that the interest coupons falling due June 1, 1894, December 1, 1894, and June 1, 1895, had not been paid, and the answer of the defendant company admitted that they had not been paid. It is also said there is no evidence that one-third of the bondholders requested in writing the trustees to declare the principal and interest due and payable, but there seems to be no lack of evidence in the record to support the finding in this respect.

It is also contended by appellants that the taking of the Flanagan judgment, and the issuing of execution thereon, was not sufficient ground on which to declare the principal and interest of the bonds due, because the judgment was obtained by collusion, and was not a sufficient ground under the provisions of the trust deed. We can see but little force in this objection. The defendant had defaulted in the payment of its interest due on the bonds. Flanagan was one of the bondholders residing in New York. He sent six coupons owned by him for collection, which, not being paid, were put into judgment by one Leffingwell acting for him. Execution was issued upon the judgment, which not being paid, the trustees declared the bonds due and payable. The company was insolvent and unable to pay, and made no resistance to the obtaining of the judgment and issuing of execution. But there is no evidence of collusion in the record. Nothing was done either by Flanagan or the company which they had not a right to do. The failure to discharge the judgment and execution was clearly a breach of the conditions of the trust deed which authorized the trustees to declare the entire debt due, and proceed to foreclosure. If the company could have kept up its interest, all this would have been avoided. But being insolvent, and wholly unable to pay its accruing interest, these objections seem somewhat of a technical character, in the light of these facts.

There are some other minor objections made to the decree which are contained in the brief of counsel, but which were not urged upon the oral argument. We have carefully considered them all, and think they should be overruled. There is but one more contention that we care to notice specifically, and that is this: That it was an error, for which the decree should be reversed, for the court to strike the appellants' cross bill from the files. But the answer to this objection is that the appellants were not made defendants, and only came in and were allowed to intervene by permission and order of the court. The cross bill was not an original proceeding on their part. Stockholders are not necessary parties in a bill against the corporation to foreclose a trust deed. They are only allowed to come in under leave of the court, where fraud on the part of the bondholders, trustees, or other parties has occurred which would affect the right of the trustees to foreclose. Thomas v. Railroad Co., 109 U. S. 526, 3 Sup. Ct. 315. Appellants were not creditors, and constituted but a very small part of the stockholders. The court, upon petition, permitted them to become defendants, and put in an answer and cross bill, upon the supposition that their answer might show a state of facts which would defeat or qualify the right of foreclosure. The substance of the answer was, as before stated, that the bondholders had acquired their stock without paying for it, and were indebted

to the company for it, and that there was a fraudulent overvaluation of the property. The answer was filed on May 18, 1895, and the cross bill on the same day. The matters set up in the cross bill were the same, being substantially identical in averment and phraseology with those set up in the answer, and were clearly matters of defense. There was therefore no need of a cross bill, and to file such a one was an abuse of the leave given by the court. For these reasons the court was amply justified in withdrawing its permission and striking the cross bill from the files. This practice is recognized and fully sustained in Forbes v. Railroad Co., 2 Woods, 323, Fed. Cas. No. 4,926. There was a motion to set aside an order allowing parties to intervene as defendants and to file an answer and cross bill. The interveners having, as the court thought, presented a prima facie case, orders were made in accordance with their request. The complainant moved to vacate the order, and the question was raised whether the applicants should have been allowed to intervene. The court says:

"It is questionable whether, in any case where suit is properly instituted against a corporation, a stockholder of that corporation can, even on a suggestion of fraud on the part of its officers, come in by way of intervention as a party to that suit and seek to defeat or control the proceedings. An original bill rather seems to be the proper mode of proceeding. And it is in the discretion of the court whether or not to permit the stockholder to become a party defendant in any case where he is not made such by the bill, and, as it is held to be an extreme remedy to be admitted by the court with hesitation and caution, I think I ought not to have allowed it in this case, and ought now to withdraw the order for such allowance. The orders for leave to intervene and file answers and cross bills will be vacated."

The case of Betts v. Lewis, 19 How. 72, relied upon by appellants, is not in point. That was an original bill filed in the district court for the Northern district of Alabama, having the powers of a circuit court, to charge a legacy on property alleged to have come to the hands of the respondents, and to be chargeable with its payment. After answer had been filed, and while exceptions to one of the answers were pending, the respondents moved to dismiss the bill for want of equity, and the court ordered it to be dismissed. This was making a motion to dismiss an original bill for want of equity to take the place of a demurrer, which if allowed the court might, and ordinarily would, grant an amendment to cure the defect, if it were curable. It was an original bill, which the complainants had a right to bring without any leave granted by the court. But the rule, as we have seen, is different in regard to cross bills which are filed under permission. That permission presupposes that the matter of the cross bill will be germane to the original bill, and such as could not be set up by answer. And if when the cross bill is filed it appears to violate all these rules, and to be an abuse of the leave granted by the court, the court will withdraw the permission and dismiss the cross bill, instead of putting the complainant to his demurrer. This practice seems to be entirely rational and just, and such as a court of equity will approve. The cross bill was not germane to the original bill, which was simply to foreclose a mortgage. It alleged a fraudulent overvaluation of property by the company and by directors and

stockholders; that the contract under which the bonds were issued was fraudulent and void; and that the bonds and mortgage were void, —all of which was matter of defense, and had been set up in the answer. It also alleged a liability on the part of the bondholders, or some of them, as stockholders, which if it existed at all could only be enforced at the instance of creditors, in a suit to which all stockholders were parties. This was not germane to a bill to foreclose a mortgage. If two answers setting up the same matter had been put in, no one would question that one of them should be struck out, and the labeling of one as a cross bill does not change the rule. A cross bill, being an auxiliary bill merely, must be a bill touching matters in question in the original bill. If its purpose is different from that of the original bill it is not a cross bill, even though the matters presented in it have a connection with the same general subject (Crosse v. De Valle, 1 Wall. 1); and a cross bill setting up no defense except what could be set up by answer will be dismissed (Investment Corp. v. Marquam, 62 Fed. 960). We are satisfied that the record discloses no error, and that the conclusions of fact and law found by the court below are fully sustained by the evidence. The decree of the circuit court is affirmed.

GODKIN v. COHN et al.

(Circuit Court of Appeals, Seventh Circuit. May 3, 1897.)

No. 307.

1. PUBLIC LANDS—MISTAKE IN LAND PATENT.
   Where, by mistake arising from the erroneous numbering of lots upon a plat in a local land office, lot "No. 2" was described in entries and in patents as "No. 4," and "No. 4" was described as "No. 2," and these mistakes ran through successive conveyances of both lots, none of the purchasers being misled thereby as to the lot he was actually purchasing, but being merely mistaken as to its proper designation, the mistake may be corrected as against one who, with knowledge of the mistake, finally purchased lot "No. 4," having it conveyed to him as lot "No. 2," with the fraudulent purpose of claiming according to that description.

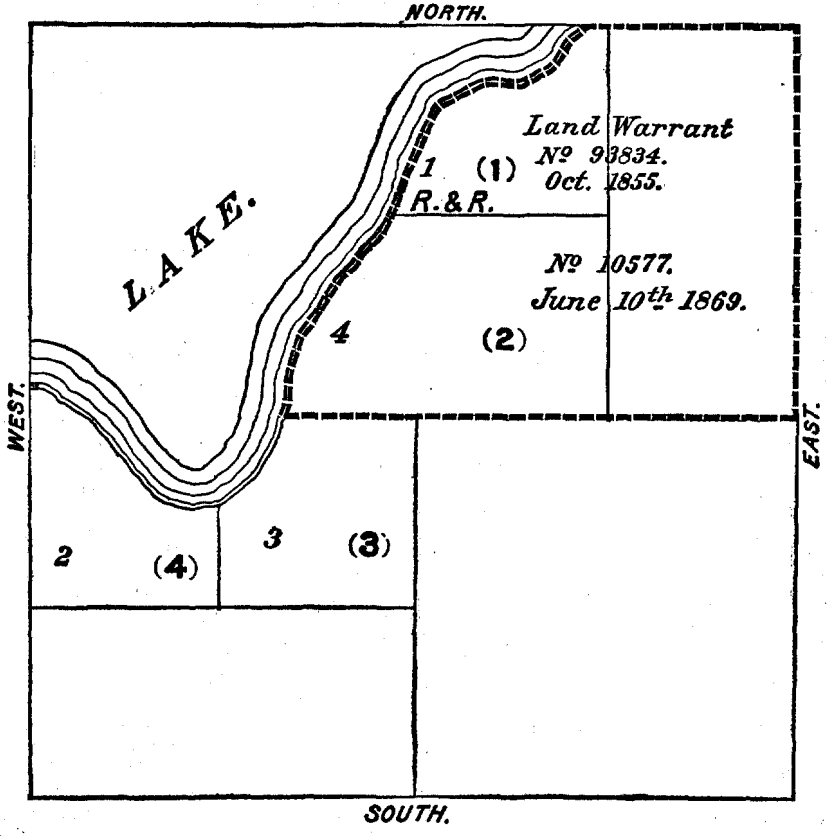
2. SAME.
   A remote grantee of the original patentee of lot No. 2, erroneously described as lot "No. 4," may avail himself of the mistake, as each grantee should not be required to proceed by separate bill against his immediate grantor.

3. SAME—LACHES.
   The fact that nearly 24 years elapsed after the original mistake before the filing of the bill to correct the error does not constitute laches, neither the defendant nor any of his grantors having been prejudiced by the delay, and there having been nothing to put plaintiff or his grantors on inquiry as to the mistake until the assertion of the adverse claim, after which plaintiff proceeded with diligence.

4. LIMITATION.
   As it was not possible for the original patentee, under whom plaintiff claims, to assert his right as long as the legal title remained in the United States, the sovereign being exempt from suit, the limitation of 10 years prescribed by Rev. St. Wis. § 4221, did not begin to run until the conveyance of the legal title to the patentee under whom defendant claims.

Appeal from the Circuit Court of the United States for the Western District of Wisconsin.

This is a bill in equity, filed in the court below by John Godkin, the appellant here, as complainant, which stated, in substance, the following facts: On June 10, 1896, Crosier Davidson, being the owner of military land warrant numbered 93,834, issued by the United States under the act of congress of March 3, 1895, applied at the United States land office at Stevens Point, in the state of Wisconsin, to locate in satisfaction of the warrant all that portion of section 12 in township 41 N., range 9 E., lying north of the east and west center line of the section, and east of the lake which indents the northern portion of the section (called for brevity the "northeast quarter" of the section, although the land covers all of that quarter section and some other land lying in the northwest quarter section between the northeast quarter section and the lake). The register and receiver, upon such application, caused to be written upon the plat of the lands in their office, and upon the lands so designated by Davidson, the following: "Land Warrant No. 93,834. Act 1855. R. and R. No. 10,577. June 10, 1869,"—and thereupon filed an application for such location, signed by Davidson, certified and attested by the register and receiver in the usual form of such applications, and asserting that the location was correct, and in accordance with law and instructions (referring to the instructions of the commissioner of the general land office issued May 3, 1855, which, among other things, contained the following: "Each warrant is to be distinctly and separately located upon a compact body of land"). The following is a plat of section 12:



The numbers referred to as "marked in red ink" are enclosed in parentheses; the red lines being indicated by dotted lines.

The numbers of the lots as noted upon the plat in the general land office are marked in red ink; as they appear upon the plat in the local land office in black ink. The land inclosed by the red lines is a compact body of land, upon which Davidson designed to locate under the land warrant, and the land which the register and receiver understood he had located under such warrant, and which they intended to describe in his application, and to certify as being located. These lands contained two full 40-acre lots, and, adjoining upon the west, two fractional lots, running westerly to the shore of the lake. The northerly fractional lot contained 35.50 acres and the southerly one 56.50 acres, according to the government survey. The whole of the land embraced within the red lines contained 172 acres, which, being 12 acres in excess of the quantity of land to which Davidson was entitled under the warrant, he was required to pay and did pay to the register and receiver, in cash, the government price for the excess of 12 acres, and took a receipt therefor. In the application made out by the receiver and signed by Davidson, the land was described as the "east ½, northeast ¼, and lots one (1) and four (4) of section No. 12, in township forty-one (41) north, of range nine (9) east, in district of lands subject to sale at the land office at Stevens Point, Wisconsin, containing 172 acres." The southerly one of the two fractional lots was described in the application as "lot four," instead of by its correct number, "lot two," through clerical error by the register or receiver, or by some clerk in their service. The application was forwarded to the general land office, and upon July 1, 1870, a patent was duly issued by the United States, conveying to Crosier Davidson lots 1 and 4, and the E. ½ of the N. E. ¼ of section 12, in town 41 N., of range 9 E. The error in describing lot 2 as lot 4 arose from the error of the local land office in entering the location, and from mistakingly reporting the location and purchase as conveying lot 4 instead of lot 2. This patent has never been delivered to Davidson, or to those claiming under him, but still remains in possession of the government officers. The words, figures, and letters appearing upon the drawing are fac-similes of the original words, figures, and letters which the register and receiver caused to be written upon the government plat in their office at the time Davidson made his location; and such words, figures, and letters show that the lands embraced in the red lines were located under warrant No. 9,334, issued under act of 1855, and that the lands so located were intended to be described in the register and receiver's duplicate receipt No. 10,577, issued June 10, 1869. There is in section 12 a fractional lot 4, but it is not contiguous to or adjoining any lands in the N. E. ¼ of the section, but appears in the drawing in the N. W. ¼ of the S. W. ¼ of the section; contains only 31.30 acres of land according to the government survey, and is separated from the E. ½ of the N. E. ¼ and lot 1 of the section by two fractional lots; so that, if the land warrant had been located in fact as described in the application and patent, the location would cover but 147.20 instead of 172 acres, and the land warrant in such case would not have been located upon a compact body of land according to the instruction of the commissioner of the general land office. By an error of some clerk in the service of the United States, lot 2 was erroneously numbered upon the government plat furnished by the United States to the register and receiver, and by them kept in the land office at Stevens Point, by entering thereon the figure 4 as its number, and a like error was made in numbering lot 4 by entering thereon the figure 2, and that appears upon the plat still preserved in the local land office now located at Wausau. Davidson and wife conveyed to Parry, Ross, and Cockburn, August 3, 1871, by warranty deed with the usual covenants. March 22, 1872, Parry, by like deed, and for a valuable consideration, conveyed his interest to Cockburn and Ross; and on August 28, 1875, Cockburn, by a like warranty deed with the usual covenants, and for a valuable consideration, conveyed his interest to Ross. On September 29, 1892, Ross likewise conveyed to Benjamin Godkin and John Godkin, and on March 17, 1891, Benjamin Godkin, by like warranty deed with the usual covenants, and for a valuable consideration, conveyed to John Godkin, the complainant and appellant. All the grantors and grantees intended to describe in their several deeds the land applied for and intended to be entered by Davidson, and intended that the same should be conveyed by each of these deeds; but, misled by the error and mistake charged, and following the description given to the lands by the receiver

and register, described as lot 4 the southerly lot of the two lots west of the E. ½ of the N. E. ¼, instead of describing it as lot 2. Assessors of the state of Wisconsin, whose duty it was to enter taxable real estate upon their assessment rolls in regular order as to lots and blocks, sections and parts of sections, up to and including the year 1877 (with the exception of the year 1876), assessed the property according to the description that appears in the deeds. In the year 1876 there was no lot 4 assessed as a part of the N. E. ¼ of section 12; but a lot 2 was assessed, which Ross, the then owner of the N. E. ¼, being misled by the error of the United States officers, did not recognize by that description as part of the N. E. ¼ of the section, and through mistake, and by being misled, failed to pay the taxes levied in that year. For the same reason taxes assessed upon a portion of the N. E. ¼ were unpaid in 1882; but Davidson and his grantees intended in good faith to pay the taxes in each year, and attempted so to do, and would so have done but for the fact that they did not recognize the entry of the lot in the assessment in the tax roll by any other description than lot 4. The defendant Cohn once claimed some title or interest in lot 2 under tax deed issued to one Gillett upon tax sales of lot 2 for the years 1875 and 1882, in which years the legal title to lot 2 was still vested in the United States. Cohn obtained from Gillett a conveyance of lot 2 on December 29, 1891, but the complainant avers upon information and belief that Cohn did not intend to rely thereon as a title to lot 2, but bases his claim upon certain other conveyances, now to be stated. On October 20, 1885, one Dunfield applied to the local land office to purchase from the United States a fractional lot in section 12, being the N. W. ¼ of the S. W. ¼ of that section, the correct number of which lot is 4; but, Dunfield and the register and receiver believing that its number was 2, it was, through mistake, described as lot 2 in the entry, and purchase then made by Dunfield, and in the record of the register and receiver touching such entry and purchase, and in their report thereof to the government. The entry of Dunfield was noted upon the defective plat upon the N. W. ¼, which upon the plat bears the number 2 instead of the correct number, 4. Dunfield designed to purchase, and in fact paid for, 31.70 acres of land,—that being the number of acres charged against him by the register and receiver in the entry (which included other lands) as the acreage of the land erroneously described in the entry as lot 2; that amount being the correct area of lot 4 in the section according to the government survey. Thereafter, on July 30, 1886, a patent was issued by the government to Dunfield, conveying lot 2, which patent has never been delivered, but is still in possession of the government officers. Dunfield never claimed the ownership or title to any part of the N. E. ¼ of the section, but always claimed the ownership and title to the N. W. ¼ of the S. W. ¼ of the section. On November 24, 1885, he sold the land to one Thomas B. Scott, since deceased, conveying it by warranty deed, wherein he described the land both as lot 4 of section 12 and as the N. W. ¼ of the S. W. ¼ of that section. After the death of Thomas B. Scott, Walter A. Scott, his devisee in trust, thinking the correct number of the lot to be lot 2, obtained a quitclaim deed of the same from Dunfield on February 1, 1888, the lot being therein described as "the northwest quarter of the southwest quarter of said section twelve (12)," and as lot 2 of that section. These conveyances were duly recorded in the proper office in the years 1886 and 1888. Walter A. Scott, trustee, by deed dated June 20, 1891, recorded July 1, 1891, conveyed to Thomas B. Scott, an heir of Thomas B. Scott, deceased. By deed June 29, 1891, recorded July 2, 1891, Thomas B. Scott conveyed to Walter A. Scott. By deed dated June 20, 1891, recorded July 6, 1891, Walter S. Scott conveyed to Cassie S. Cushing. By deed dated May 4, 1892, recorded May 17, 1892, Cassie S. Cushing conveyed to Walter A. Scott and Thomas B. Scott. In each and all of these conveyances the lot was described as the N. W. ¼ of the S. W. ¼ of the section, and as lot 2 of that section. Lot 2 of section 12, east of the lake, was a valuable piece of land. Up to the winter of 1892–93 its chief and almost entire value consisted in the pine timber growing thereon, which alone was of the value of $17,000. Lot 4, being the lot in the N. W. ¼ of the S. W. ¼, and south of the lake, was also chiefly valuable for its pine timber, but was never worth, with the pine timber thereon, to exceed $400. None of the grantees in the deeds described, deriving title from or under Dunfield, ever claimed any

right or ownership in any part of the N. E. ¼ of section 12, but they each and all believed and understood that the title derived by them from Dunfield was a title to the N. W. ¼ of the S. W. ¼ of that section, and claimed title thereto.

The defendant Cohn, having ascertained the error which had been committed in the location by Davidson and entry by Dunfield, and that they had each obtained the title from the government to land which they had not purchased, and that they and their grantees, respectively, were ignorant of the fact, and that Dunfield, Thomas B. Scott, and those claiming under him did not know that lot 2 described in the entry of Dunfield and the patent thereon issued was in the N. E. ¼ of the section, but supposed and believed that lot 2 was the N. W. ¼ of the S. W. ¼ of the section, and intending and designing to make profit to himself out of such mistake and out of the continued ignorance of the parties claiming lots 2 and 4, respectively, negotiated with Walter A. Scott for the purchase of the N. W. ¼ of the S. W. ¼ of section 12, and agreed upon a price to be paid therefor upon the basis of an estimate of the pine timber growing and standing thereon, which he procured to be made, and upon an estimate of the timber upon the same lot which Scott had in his possession, and which had been made or procured by Dunfield, or by some one claiming under him. Cohn drafted a deed from the two Scotts, grantees in the deed of May 4, 1892, to himself, in which deed he did not describe the lands actually purchased by him, but therein described the land as lot 2 in section 12; and the two Scotts, believing that they were conveying to him by that deed the lot which they claimed to own, namely, the N. W. ¼ of the S. W. ¼ of section 12, executed and delivered to Cohn a deed on August 16, 1892, for the sum of $400, which was about one-twentieth part of the actual value of the real lot 2. On November 10, 1892, Cohn conveyed to the defendant Finn an undivided one-half interest in the pine timber upon lot 2, warranting the title thereto, Finn agreeing to cut all the pine timber into merchantable saw logs, and remove the same from lot 2 during the logging season of 1892–93. The consideration of this deed was expressed to be $2,135, the receipt of $250 being acknowledged, Finn agreeing to give to Cohn his promissory notes for the balance of the consideration. Finn afterwards assigned to the defendant Sales some interest in the timber purchased by Cohn. Thereupon Finn and Sales entered upon lot 2, and began to cut timber thereon, and claimed ownership thereof; and, upon the complainant becoming informed of their claim of title, he was led to investigate the facts concerning the location of Davidson and the entry of Dunfield, and then for the first time ascertained the facts in regard to the errors and mistakes asserted. None of the grantors or grantees in the complainant's chain of title had any information or knowledge that the error had been committed in the location by Davidson, but each and all believed the location covered the N. E. ¼ of section 12, and the land described upon the plat as located by Davidson. Having become informed of the facts, he notified Finn and Sales of his equitable ownership in lot 2, and forbade the cutting or removing of any timber therefrom. Finn and Sales, however, persisted after this notification, and removed all the merchantable timber, to the value of $17,000. Finn and Sales entered into negotiations with the defendant the Merrill Lumber Company for the sale to them of the logs and timber so cut and removed from lot 2, and, pending the negotiations, and before their conclusion, Godkin, the complainant, notified the Merrill Lumber Company of his title and ownership in the logs and timber, but, notwithstanding, the Merrill Lumber Company consummated the negotiations, and purchased the logs and timber, and now claims to own the same. The purchase was upon credit, and not for cash, except as to a small cash payment made thereon. All these parties charged, before the time of their respective purchases, knew of the errors and mistakes set forth in the location by Davidson and the entry by Dunfield, and of Davidson's intention that the location should cover lot 2, and of Dunfield's intention that his entry should cover lot 4. The interior department of the United States does not and will not correct any error of the government, or between the government and purchasers of land from it, unless application is made for the correction before a patent for the lands has been executed and recorded; and the complainant has now no remedy in the interior department for the correction of the errors and to obtain title to lot 2, and has no adequate remedy at law whereby he may obtain justice. He has applied to the interior department for correction of the

patents before they should be actually delivered, but his application was refused, and such correction now would not avail, as the timber, which constitutes almost the entire value, has been cut and removed as stated. The complainant offers to convey lot 4 to Cohn, or to such of his grantees as may be entitled to receive conveyance, as may be decreed by the court. The bill prays that it may be decreed that Cohn "took and holds the title to said lot two in section twelve, town forty-one, range nine, in trust for your orator, and that he and the other defendants be decreed to execute said trust by conveying said title to your orator, and by accounting to and paying your orator the value of said timber taken by him and them, together with interest thereon, and such other damages as your orator may be entitled to recover, together with the costs of this suit, and such other relief as your orator may be entitled to in this suit." The defendants demurred to the bill generally, and specifically upon the ground that the bill showed that the complainant had no interest in lot 2, and had no right of action or right to any relief against the defendants, or any of them, but the right of action, if any, is in Crosier Davidson, named in the bill; and also upon the ground that the right of action has been barred by lapse of time, and the laches and delay of the complainant and those under whom he claims, and that the action was not commenced within the time limited by law; that the complainant has an adequate remedy at law; and that the grantors of the complainant are necessary parties to the bill. Upon hearing, the court sustained the demurrer, and dismissed the bill, from which decree the complainant appealed to this court.

C. L. Collins, W. C. Silverthorn, H. A. Hurley, T. C. Ryan, and G. D. Jones, for appellant.

Neal Brown, L. A. Pradt, and H. C. Hetzel, for appellees.

Before WOODS, JENKINS, and SHOWALTER, Circuit Judges.

JENKINS, Circuit Judge (after stating the facts as above). Assuming, as we must, the truth of the allegations of fact stated in the bill, it is established that Davidson located under his warrant the 172 acres of land in the N. ½ of section 12 embraced within the red lines of the plat. This is rendered certain by the entry of the register of the land office upon the plat. It is also clear that Dunfield in fact purchased the lot in the N. W. ¼ of the S. W. ¼ of the section, wrongly numbered 2, and not the lot located by Davidson, wrongly numbered 4. He paid upon the basis of the acreage contained in that lot, which was less in amount than the acreage contained in lot 2; and upon the plat his entry was noted by the government officials upon the lot in the N. W. ¼ of the S. W ¼ of the section. Both mistakes in the entries and in the patents arose from the erroneous numbering of the respective lots upon the plat in the local land office. Dunfield conveyed, describing his lot as lying in the N. W. ¼ of the S. W. ¼ of the section, thus emphasizing the fact that he claimed lot 4, and not lot 2. It results that when lot 2 was so located by Davidson, the United States held the legal title thereto, as trustee for the benefit of Davidson, and upon conveyance of that title to another "the grantee with notice took it subject to the equitable claim of the first purchaser, who could compel its transfer to him. In all such cases a court of equity will convert the second purchaser into a trustee of the true owner and compel him to convey the legal title." Cornelius v. Kessel, 128 U. S. 456, 460, 9 Sup. Ct. 122. The government had received from Davidson the consideration for lot 2. It intended to sell, and the officers supposed they had sold, that lot to Davidson; and the latter intended to purchase, and supposed he had purchased, it. The

government was, therefore, bound in good morals and in law to grant the legal title to the property purchased (U. S. v. Hughes, 11 How. 552), and was clearly bound to correct the mistake occurring through the error of its officials. This correction could have been made under sections 2369–2372, Rev. St., upon proper application prior to the issuance of the patent to Dunfield; and doubtless, if such application had been made, the error would have been corrected.

Upon conveyance by the government of the lot so sold to Davidson, the purchaser with notice of Davidson's rights is charged as trustee of the true owner. So Dunfield, not intending to purchase lot 2, but receiving legal title thereto through the mistake of the officers of the government, is also chargeable as trustee for the true owner, as was Davidson chargeable by virtue of the patent to him of lot 4, as trustee for Dunfield. So likewise are Dunfield's grantees, who took title under similar mistake, supposing they were purchasing, and intending to purchase, lot 4, and not lot 2. Cohn knew of the mutual mistakes and designed to obtain an unjust advantage. He in fact purchased lot 4, but induced his grantor to convey a lot which he did not purchase. This was an imposition upon his grantor, who was innocent of any designed wrong, being only the victim of the mistake of the officers of the government; but Cohn cannot be regarded as an innocent purchaser, since he had notice of the errors of description.

Possibly a more difficult question touches the right of the grantees of Davidson to avail themselves of the mistake. Each of them supposed he was purchasing, and intended to purchase, and each grantor supposed he was selling, and intended to sell, lot 2. The several mistakes in description arose from the original error of the government officials in marking the plat. Davidson, then having the equitable title to lot 2, and supposing that he had the legal title thereto under its description as lot 4, undertook to convey his interest in all the property in section 12 which he had located under his land warrant; and by his deed, although by wrong description, conveyed his equitable interest therein, which, through like successive conveyances, passed to the appellant. We see no valid objection to sustaining the right of the appellant to have correction of an error that is common to both claims of title. A direct proceeding like the present would certainly avoid a multiplicity of actions. It would be, if the facts alleged are established, an unnecessary requirement that each grantee should proceed by separate bills against his immediate grantor, when the whole beneficial estate is vested in the appellant. It is not like the case of Crocker v. Bellangee, 6 Wis. 645, relied upon by the appellees. There the plaintiff's grantor had conveyed to the defendant, and, as was alleged, had been imposed upon and defrauded in the sale. Thereafter, without attempt at rescission, the grantor conveyed the same property to the plaintiff, who filed his bill to set aside his grantor's conveyance to Bellangee, seeking to avail himself of the fraud practiced on his grantor. It was held, and we think rightly so, that the fraudulent sale was voidable, not void, and then only at the election of the party defrauded; that the title, both legal and equitable, had passed by the conveyance to Bellangee, subject

to be defeated, if obtained by fraud, only by direct action of the party defrauded; and that the subsequent conveyance to Crocker by the grantor of Bellangee did not devest the title. To the like effect is Graham v. Railroad Co., 102 U. S. 148. But here Davidson had the equitable title. The United States held the legal title in trust for him. It later conveyed the legal title through error, and Dunfield, the grantee, and those holding under him, took it with notice of the error, or under such circumstances that in equity they must be charged as trustees. Davidson conveyed his equitable title supposing he had the legal title. Although the original error of description runs through the entire chain of title, we must hold that the effect of the conveyances is in equity to vest the equitable title to lot 2 in the appellant. This conclusion is sustained by authority which we are not at liberty to disregard. Thus, in May v. Adams, 58 Vt. 74, 3 Atl. 187, two tenants in common divided their lands by deed of partition. There was a mutual mistake in the deed in that the language did not correctly describe the line agreed upon. The agreed line was recognized and understood by them to be the one described in the deed so long as they were the owners, and the parties to the suit purchased with like understanding, and recognized it for several years. It was held that the mistake was remediable in equity both between the original owners and their grantees. So, also, in Widdicombe v. Childers, 124 U. S. 404, 8 Sup. Ct. 517, Smith, the grantor of the defendant, purchased at the proper land office the southeast quarter of a section; but the register by mistake described it in the application as the southwest quarter, and the entry in the plat book showed the purchase and sale of the southeast quarter. The plaintiff, with full knowledge of these facts, afterwards located and obtained a patent for the southeast quarter. It was held that he was a purchaser in bad faith, and that his legal title, though good as against the United States, was subject to the superior equities of Smith and of those claiming under him. We are unable to distinguish between that case and the one in hand. The facts bear remarkable similarity. To like effect is Hoyt v. Gooding, 99 Mich. 71, 58 N. W. 41.

It is alleged that this bill should not be sustained, because of laches. The location by Davidson was made June 10, 1869. The suit was brought in the year 1893. The lands are known as "pine lands," and were for many years after the entry remote from railway communication. They doubtless were obtained, as most lands of similar character in the northern section of the state were purchased, with a view to the prospective increase in value of pine timber. It is true that nearly 24 years had elapsed prior to the filing of the bill to correct the error. But that is not controlling. There must be neglect in the enforcement of a right, and such negligence presupposes knowledge of one's right. So laches may be excused from ignorance of one's right or from the obscurity of the transaction. What is required is that one seeking the aid of equity should use reasonable diligence in his application for relief. Thus in Galliher v. Cadwell, 145 U. S. 368, 372, 12 Sup. Ct. 873, it is said that the decisions on the question of laches "proceed on the assumption that the party to