document are that the expediente be reserved for the consideration of the Departmental Assembly and their due approval of the same. Due report of the proceedings was made to that tribunal, and the record shows that on the twenty-second of May, 1840, they formally approved of the grant.

Satisfactory proof was introduced that Maria Candida intermarried with José Bolcoff, and that Maria de los Angeles intermarried with Joseph L. Majors. Prior to the marriage of Maria de los Angeles, the three sisters lived together as members of the family of José Bolcoff, the husband of the elder, and Maria Jacinta continued to reside in his family on the premises until 1850, when she became a nun and entered a convent.

By the record it appears that Joseph L. Majors, on the thirtieth of April, 1852, presented a petition to the commissioners claiming title in right of his wife to one-third of the rancho El Refugio, setting up the concession made by the governor to his wife and her two sisters, and asked that the claim might be confirmed. In support of his claim he introduced the several documents referred to as tending to show that the concession to the three sisters was a valid

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grant of the rancho; but the commissioners, on the thirtieth of January, 1855, rejected the claim, evidently proceeding upon the ground that the documents introduced by the other claimants were genuine.

Apart from that consideration the commissioners were doubtless much influenced by the testimony of the governor, who was examined as a witness by the successful claimants. He admitted that he granted the rancho in the first place to the three sisters, but he stated that he made the grant at the request of Maria Candida, the wife of José Bolcoff, and that he subsequently regranted the land to her husband at her request and upon her representation that an arrangement to that effect between her husband and the husband of her other married sister had been made. His statement was that he granted the new title to José Bolcoff because the parties agreed upon it, although he admitted that neither of the other two grantees ever came before him or made any such request. Subsequent investigations led to the discovery that the documents, or most of the documents, introduced in support of the claim of José Bolcoff, were forged and fraudulent, which induced the appellee, claiming title under the three sisters, to commence the present suit.

Confirmed as the claim of José Bolcoff was at the same time that the claim of the three sisters was rejected, they did not appeal nor would they have been benefited if they had, as the claim was confirmed to the other claimants and they were not parties in that litigation and could not appeal from the decree. Had all the facts and circumstances been known the unsuccessful claimant might perhaps have presented a petition to the district judge and have procured an injunction restraining the confirmees of the claim "from suing out a patent for the same until title thereto" had been "finally decided," but it is a sufficient answer to any such suggestion that the patent was issued before the alleged forgeries were discovered.

Remediless as the appellee was at law, he instituted the present suit in the Circuit Court. His theory is, as shown in the bill of complaint, that the grant was in fact made to

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the three sisters, and that their names were erased and the name of the successful claimant inserted in the same, and that the commissioners were induced by false swearing, forgery, and fraud, to confirm the claim to the grantees of the party guilty of all those offences, as the means of his success and of the defeat of the claim of the three sisters, to whom the rancho really belonged.

All such charges are denied in the answer, but they are fully proved by the documents exhibited in the case and by such facts and circumstances as leave no doubt in the mind of the court that the charges are true. Even the governor admits, in his deposition taken in this case, that the *espediente*, including the concession, was prepared in the name of the three sisters, but he states that when the *titulo* was prepared the wife of José Bolcoff came before him, and that upon her representation that her sisters were to receive an interest in another rancho the title-papers were made out in the name of her husband.

Such a theory is highly improbable, but the much better answer to it is that it is clearly and satisfactorily disproved. Beyond all doubt the entire *espediente*, except the *titulo*, was in the name of the three sisters, and the formal concession which was also in their name directed that the ultimate title should be issued to them and be recorded in the proper book; and discoveries made since the patent was issued show that the grant was entered in the *Toma de Razon* and in *Jimeno's Index*.

Much weight is due to those documents as evidences of title, even when they are not introduced in the particular case before the court. They were not produced before the commissioners, and it may be doubted whether they would have benefited the case of the three sisters if they had been, as their names are erased in the entry and the name of José Bolcoff written in their place, and as no suspicion of forgery or fraud existed at that time it may be doubted whether the production of the documents would have changed the result. Conjectures in that behalf, however, are of no avail, as it now appears that all or nearly all of the title-papers intro-

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duced to support that title were forged and fraudulent, showing to the entire satisfaction of the court that the equity of the case was in the three sisters.

Further argument upon that topic is unnecessary as the proofs are persuasive, convincing, and decisive. Detailed reference to them is given in the opinion delivered by the Circuit Court, and to that the parties can recur if they desire to examine the documents or the statements of the witnesses as exhibited in the depositions sent up in the record.

Suppose that is so, still it is insisted by the appellants that the decree should be reversed because the decree of the commissioners, as they contend, was final and conclusive between the original claimants. Unquestionably it is a general rule that when jurisdiction is delegated to a tribunal over a subject-matter, and its exercise is confided to their discretion, the decision of the matter, in the absence of fraud, is in general valid and conclusive. Even fraud will not in every case open the judgment or decree to review where the proceeding is not a direct one, but it is not important to enter much into that field of inquiry, as the fifteenth section of the act under which the commissioners were appointed provides that the final decrees rendered by the commissioners or by the District or Supreme Court of the United States, or any patent to be issued under the act, shall be conclusive between the United States and the said claimants only, and shall not affect the interests of third persons.\*

Nothing more is contemplated by the proceedings under that act than the separation of the lands which were owned by individuals from the public domain.†

Argument is not necessary to show that a patent in a suit at law is conclusive evidence of title against the United States and all others claiming under the United States by a junior title. Until the patent issues the fee is in the gov-

\* 9 Stat. at Large, 634.

† United States *v.* McIlle, 1 Wallace, 709; Beard *v.* Federy, 3 Id. 493; United States *v.* Sanchez, Hoffman, Land Cases, 183; Martin *v.* United States, Id. 146; United States *v.* Ortega, Id. 135.

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ernment, but when it issues the legal title passes to the patentee. Persons claiming to hold the land against the patent cannot have relief in a suit at law, but courts of equity have full jurisdiction to relieve against fraud or mistake, and that power plainly extends to cases where one man has procured the patent which belonged to another at the time the patent was issued.\*

Where one party has acquired the legal right to property to which another has the better right, a court of equity will convert him into a trustee of the true owner, and compel him to convey the legal title.†

Objection was taken in the court below that some of the respondents were innocent purchasers, but that objection cannot have any weight at this time, as all the appellants before the court had notice of the title of the appellee, as clearly appears by the report of the master. None of those who purchased without notice are embraced in the decree.

Laches and the statute of limitations are set up in argument, but such defences cannot prevail where the relief sought is grounded on a charge of secret fraud, and it appears that the suit was commenced within a reasonable time after the evidence of the fraud was discovered.

DECREE AFFIRMED.

Mr. Justice FIELD did not sit in this case, nor participate in its decision.

\* *Bagnell v. Broderick*, 13 Peters, 436; *Patterson v. Winn*, 11 Wheaton 380.

† *Stark v. Starrs*, 6 Wallace, 419.