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SUMMA CORP. v. CALIFORNIA, 104 S.Ct. 1751 (1984); a 'landmark case' being based upon State Eminent Domain Laws--while the Final Decision is based upon 'Treaty Law' @ 1:10:1, and "...the judges of every State shall be bound thereby"--aka 'Supreme Law of the Land' @ Art. VI, Cl. 2, Supremacy Clause. Every inch of land across the nation comes under Treaty Law; the lead case that said 'Treaty Law' cannot be interfered with by a State Legislature is: Ware v. Hylton, [(1976) 3 Dall. (3 U.S. 199)]; wherein, U.S. Supreme Court held that Treaty is Supreme Law of the Land (Art. VI, Cl.2), and "...the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

That is--FEDERAL LAND PATENTS--put into evidence by a land owner cannot be challenged by a state court because it flows from a United States treaty; thus, no court has jurisdiction over title or ownership to land that traces its source to the paramount or common source of title from the United States government, banks and private corporations notwithstanding; because FEDERAL LAND PATENTS were NEVER given to corporations--only to PRIVATE CITIZENS--hence the term "PRIVATE LAND CLAIM" or "PLC" (as called) used by the Bureau of Land Management as the date of the Original Patent.

The March 3, 1851 Act of Congress established a 'Land Commission' to confirm claims and a 'Court of Private Land Claims' to settle disputes before final confirmation; nka U.S. Bureau of Land Management. The Act of 1851 established a two (2) year limit to contest claims after which the confirmed land claims were closed forever by the issuance of a FEDERAL LAND PATENT that generally included the phrase--"given this day \_\_\_ to \_\_\_ his heirs and assigns forever."

No claims could be made after the issuance date of FLP; this is what Summa [104 U.S. 1751] was all about. The two year limitation on contests of FLP issued to 'Private Land Claimants' was extended by Act of 3-3-1891.

43 USC 59 verifies that 'Certified True Copies of FLPs' SHALL be Evidence in all cases where Original FLP would be evidence! 43 USC 83 covers the 'Evidentiary Effect of Certified FLPs for all States', and all courts in the U.S. must take 'Judicial Notice' of these FLPs and their 'Evidentiary Effect' under these federal statutes.

If the bank/lender lays claim to land by lien theory, it must have been presented in the contest of the FLP within 2 years after last Act of 1891, or "be forever barred"! Was your present lender/bank in existence in 1891 in order to present any claim against the owner of land under FLP flowing from a United States Treaty, aka Law of Nations? Summa decision brought all 'stare decisis law' [to abide by decided cases] up to date in April 1984 case.

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SUMMA CORPORATION, Petitioner

v.  
CALIFORNIA ex rel. STATE LANDS COMMISSION and City of Los Angeles

No. 82-708.

Argued Feb. 29, 1984.

Decided April 17, 1984.

Certiorari was granted to review decision of the California Supreme Court, 81 Cal.3d 288, 182 Cal.Rptr. 599, 644 P.2d 792, vacating 117 Cal.App.3d 385, 172 Cal.Rptr. 619, affirming a decision of the Superior Court, Los Angeles County, Samuel Greenfield, J., allowing the State to assert public trust easement over property. The Supreme Court, Justice Rehnquist, held that California could not assert public trust easement over the property where the predecessors-in-interest had their interests confirmed without any mention of such easement in federal patent proceedings under the Act of 1851.

Reversed and remanded.

Government becomes a lawbreaker, it breeds contempt for the law; ... *Olmstead v. United States*, 277 U.S. 438, 485, 48 S.Ct. 564, 575, 72 L.Ed. 944 (1928) (dissenting opinion). See also *Solem v. Stumes*, 465 U.S. \_\_\_, \_\_\_, 104 S.Ct. 1338, 1354, 79 L.Ed.2d \_\_\_ (1984) (STEVENS, J., dissenting).

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## 1. States ←8

Federal government cannot dispose of a right possessed by a state under the equal footing doctrine of the constitution.

## 2. Navigable Waters ←37(2)

Ordinary federal patent purporting to convey tidelands located within a state to a private individual is invalid since the United States holds such tidelands only in trust for the state.

## 3. Navigable Waters ←37(4)

California could not assert public trust easement over tidelands property owned by persons whose predecessors-in-interest had had their interest confirmed without mention of such an easement in federal patent proceedings taken pursuant to Act of 1851 under which rights of persons claiming lands in California by virtue of right of title derived from Spanish or Mexican government were determined. Act March 3, 1851, § 1 et seq., 9 Stat. 631.

## Syllabus\*

Petitioner owns the fee title to the Ballona Lagoon, a narrow body of water connected to a manmade harbor located in the city of Los Angeles on the Pacific Ocean. The lagoon became part of the United States following the war with Mexico, which was formally ended by the Treaty of Guadalupe Hidalgo in 1848. Petitioner's predecessors-in-interest had their interest in the lagoon confirmed in federal patent proceedings pursuant to an 1851 Act that had been enacted to implement the treaty; and that provided that the validity of claims to California lands would be decided according to Mexican law. California made no claim to any interest in the lagoon at the time of the patent proceedings, and no mention was made of any such interest in the patent that was issued. Los Angeles brought suit against petitioner in a California state court, alleging that the city held an easement in the Ballona Lagoon for commerce,

navigation, fishing, passage of fresh water to canals, and water recreation, such an easement having been acquired at the time California became a State. California was joined as a defendant as required by state law and filed a cross-complaint alleging that it had acquired such an easement upon its admission to the Union and had granted this interest to the city. The trial court ruled in favor of the city and State, finding that the lagoon was subject to the claimed public trust easement. The California Supreme Court affirmed, rejecting petitioner's arguments that the lagoon had never been tideland, that even if it had been, Mexican law imposed no servitude on the fee interest by reason of that fact, and that even if it were tideland and subject to servitude under Mexican law, such a servitude was forfeited by the State's failure to assert it in the federal patent proceedings.

*Held:* California cannot at this late date assert its public trust easement over petitioner's property, when petitioner's predecessors-in-interest had their interest confirmed without any mention of such an easement in the federal patent proceedings. The interest claimed by California is one of such substantial magnitude that regardless of the fact that the claim is asserted by the State in its sovereign capacity, this interest must have been presented in the patent proceedings or be barred. Cf. *Barker v. Harvey*, 181 U.S. 481, 21 S.Ct. 690, 45 L.Ed. 963; *United States v. Title Ins. & Trust Co.*, 265 U.S. 472, 44 S.Ct. 621, 68 L.Ed. 1110; *United States v. Coronado Beach Co.*, 255 U.S. 472, 41 S.Ct. 378, 65 L.Ed. 736. Pp. 1755-1758.

31 Cal.3d 288, 182 Cal.Rptr. 599, 644 P.2d 792, reversed and remanded.

Warren M. Christopher, Washington, D.C., for petitioner.

Louis F. Claiborne, Washington, D.C., for the United States as amicus curiae, by special leave of Court.

the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337, 76 S.Ct. 282, 267, 50 L.Ed. 489.

Nancy Alvarado Saggese, Los Angeles, Cal., for respondents.

Justice REHNQUIST delivered the opinion of the Court.

Petitioner owns the fee title to property known as the Ballona Lagoon, a narrow body of water connected to Marina del Rey, a man-made harbor located in a part of the City of Los Angeles called Venice. Venice is located on the Pacific Ocean between the Los Angeles International Airport and the City of Santa Monica. The present case arises from a lawsuit brought by respondent City of Los Angeles against petitioner Summa Corp. in state court, in which the City alleged that it held an easement in the Ballona Lagoon for commerce, navigation, and fishing, for the passage of fresh waters to the Venice Canals, and for water recreation. The State of California, joined as a defendant as required by state law, filed a cross-complaint alleging that it had acquired an interest in the lagoon for commerce, navigation, and fishing upon its admission to the Union, that it held this interest in trust for the public, and that it had granted this interest to the City of Los Angeles. The City's complaint indicated that it wanted to dredge the lagoon and make other improvements without having to exercise its power of eminent domain over petitioner's property. The trial court

1. Respondents argue that the decision below presents simply a question concerning an incident of title, which even though relating to a patent issued under a federal statute raises only a question of state law. They rely on cases such as *Hooker v. Los Angeles*, 188 U.S. 314, 23 S.Ct. 395, 47 L.Ed. 1903; *Los Angeles Milling Co. v. Los Angeles*, 217 U.S. 217, 30 S.Ct. 452, 54 L.Ed. 736 (1910), and *Boquillus Land & Cattle Co. v. Curtis*, 213 U.S. 339, 29 S.Ct. 493, 53 L.Ed. 822 (1909). These cases all held, quite properly in our view, that questions of riparian water rights under patents issued under the 1851 Act did not raise a substantial federal question merely because the conflicting claims were based upon such patents. But the controversy in the present case, unlike those cases, turns on the proper construction of the Act of March 3, 1851. Were the rule otherwise, this Court's decision in *Barker v. Harvey*, 181 U.S. 481, 21 S.Ct. 690, 45 L.Ed. 963 (1901), would have been to dismiss

117 Cal.App.3d 335, 172 Cal.Rptr. 619 ruled in favor of respondents, finding that the lagoon was subject to the public trust easement claimed by the City and the State, who had the right to construct improvements in the lagoon without exercising the power of eminent domain or compensating the landowners. The Supreme Court of California affirmed the ruling of the trial court. *City of Los Angeles v. Venice Peninsula Properties*, 31 Cal.3d 288, 182 Cal.Rptr. 599, 644 P.2d 792 (1982).

In the Supreme Court of California, petitioner asserted that the Ballona Lagoon had never been tideland, that even if it had been tideland, Mexican law imposed no servitude on the fee interest by reason of that fact, and that even if it were tideland and subject to a servitude under Mexican law, such a servitude was forfeited by the failure of the State to assert it in the federal patent proceedings. The Supreme Court of California ruled against petitioner on all three of these grounds. We now reverse that judgment, holding that even if it is assumed that the Ballona Lagoon was part of tidelands subject by Mexican law to the servitude described by the Supreme Court of California, the State's claim to such a servitude must have been presented in the federal patent proceeding in order to survive the issue of a fee patent.<sup>1</sup>

the appeal, which was the course taken in *Hooker*, rather than to decide the case on the merits. See also *Beard v. Federy*, 3 Wall. 478, 18 L.Ed. 88 (1866). The opinion below clearly recognized as much, for the California Supreme Court wrote, "under the Act of 1851, the federal government succeeded to Mexico's right in the tidelands granted to the defendants' predecessors upon annexation of California," 31 Cal.3d at 298, 182 Cal.Rptr. 599, 644 P.2d 792, an interest that "was acquired by California upon its admission to statehood," *id.*, at 302, 182 Cal.Rptr. 599, 644 P.2d 792. Thus, our jurisdiction is based on the need to determine whether the provisions of the 1851 Act operate to preclude California from now asserting its public trust easement.

The 1839 grant to the Machados and Talamantes contained "a reservation that the grantees may enclose the property "without prejudice to the traversing roads and servitudes [servidumbres]" App. 5. According to

\* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of

Petitioner's title to the lagoon, like all the land in Marina del Rey, dates back to 1839, when the Mexican Governor of California granted to Augustin and Ignacio Machado and Felipe and Tomas Talamantes a property known as the Rancho Ballona.<sup>2</sup> The land comprising the Rancho Ballona became part of the United States following the war between the United States and Mexico, which was formally ended by the Treaty of Guadalupe Hidalgo in 1848. 9 Stat. 922. Under the terms of the Treaty of Guadalupe Hidalgo the United States undertook to protect the property rights of Mexican landowners, Treaty of Guadalupe Hidalgo, Art. VIII, 9 Stat. 929, at the same time settlers were moving into California in large numbers to exploit the mineral wealth and other resources of the new territory. Mexican grants encompassed well over 10,000,000 acres in California and included some of the best land suitable for development. H.R.Rep. No. 1, 33d Cong., 2d Sess., 4-5 (1854). As we wrote long ago:

"The country was new, and rich in mineral wealth, and attracted settlers, whose industry and enterprise produced an un-

expert testimony at trial, under *Las Siete Partidas*, the law in effect at the time of the Mexican grant, this reservation in the Machados' and Talamantes' grant was intended to preserve the rights of the public in the tidelands enclosed by the boundaries of the Rancho Ballona. The California Supreme Court reasoned that this interest was similar to the common law public trust imposed on tidelands. Petitioner and amicus United States argue, however, that this reservation was never intended to create a public trust easement of the magnitude now asserted by California. At most this reservation was inserted in the Mexican grant simply to preserve existing roads and paths for use by the public. See *United States v. Coronado Beach Co.*, 255 U.S. 472, 485-486, 41 S.Ct. 378, 379, 65 L.Ed. 736 (1921); *Barker v. Harvey*, 181 U.S. 481, 21 S.Ct. 690, 45 L.Ed. 963 (1901); cf. *Jover v. Insular Government*, 221 U.S. 623, 31 S.Ct. 664, 55 L.Ed. 884 (1911). While it is beyond cavil that we may take a fresh look at what Mexican law may have been in 1839, see *United States v. Perot*, 98 U.S. 428, 430, 25 L.Ed. 251 (1878); *Fremont v. United States*, 17 How. 541, 556, 15 L.Ed. 241 (1854), we find it unnecessary to determine whether Mexican law imposed such an expansive easement on grants of private property

paralleled state of prosperity. The enhanced value given to the whole surface of the country by the discovery of gold, made it necessary to ascertain and settle all private land claims, so that the real estate belonging to individuals could be separated from the public domain." *Peralta v. United States*, 3 Wall. 434, 439, 18 L.Ed. 221 (1865); see also *Botiller v. Dominguez*, 130 U.S. 238, 244, 9 S.Ct. 525, 526, 32 L.Ed. 926 (1889).

To fulfill its obligations under the Treaty of Guadalupe Hidalgo and to provide for an orderly settlement of Mexican land claims, Congress passed the Act of March 3, 1851, setting up a comprehensive claims settlement procedure. Under the terms of the Act, a Board of Land Commissioners was established with the power to decide the rights of "each and every person claiming lands in California by virtue of any right or title derived from the Spanish or Mexican government. . . ." Act of March 3, 1851, § 8, ch. 41, 9 Stat. 631, 632. The Board was to decide the validity of any claim according to "the laws, usages, and customs" of Mexi-

2. The Rancho Ballona occupied an area of approximately 14,000 acres and included a tidelands area of about 2,000 acres within its boundaries. The present-day Ballona Lagoon is virtually all that remains of the former tidelands, with filling and development or natural conditions transforming most of much larger lagoon area into dry land. Although Respondent Los Angeles claims that the present controversy involves only what remains of the old lagoon, a fair reading of California law suggests that the State's claimed public trust servitude can be extended over land no longer subject to the tides if the land was tidelands when California became a state. See *City of Long Beach v. Mansell*, 3 Cal.3d 462, 91 Cal.Rptr. 23, 476 P.2d 423 (1970).

The Mexican grantees acquired title through a formal process that began with a petition to the Mexican Governor of California. Their petition was forwarded to the City Council of Los Angeles, whose committee on vacant lands approved the request. Formal vesting of title took place after the Rancho had been inspected, a Mexican judge had completed "walking the boundaries," App. 213, and the conveyance duly registered. See generally App. 1-13; *United States v. Pico*, 5 Wall. 536, 539, 18 L.Ed. 695 (1866).

co, *id.*, at § 11, while parties before the Board had the right to appeal to the District Court for a *de novo* determination of their rights, *id.*, at § 9; *Grisar v. McDowell*, 6 Wall. 363, 375, 18 L.Ed. 863 (1867), and to appeal to this Court, *id.*, at § 10. Claimants were required to present their claims within two years, however, or have their claims barred. *Id.*, at § 13, see *Botiller v. Dominguez*, 130 U.S. 238, 9 S.Ct. 525, 32 L.Ed. 926 (1889). The final decree of the Board, or any patent issued under the Act, was also a conclusive adjudication of the rights of the claimant as against the United States, but not against the interests of third parties with superior titles. Act of March 3, 1851, § 15.

In 1852 the Machados and the Talamantes petitioned the Board for confirmation of their title under the Act. Following a hearing, the petition was granted by the Board, App. 21, and affirmed by the United States District Court on appeal, App. 22-23. Before a patent could issue, however, a survey of the property had to be approved by the Surveyor General of California. The survey for this purpose was completed in 1858, and although it was approved by the Surveyor General of California, it was rejected upon submission to the General Land Office of the Department of Interior. App. 32-34.

In the confirmation proceedings that followed, the proposed survey was readvertised and interested parties informed of their right to participate in the proceedings.<sup>3</sup> The property owners immediately north of the Rancho Ballona protested the proposed survey of Rancho Ballona; the Machados and Talamantes, the original grantees, filed affidavits in support of their

3. It is undisputed that the State had the right to participate in the patent proceedings leading to confirmation of the Machados' and Talamantes' grant. The State asserts that as a "practice" it did not participate in confirmation proceedings under the 1851 Act. Brief of Respondent California 16, n. 17. In point of fact, however, the State and City of Los Angeles participated in just such a proceeding involving a rancho near the Rancho Ballona. See *Historical Archives*, PG 49, California Land Claims, Book 434

claim. As a result of these submissions, as well as a consideration of the surveyor's field notes and underlying Mexican documents, the General Land Office withdrew its objection to the proposed ocean boundary. The Secretary of the Interior subsequently approved the survey and in 1873 a patent was issued confirming title in the Rancho Ballona to the original Mexican grantees. App. 101-109. Significantly, the federal patent issued to the Machados and Talamantes made no mention of any public trust interest such as the one asserted by California in the present proceedings.

The public trust easement claimed by California in this lawsuit has been interpreted to apply to all lands which were tidelands at the time California became a state, irrespective of the present character of the land. See *City of Long Beach v. Mansell*, 3 Cal.3d 462, 486-487, 91 Cal.Rptr. 23, 476 P.2d 423 (1970). Through this easement, the State has an overriding power to enter upon the property and possess it, to make physical changes in the property, and to control how the property is used. See *Marks v. Whitney*, 6 Cal.3d 251, 259-260, 98 Cal.Rptr. 790, 491 P.2d 374 (1971); *People v. California Fish Co.*, 166 Cal. 576, 596-599, 138 P. 79 (1913). Although the landowner retains legal title to the property, he controls little more than the naked fee, for any proposed private use remains subject to the right of the State or any member of the public to assert the State's public trust easement. See *Marks v. Whitney*, *supra*.

[1, 2] The question we face is whether a property interest so substantially in derogation of the fee interest patented to petitioner's predecessors can survive the patent

Brief of General Rosecrans and State of California et al., *In re: Sausal Redondo and other cases*, Resolution of City Council of Los Angeles, Dec. 24th, 1868. Moreover, before the Mexican grant was confirmed, Congress passed a statute specially conferring a right on all parties claiming an interest in any tract embraced by a published survey to file objections to the survey. Act of July 1, 1864, § 1, ch. 194, 13 Stat. 332.

proceedings conducted pursuant to the statute implementing the Treaty of Guadalupe Hidalgo. We think it cannot. The federal government, of course, cannot dispose of a right possessed by the State under the equal footing doctrine of the United States Constitution. *Pollard's Lessee v. Hagan*, 3 How. 212, 11 L.Ed. 565 (1845). Thus, an ordinary federal patent purporting to convey tidelands located within a state to a private individual is invalid, since the United States holds such tidelands only in trust for the state. *Borax Co. v. Los Angeles*, 296 U.S. 10, 15-16, 56 S.Ct. 23, 25-26, 80 L.Ed. 9 (1935). But the Court in *Borax* recognized that a different result would follow if the private lands had been patented under the 1851 Act. *Id.*, at 19, 56 S.Ct. at 27. Patents confirmed under the authority of the 1851 Act were issued "pursuant to the authority reserved to the United States to enable it to discharge its international duty with respect to land which, although tidelands, had not passed to the State." *Id.*, at 21, 56 S.Ct. at 28. See also *State Land Board v. Corvallis Sand & Gravel Co.*, 429 U.S. 963, 375, 97 S.Ct. 582, 589, 50 L.Ed.2d 550 (1977); *Knight v. United States Land Assn.*, 142 U.S. 161, 12 S.Ct. 258, 35 L.Ed. 974 (1891).

This fundamental distinction reflects an important aspect of the 1851 Act enacted by Congress. While the 1851 Act was intended

4. In support of this argument the State cites to *Montana v. United States*, 450 U.S. 544, 101 S.Ct. 1245, 67 L.Ed.2d 493 (1981), and *Illinois Central R. v. Illinois*, 146 U.S. 387, 13 S.Ct. 110, 36 L.Ed. 1018 (1892), in support of its proposition that its public trust servitude survived the 1851 Act confirmation proceedings. While *Montana v. United States* and *Illinois Central R. v. Illinois* support the proposition that alienation of the beds of navigable waters will not be lightly inferred, property underlying navigable waters can be conveyed in recognition of an "international duty." *Montana v. United States*, *supra*, 450 U.S., at 552, 101 S.Ct. at 1251. Whether the Ballona Lagoon was navigable under federal law in 1850 is open to speculation. The trial court found only that the present-day lagoon was navigable, App. to Pet. for Cert. A-52, while respondent Los Angeles concedes that the lagoon was not navigable in 1850. Brief of Respondent Los Angeles 29. The obligation of the United States to respect the

to implement this country's obligations under the Treaty of Guadalupe Hidalgo, the 1851 Act also served an overriding purpose of providing repose to land titles that originated with Mexican grants. As the Court noted in *Peralta v. United States*, 3 Wall. 434, 16 L.Ed. 221 (1865), the territory in California was undergoing a period of rapid development and exploitation, primarily as a result of the finding of gold at Sutter's Mill in 1848. See generally J. Caughey, *California* 238-255 (1953). It was essential to determine which lands were private property and which lands were in the public domain in order that interested parties could determine what land was available from the government. The 1851 Act was intended "to place the titles to land in California upon a stable foundation, and to give the parties who possess them an opportunity of placing them on the records of this country, in a manner and form that will prevent future controversy." *Fremont v. United States*, 17 How. 542, 553-554, 15 L.Ed. 241 (1854); accord, *Thompson v. Los Angeles Farming Co.*, 180 U.S. 72, 77, 21 S.Ct. 289, 291, 45 L.Ed. 432 (1901).

California argues that since its public trust servitude is a sovereign right, the interest did not have to be reserved expressly on the federal patent to survive the confirmation proceedings.<sup>4</sup> Patents issued

property rights of Mexican citizens was, of course, just such an international obligation, made express by the Treaty of Guadalupe Hidalgo and inherent in the law of nations, see *United States v. Moreno*, 1 Wall. 400, 404, 17 L.Ed. 633 (1863); *United States v. Fassett*, 21 How. 445, 448, 16 L.Ed. 185, 186 (1858).

The State also argues that the Court has previously recognized that sovereign interests need not be asserted during proceedings confirming private titles. The State's reliance on *New Orleans v. United States*, 10 Pet. 662, 5 L.Ed. 573 (1836), and *Eldridge v. Trezevant*, 160 U.S. 452, 16 S.Ct. 345, 40 L.Ed. 490 (1896), in support of its argument is misplaced, however. Neither of these cases involved titles confirmed under the 1851 Act. In *New Orleans v. United States*, for example, the board of commissioners in that case could only make recommendations to Congress, in contrast to the binding effect of a decree issued by the Board under the 1851 Act. Thus, we held in

pursuant to the 1851 Act were, of course, confirmatory patents that did not expand the title of the original Mexican grantee. *Beard v. Federy*, 3 Wall. 478, 18 L.Ed. 88 (1865). But our decisions in a line of cases beginning with *Barker v. Harvey*, 181 U.S. 481, 21 S.Ct. 690, 45 L.Ed. 963 (1901), effectively dispose of California's claim that it did not have to assert its interest during the confirmation proceedings. In *Barker* the Court was presented with a claim brought on behalf of certain Mission Indians for a permanent right of occupancy on property derived from grants from Mexico. The Indians' claim to a right of occupancy was derived from a reservation placed on the original Mexican grants permitting the grantees to fence in the property without "interfering with the roads, cross-roads, and other usages." *Id.*, at 494, 495, 21 S.Ct. at 695. The Court rejected the Indians' claim, holding that:

"If these Indians had any claims founded on the action of the Mexican Government they abandoned them by not presenting them to the Commission for consideration, and they could not, therefore, . . . resist successfully any action of the government in disposing of the property." If it be said that the Indians do not claim the fee, but only the right of occupation, and therefore, they do not come within the provision of § 8 as persons claiming lands in California by virtue of any right or title derived from the Spanish or Mexican Government, it may be replied that a claim of a right to a permanent occupancy of land is one of far-reaching effect, and it could not well be said that the lands burdened with a right of permanent occupancy were part of the public domain and subject to the full disposal of the United States. . . . Surely a claimant would have little reason for presenting to

that case that the City of New Orleans could assert public rights over riverfront property which were previously rejected by the board of commissioners. *New Orleans v. United States*, 10 Pet., at 733-734. The decision in *Eldridge v. Trezevant*, *supra*, did not even involve a confirmatory patent, but simply the question whether an outright federal grant was exempt from

the Land Commission his claim to land, and securing a confirmation of that claim, if the only result was to transfer the naked fee to him, burdened by an Indian right of permanent occupancy." *Id.* at 491-492, 21 S.Ct. at 694 (quoting *Beard v. Federy*, 3 Wall. 478, 493, 18 L.Ed. 88 (1865)).

The Court followed its holding in *Barker* in a subsequent case presenting a similar question, in which the Indians claimed an aboriginal right of occupancy derived from Spanish and Mexican law that could only be extinguished by some affirmative act of the sovereign. *United States v. Title Ins. & Trust Co.*, 265 U.S. 472, 44 S.Ct. 621, 68 L.Ed. 1110 (1924). Although it was suggested to the Court that Mexican law recognized such an aboriginal right, Brief for Appellant in *United States v. Title Ins. & Trust Co.*, O.T.1923, No. 358, p. 14-16, cf. *Chouteau v. Molony*, 16 How. 203, 229, 14 L.Ed. 905 (1853), the Court applied its decision in *Barker* to hold that because the Indians failed to assert their interest within the timespan established by the 1851 Act, their claimed right of occupancy was barred. The Court declined an invitation to overrule its decision in *Barker* because of the adverse effect of such a decision on land titles, a result that counseled adherence to a settled interpretation. *Id.*, at 486, 21 S.Ct. at 692.

Finally, in *United States v. Coronado Beach Co.*, 255 U.S. 472, 41 S.Ct. 378, 65 L.Ed. 736 (1921), the government argued that even if the landowner had been awarded title to tidelands by reason of a Mexican grant, a condemnation award should be reduced to reflect the interest of the state in the tidelands which it acquired when it entered the union. The Court expressly rejected the government's argument, holding that the patent proceedings were con-

long-standing local law permitting construction of a levee on private property for public safety purposes. While the Court held that the federal patent did not extinguish the servitude, the interest asserted in that case was not a "right of permanent occupancy." *Barker v. Harvey*, 181 U.S. 481, 491, 21 S.Ct. 690, 694 (1901), such as that asserted by the State in this case

drive on this issue, and could not be collaterally attacked by the government. 255 U.S. at 487-488, 41 S.Ct. at 879. The decision in that even "sovereign" claims such as those made by the state of California in the asserted case must, like other claims, be asserted in the patent proceedings or be barred.

[3] These decisions control the outcome of this case. We hold that California cannot at this late date assert its public trust easement over petitioner's property, when petitioner's predecessors-in-interest had their interest confirmed in proceedings taken pursuant to the Act of 1851. The interest claimed by California in one of such substantial magnitude that regardless of the fact that the claim is asserted by the State in its sovereign capacity, this interest, like the Indian claim made in *Barker* and in *United States v. Title Insurance Co.*, must have been presented in the patent proceeding or be barred. Accordingly, the judgment of the Supreme Court of California that court for further proceedings not inconsistent with this opinion.

It is so ordered.

Justice MARSHALL, took no part in the consideration or decision of this case.



43 § 175

Water or loss of exemption  
Generally 35  
Abandonment of homestead 17  
Confession of judgment 17  
Pledge of homestead 18

1. Constitutionality  
This section is valid and binding on the states. *Full v. O'Neal*, 1882, 1 S.Ct. 325, 106 U.S. 272, 27 L.Ed. 196. See also *Miller v. Little*, 1874, 47 Cal. 348. *Russell v. Lough*, 1874, 21 Minn. 167, 18 Am. Rep. 359. *Old v. Harlock*, 1873, 33 W.Va. 522.

2. Construction—Generally  
In absence of some persuasive indication that United States Supreme Court could not adhere to prior decision construing this section, state Supreme Court was required by supremacy clause, U.S.C.A. Const. art. 6, cl. 2, to accept federal homestead law and construction given by United States Supreme Court. *Mealey v. Martin*, Alaska 1976, 468 P.2d 965.

3. — *State, Making Homestead Act*  
Government land acquired under *State Making Homestead Act*, section 29) of 1851 Act, is exempt from attachment or execution for debt contracted by settler prior to issuance of patent. *Albuquerque v. Rakey*, 1924, 226 P. 416, 29 N.M. 682.

4. Purpose.  
The primary purpose of this section stating that no homestead acquired under the provisions of any debt contracted before the making of the patent therefor was the protection of the family, and an abandoned name may make good of homestead in the name of her husband. *Craig Lumber Co. v. Ramey*, 1961, 119 P.2d 608, 108 Colo. 516.

5. Power of Congress  
Under U.S.C.A. Const. art. 4 § 3, cl. 2, Congress, in exercise of its discretion in disposal of public lands, had power, by this section, to restrict alienation of homestead lands after conveyance by United States in fee simple by providing no such lands shall be exempt from satisfaction of debts contracted prior to issuance of patent. *Ruddy v. Ross*, 1870, 148 F. 818, 9 S.Ct. 47, 248 U.S. 106, 63 L.Ed. 148, 8 A.L.R. 643.

This section is not, strictly speaking, an exemption statute, but was enacted by virtue of the power conferred upon Congress to dispose of public lands. *First State Bank of Shelby v. Business County Bank*, 1919, 185 P. 162, 56 Mont. 363, 8 A.L.R. 631.

It is wholly beyond power of a state in limit or impair the exemption granted by this section as to lands acquired under homestead law in respect to satisfaction of debt contracted prior to issuance of patent. *Boyer-Shute Lumber Co. v. Eckham*, 1918, 170 N.W. 503, 51 N.D. 365.

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7. Property subject to execution—Dwellings  
A dwelling house located upon a federal homestead is exempt from garnishment under this section. *Gardner v. Glaser*, 1924, 226 P. 911, 26 Ariz. 503.

Negotiations by a homesteader for sale of the improvements together with a relinquishment of his possessory right to land at home-steads did not constitute a consecutive servitude of house from realty which would entitle a creditor to represent house as personal property. *Enterprise Mercantile & Milling Co. v. Cunningham*, 1917, 165 P. 224, 84 Or. 319.

8. — *Enlarged homesteads*  
Enlarged homesteads are exempt from liability for debts contracted prior to the issuance of patent therefor, under this section. *In re Auger*, D.C. Minn. 1918, 238 F. 421.

9. — *Intergroup dishes*  
Intergroup dishes are not liable to be sold for debt contracted before the issue of the patent. *Faul v. Cook*, 1893, 26 P. 662, 19 Or. 455, 20 Am. St. Rep. 836.

10. — *Homestead proceeds*  
Rev. St. Ark. sec. 3380, which exempts proceeds of a homestead from attachment upon a dwelling house located on a federal homestead, did not exempt by this section, since, not having so stated, the court could not assume that it applied only to certain property, but having so stated, the court is not bound to assume that it applied only to certain property, but having so stated, the court is not bound to assume that it applied only to certain property.

11. — *Proceeds of sale*  
Where an entryman, prior to the sale of his homestead, assigns to his wife the right to the proceeds of the sale in consideration for her signing the deed, one who became a creditor of the husband prior to the issuance of the patent for the land, may not object to the transaction in view of the provisions of this section. *Keller v. Flanagan*, 1923, 213 P. 222, 66 Mont. 164.

The exemption is in the nature of a condition attached to the proceeds of a sale. *Riverville Hardware Co. v. Bennington*, 1908, 96 P. 826, 57 Wash. 111.

12. — *Resulting trust property*  
Where fiduciary funds are traced to homestead giving rise to resulting trust, homestead is not exempt. *White v. Mayo*, 1926, 246 P. 910, 31 N.M. 366.

13. Persons entitled to exemption  
The debts referred to are those of the patentee, and the exemption does not run with the land and inure to the benefit of the patentee's heirs and assigns, so as to order the hands exempt from execution for debts of the patentee's husband contracted prior to his acquiring the land on her death. *In re Farmer's Estate*, D.C.N.D. 1914, 211 F. 757.

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Perhaps the easiest means of defining a collateral attack is to show the converse corollary, or a direct attack on a patent. As was stated in the previous paragraphs, a direct attack upon a land patent is an action for fraud or mistake brought by the government or a party acting in its place. Therefore, a collateral attack, by definition, is any attack upon a patent that is not covered within the direct attack list. Perhaps the most prevalent collateral attack in property law today is a mortgage or deed of trust foreclosure on a color of title. In these instances, it is determined that the complete title and interest in the land is purchased by the mortgagee or another in his place. Such a determination displaces the patentee's ownership of the title without the court ever ruling that the patent was acquired through fraud or mistake. This is against public policy, legislative intent, and the overwhelming majority of case law. Therefore, it is now necessary to determine the patent's role in American property law today to see what powers the courts of equity have in protecting the rights of the challengers of patents.

The attitude of the courts is to promote simplicity and certainty in title transactions, thereby they follow what is in the chain of title and not what is outside. [*Sabo v. Horvath*, 559 P. 2d 1038, 1044 (1976).] However, in equity courts, title under a patent from the government is subject to control to protect the rights of parties acting in a fiduciary capacity. [*Sanford v. Sanford*, 139 U.S. 290 (1891).] This protection however does not include the invalidation of the patent. The determination of the land department in matters cognizable by it, in the alienation of lands and the validity of patents, cannot be collaterally attacked or impeached. [*Id.*] Therefore the courts have had to devise another means to control the patentee, if not the patent itself. As stated in *Raestle v. Whitson* [582 P. 2d 170, 172 (1978)]. "The land patent is the highest evidence of title and is immune from collateral attack. This does not preclude a court from imposing a constructive trust upon the patentee for the benefit of the owners of an equitable interest." This then explains the most equitable way a court may effectively restrict the sometimes harsh justice handed down by a strict court of law. Equity courts will impose a trust upon the patentee until the debt has been paid. As has been stated, a patent can not be collaterally attacked, therefore the land can not be sold or taken by the courts unless there is strong evidence of fraud or mistake. However, the courts can require the patentee to pay a certain amount at regular intervals until the debt is paid, unless of course, there is a problem with the validity of the debt itself. This is the main purpose of the patent in this growing epidemic of farm foreclosures that defy the public policy of Congress, the legislative intent of the Statutes-At-Large, and the legal authority as to the type of land ownership possessed in America. Why then is the rate of foreclosures on the rise?

Titles to land today, as was stated earlier in this memorandum, are normally in the form of colors of title. This is because of the trend in recent property law to maintain the status quo. The rule in most jurisdictions, and those which have adopted a grantor-grantee index in particular, is that a deed outside the chain of title does not act as a valid conveyance and does not serve notice of a defect of title on a subsequent purchaser. These deeds outside the chain of title are known as "wild deeds." [*Sabo v. Horvath*, 559 P. 2d 1038, 1043 (1976); see also *Porter v. Buck*, 335 So. 2d 369, 371 (1976); *The Exchange National Bank v. Lawndale National Bank*, 41 Ill. 2d 316, 243 N.E. 2d 193, 195-96 (1968).] The chain of title for purposes of the marketable title

"Banks cannot LOAN CREDIT" (194 NW 429; 95 U.S. 557; 271 U.S. 669; 144 SE 501.)  
"A Lawful Consideration (31 USC 371) MUST BE TENDERED FOR CONTRACT TO EXIST" (11 Tex. 430)  
★ "Sovereignty resides in 'We the People'" (Wis. Atty. Gen. v. Barstow, 5 Wis. 527)

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insurance simply to guarantee a marketable title. Worse, a practice has prevailed in some of the states . . . of permitting actions to determine titles to be maintained upon warrants for land (warranty deeds) and other titles not complete or legal in their character. This practice is against the intent of the Constitution and the Acts of Congress. [*Bagnell v. Broderick*, 38 U.S. 438 (1839).] Such lesser titles have no value in actions brought in federal courts notwithstanding a state legislature which may have provided otherwise. [*Hooper et. al v. Scheimer*, 64 U.S. (23 How.) 235 (1859).] It is in fact possible that the state legislatures have even violated the Supremacy Clause of the United States Constitution. These actions are against the intent of the Founding Fathers and against the legislative intent of the Congressmen who enacted the Statutes-At-Large creating the land patent or land grant. This patent or grant, since the land grant has been stated to be another name for the patent, the terms being synonymous [*Northern Pacific Railroad Co. v. Barden*, 46 F. 592, 617 (1891)] prevented every problem that was created by the advent of colors of title, marketable titles, and mortgages. Therefore it is necessary to determine the validity of returning to the patent as the operative title.

Patents are issued (and theoretically passed) between sovereigns . . . and deeds are executed by persons and private corporations without those sovereign powers. [*Leading Fighter v. County of Gregory*, 230 N.W. 2d 114, 116 (1975).] As was stated earlier, the American people in creating the Constitution and the government formed under it, made such a document and government as sovereigns, retaining that status even after the creation of the government. [*Chisholm v. Georgia*, 2 Dall. (U.S.) 419 (1793).] The government as sovereign passes the title to the American people creating in them sovereign freeholders. Therefore, it follows that the American people, as sovereigns, would also have this authority to transfer the fee simple title, through the patent, to others. Cases have been somewhat scarce in this area, but there is some case law to reinforce this idea. In *Wilcox v. Calloway* [1 Wash. (Va.) 38, 38-41 (1823)], the Virginia Court of Appeals heard a case where the patent was brought up or reissued to the parties four separate times. Some of the issuances of the patent came before the creation of the Constitutional United States government, and some occurred during the creation of that government. The courts determined the validity of those patents, recognizing each actual acquisition as being valid, but reconciling the differences by finding the first patent, properly secured with all the necessary requisite acts fulfilled, carried the title. The other patents, and the necessary acquisition of a new patent each time yielded the phrase "lapsed patent;" a lapsed patent being one that must be reacquired to perfect the title. [*Id.*] Subsequent patentees take subject to any reservations in the original patent. [*State v. Crawford*, 441 P. 2d 586, 590 (1968).]

A patent regularly issued by the government is the best and only evidence of a perfect title. The actual patent should be secured to place at rest any question as to validity of entries (possession under a claim and color of title). [*Young v. Miller*, 125 So. 2d 257, 258 (1960).] Under the color of title act, the Secretary of Interior may be required to issue a patent if certain conditions have been met, and the freeholder and his predecessors in title are in peaceful, adverse possession under claim and color of title for more than a specified period. [*Beaver v. United States*, 350 F. 2d 4, cert. denied 387 U.S. 937 (1965).] A description which will identify the lands (and posses-

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