

any meaning can be given to the later clause, and that effect can be given to all parts of the section. No collections of antiquity could be exempt when "imported specially and not for sale," if all collections, under all circumstances, were already exempt. Upon any other construction it would appear that congress, after exempting all antiquities, had proceeded in the same section of a law to revoke what it had already declared, by exempting them only upon specified conditions. The limitation or exception is in the nature of a proviso, concerning which it is affirmed that when it is repugnant to the main body of the act, the proviso shall stand and be held a repeal of the purview, as it speaks the last intention of the makers. Sedg. St. Law, 62.

As the articles in suit were not exempt from duty, it is unnecessary to consider whether, if they had been exempt, an intent to defraud the United States could not be predicated upon a false statement made by the importer with intent to mislead the customs officers, and which might lead them to forego any examination of the property, or to assert the right to a duty in a doubtful case.

The judgment is reversed.

---

UNITED STATES v. GUNNING and others.

(Circuit Court, S. D. New York. November, 1883.)

1. PATENTS FOR INVENTIONS—WHEN OBTAINED THROUGH FRAUD—RIGHT OF GOVERNMENT TO VACATE.

There is no distinction between letters patent for an invention and for land, as regards the rights and remedies for vacating them, when obtained by fraud. The right is the same as that which a state has to annul the charter of a corporation created by its legislature if obtained by fraud.

2. SAME—PROPER REMEDY.

The appropriate remedy in behalf of the United States, when a patent for an invention has been obtained by fraud, is by a bill in equity.

In Equity.

*Chas. W. Seymour*, for Gunning. *A. J. Todd*, of counsel.

*Louis C. Raegener*, Special Asst. Atty., for the United States.

WALLACE, J. This bill is filed to vacate letters patent for an invention granted to the defendants, September 26, 1882, upon the ground of fraud and false suggestion, the allegations being that the applicant induced the grant by his statements in his application that he believed himself to be the inventor of the patented subject, and did not know or believe it had been in public use or on sale in the United States for more than two years prior to his application, whereas both of these statements were false to his knowledge. The defendants have demurred, and in support of the demurrer urge that the United States cannot maintain a suit in equity to vacate letters patent for an invention, although the grant was obtained by fraud. It is insisted in

their behalf that there is no statutory provision which permits such a suit, and in the absence of statutory authority no such suit can be maintained.

Notwithstanding the expression of opinion of Judge SHEPLEY in *Atty. Gen. v. Rumford Chemical Works*, 2 Bann. & A. 298, in favor of the defendants' position, it is believed there is no sound reason why a bill will not lie in such a case as well as where the subject of the grant is land, or is a franchise or right of a different kind. The learned judge laid much stress upon the consideration that in issuing letters patent for inventions, nothing is granted which belonged before to the United States, and the rights and remedies of the parties to such grants are dependent solely on the statute enactments, and do not grow out of any previous ownership of the subject of the grant; and it was his view that in such a case express authority for proceedings to annul the grant must be conferred, in order to sanction them. The same reasoning would preclude a state from proceedings to annul the charter of a corporation created by its legislature if obtained through fraud. Yet it is a familiar principle that grants of corporate franchises obtained through fraud practiced upon the legislature are void when the state elects to set them aside by a judicial rescission. *Mor. Priv. Corp.* 148. He also refers to the provisions of the patent acts of 1790 and 1793, which authorized proceedings for the repeal of patents obtained surreptitiously or by false suggestion, as indicating that congress deemed it necessary that authority for proceedings to repeal letters patent obtained through fraud should be conferred by statute. These provisions, however, permitted such proceedings to be taken by any person who chose to complain,—a right which did not and does not exist unless expressly conferred. A bill in equity lies to set aside letters patent obtained by fraud, but only between the sovereignty making the grant and the grantee. *Field v. Seabury*, 19 How. 323. No inference can be justly drawn, therefore, from these provisions that congress deemed it requisite to confer express authority upon the United States to maintain such a suit, nor from the absence of such provisions in the existing laws that congress intended to withhold such authority.

In *Mowry v. Whitney*, 14 Wall. 434, Mr. Justice MILLER, in delivering the opinion of the court, assumed without question that there is no distinction between letters patent for an invention and for land, as regards the rights and remedies for vacating them when obtained by fraud, and that a bill in equity is an appropriate remedy in behalf of the United States when a patent for an invention has been obtained by fraud. Although the precise point decided was that the owner of a conflicting patent could not maintain a suit in his own name to vacate an interfering patent obtained fraudulently, that conclusion was influenced mainly by the consideration that the government was the appropriate party to assert the remedy and seek the relief.

The demurrer is overruled.

## ROSENKRANS v. LAFAYETTE, B. &amp; M. R. Co. and others.

(Circuit Court, D. Indiana. April, 1883.)

## PRIVATE CORPORATIONS—CONSOLIDATION—NOTICE TO BONDHOLDERS.

Upon the consolidation of two incorporated companies, the holder of bonds of one company, containing a clause authorizing their conversion at any time before maturity into the capital stock of the company issuing them, at par, cannot be deprived of the privilege of such conversion, and relegated to the rights conferred upon him instead by the articles of consolidation, until he has had a fair opportunity, after notice of the contemplated change, to exercise his original rights, and has elected not to do so.

## In Equity.

*Judd & Whitehouse and C. B. Lawrence*, for plaintiff.

*Harrison, Hines & Miller and R. P. Ranney*, for defendants.

DRUMMOND, J. The Lafayette, Bloomington & Muncie Railway Company, having a capital stock of \$1,000,000, on the first of May, 1879, executed and issued of its first mortgage bonds the amount of \$2,500,000, and also issued its income bonds to the amount of \$1,000,000. To secure both these issues, a mortgage, or deed of trust, was given to the Central Trust Company of New York. The plaintiff is the owner of five of these income bonds, of \$1,000 each. These income bonds contain this clause: "This bond may, at the option of the holder, be converted into the capital stock of the said railway company at par, at any time before maturity." The Lake Erie & Western Railway Company, with a capital stock of \$3,000,000, also executed in August, 1879, a mortgage, or deed of trust, to the Central Trust Company of New York, to secure an issue of income bonds to the amount of \$1,485,000. In 1879 these two companies were consolidated, the consolidated company including a railroad from Fremont, in the state of Ohio, through Indiana to Bloomington, in the state of Illinois. By the consolidation, the capital stock of the Lake Erie & Western Railway Company was fixed at \$3,000,000. The allegation of the bill is that at the time of the consolidation the stock of both companies was illegally increased, or, as the bill terms it, "watered." By the articles of consolidation there were awarded to the holders of the capital stock of the Lake Erie & Western Railway Company \$3,000,000, or 30,000 shares, and to the holders of stock of the Lafayette, Bloomington & Muncie Railway Company \$4,000,000, or 40,000 shares, subject to the following proviso:

"Provided, however, that in case the holder or holders of any of the income bonds secured by the mortgages of the first and second parties hereto to the Central Trust Company of New York shall, at any time after such consolidation, avail himself or themselves of the privilege of conversion into capital stock therein contained, then the said consolidated company shall, and is hereby authorized to, make from time to time such increase in the total amount of its capital stock as shall equal the amount of such conversion of