

UNITED STATES *v.* MARSHALL SILVER  
MINING CO.<sup>1</sup>

*Circuit Court, D. Colorado.*

June 28, 1883.

PATENT FOR LANDS—CONSPIRACY AND FRAUD  
IN PROCURING.

A bill which charges a conspiracy between defendants and officers of the land department of the government, with a view to perpetrate a fraud upon the government and other persons, *held* good on demurrer. *Quære*: To what extent must injury to the government be shown as a basis of relief? Is it enough to show that the patent was obtained in Violation of law?

On Demurrer to Bill.

*Andrew W. Brazee*, Dist. Atty., for the United States.

*Morrisan & Fillins*, for defendants.

MCCRARY, J., (*orally.*) In the case of the United States against the Marshall Silver Mining Company and others I have considered the demurrer to the bill. The bill charges, at very considerable length, a conspiracy between defendants and certain land-officers to change the boundaries of a claim for a patent, and to do this fraudulently, for the purpose of extending one claim over the lines of another, and thus secure a patent to the defendant here, the Marshall Silver Mining Company, for certain mining property which was inequity the property of McClellan, Webster, and Rist, who also had their application pending. Numerous acts and several rulings of the land-officers are charged specifically in the bill as having been wrongful and fraudulent; as having been done and made in pursuance of the general

sufficient for the present to say that, in my judgment, it charges conspiracy and fraud with sufficient certainty to require an answer. Whether the facts, when fully developed, will show a fraud upon the United States, or only upon McClellan and Webster, or whether it will show a fraud upon both, are questions we can better determine upon the proofs and on final hearing. They are questions of some importance, perhaps of some difficulty. It is probably not entirely settled as to how far, or to what extent, an injury to the government must be shown, as the basis of relief in a case of this character. It may be that it is enough to show that the patent was obtained in violation of the law; possibly it may be necessary to show some actual damage; but these questions may be better determined upon the final hearing of this case than they can be now upon this demurrer, and I do not propose to pass upon them any further than I have already indicated.

The demurrer to the bill is overruled.

<sup>1</sup> From the Colorado Law Reporter.

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