17.

"The provisions of this section shall apply not only to certificates of citizenship issued under the provisions of this Act, but to all certificates of citizenship which may have been issued heretofore by any court exercising jurisdiction in naturalization proceedings under prior laws."

The principal contentions in the argument for appellant are, that a decree of naturalization is a judgment of a competent court and subject to all the rules of law regarding judgments as such that a court of equity could not, prior to June 29, 1906, set aside or annul such a judgment *236 for [illegible]

Courts throughout the Union, and bringing their applications on to summary hearing without previous notice to the Government of the United States or to the public, it is of course impossible that the public interests should be adequately represented, and in our opinion the sections quoted from the Revised Statutes are not open to any construction that would give a conclusive effect to such an investigation when conducted at the instance of and controlled by the interested individual alone.

The foundation of the doctrine of res judicata, or estoppel by judgment, is that both parties have had their day in court. 2 Black, Judgts., §§ 500, 504. The general principle was clearly expressed by Mr. Justice Harlan, speaking for this court in Southern Pacific R. Co. v. United States, 168 U.S. 1, 48:

"That a right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction, as a ground of recovery, cannot be disputed in a subsequent suit between the same parties or their privies."

Sound reason, as we think, constrains us to deny to a certificate of naturalization, procured ex parte in the ordinary way, any conclusive effect as against the public. Such a certificate, including the "judgment" upon which it is based, is in its essence an instrument granting political privileges, and open like other public grants to be revoked if and when it shall be found to have been unlawfully or fraudulently procured. It is in this respect closely analogous to a public grant of land (Rev. Stat., § 2289, etc.), or of the exclusive right to make, use and vend a new and useful invention (Rev. Stat., § 4883, etc.).

Judicial review of letters patent, looking to their cancellation when issued unlawfully or through mistake or when procured by fraud, is very ancient — possibly antedating the establishment of the court of equity in England. *239 3 Black. Com. 47, 48. As pointed out by Mr. Justice Grier, speaking for this court in United States v. Stone, 2 Wall. 525, 535 the original mode was by writ of scire facias, the bill in equity being afterwards adopted as a more convenient remedy. In United States v. San Jacinto Tin Co., 125 U.S. 273, 281 previous cases were reviewed and the practice discussed. In United States v. Beebe, 127 U.S. 338, 342 Mr. Justice Lamar, speaking for this court, said: "It may now be accepted as settled that the United States can properly proceed by bill in equity to have a judicial decree of nullity and an order of cancellation of a patent issued in mistake or obtained by fraud, where the Government has a direct interest, or is under an obligation respecting the relief invoked." See also Noble v. Union River Logging R.R. Co., 147 U.S. 165, 175, and cases cited.

United States v. Throckmorton, 98 U.S. 61, is not opposed in principle, for, as pointed out in United States v. Minor, 114 U.S. 233, 241, the patent was issued on the confirmation of a Mexican grant after judicial proceedings, where there were pleadings and parties, and witnesses were examined on both sides, with the right to appeal. Vance v. Burbank, 101 U.S. 514, 519, was likewise a contested case in the Land Department, as the report shows.

The doctrine that a patent issued ex parte may be annulled for fraud has been repeatedly applied to patents for inventions. United States v. Bell Telephone Co., 128 U.S. 315, 361 Same v. Same, 167 U.S. 224, 238.

Whether the judicial review of a certificate of naturalization should be conducted in one mode or another is a matter plainly resting in legislative discretion. Section 15 of the act of June 29, 1906 (34 Stat. 601), provides for a proceeding in a "court having jurisdiction to naturalize aliens in the judicial district in which the naturalized citizen may reside at the time of bringing the suit," upon fair *240 notice to the party holding the certificate of citizenship that is under attack. No criticism is made of this mode of procedure.

The views above expressed render it unnecessary for us to go into the question whether on general principles and without express legislative authority, a court of equity, at the instance of the Government, might set aside a certificate of citizenship or restrain its use, for fraud or the like. In United States v.

Norsch, 42 Fed. Rep. 417, it was declared that the Government could sue in a Federal court for the cancellation of a certificate that had been procured by fraud in a state court, but it was held that the facts set forth in the bill did not make out a sufficient case of fraud. In United States v. Gleason, 78 Fed. Rep. 396. 90 Fed. Rep. 778, the contrary conclusion was reached upon the main question. These two cases arose prior to the act of 1906.

Since the passage of that act, the district courts have quite generally sustained the action for a cancellation of fraudulent certificates. United States v. Nisbet, 168 Fed. Rep. 1005 United States v. Simon, 170 Fed.

consideration inflicts no such punishment, nor any punishment, upon a lawful citizen. It merely provides that, on good cause shown, the question whether one who claims the privileges of citizenship under the certificate of a court has procured that certificate through fraud or other illegal contrivance, shall be examined and determined in orderly judicial proceedings. The act makes nothing fraudulent or unlawful that was honest and lawful when it was done. It imposes no new penalty upon the wrongdoer. But if, after fair hearing, it is judicially determined that by wrongful conduct he has obtained a title to citizenship, the act provides that he shall be deprived of a privilege that was never rightfully *243 his. Such a statute is not to be deemed an ex post facto law.

The decree under review should be

Affirmed.

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