"As we are of opinion that this action cannot be maintained we have not thought it necessary to consider the other exceptions."

The general principle being thus established that the suit can only be brought in the name of and by the United States, under its direction and authority, and remains under the control of the United States to the end of the suit, therefore the principle which is asserted in the case of United States *vs.* Throckmorton, *supra*, and the other similar cases above cited, is here alike applicable as in a case brought to vacate a patent, as asserted in said cases following Throckmorton.

The principle we allude to is this, and thus stated in Throckmorton, to wit, that wherever a suit must be prosecuted by the United States and under its control and authority, there it is essential "that it shall appear in some way, without regard to the special form, that the Attorney-General (in this case, at least, the district attorney) has brought it himself, or given such authority for bringing it as will make him, the United States officer, officially responsible therefor through all the stages of its prosecution." (United States *vs.* Throckmorton, 98 U. S., 61, 70, 71.)

Rule as to Prosecutions Under Penal Statutes.

Another principle applicable to the present prosecution is that all penal actions, whether *qui tam* or other, must, in the pleading instituted in the suit throughout the prosecution, be brought strictly within the terms of the penal statutes authorizing them.

Some of the authorities establishing this proposition are thus stated in 5 Wait's Actions and Defenses, 156:

"A penalty cannot be raised by *implication*, but must be *expressly* imposed.

Jones *vs.* Estes, 2 Johns., 379.
Allaire *vs.* Howell Works Co., 14 N. J. L., 21.