Defects Appearing on Face of Complaint.

Due Authority to Prosecute Does Not Appear.

One question likely to arise in this case in behalf of and affecting all the defendants is this:

Whether, since this suit professes to be prosecuted by the informers named, although stated to be by the United States *ex rel.*, etc., and is a penal statutory *qui tam* action, authorized by section 2103, and whether, moreover, since section 2105 makes it the duty of district attorneys to prosecute such suits when applied to to do so, and makes their failure to be a ground of removal from office; and whether, since the said complaints nowhere show that the district attorney of the United States or the Attorney-General has had anything to do with the prosecution of the suit, and their names do not anywhere appear as authorizing the suit, and the petition in the concluding clause shows that the suit is prosecuted by the relators alone, is the suit, as disclosed by the face of the declaration or complaint, brought by authority of law?

The following suggestions are made in answer to this question:

1. It is thoroughly settled that a suit to vacate a patent cannot be prosecuted except by the authority of the Attorney-General of the United States, acting through the proper local attorney of the United States.

This is decided in the following cases:

U. S. *vs.* Throckmorton, 98 U. S., 61; Western Pacific R. R. Co. *vs.* U. S., 108 U. S., 512; Bookwalter *vs.* Clark, 10 Fed. Rep., 793; U. S. *vs.* Mullan, 7 Sawyer, 476; U. S. *vs.* San Jacinto Tin Co., 10 Sawyer, 855 (S. C. in 23 Fed. Rep., 290).

The general principle applicable to *qui tam* actions like this is stated in the case of Smith *vs.* Look *et al.*, 108 Mass., 138–141.