which its 1932 judgment was entered had expired. The question, then, is not whether relief can be granted, but which court can grant it.

Equitable relief against fraudulent judgments is not of statutory creation. It is a judicially devised remedy fashioned to relieve hardships which, from time to time, arise from a hard and fast adherence to another court-made rule, the general rule that judgments should not be disturbed after the term of their entry has expired. Created to avert the evils of archaic rigidity, this equitable procedure has always been characterized by flexibility which enables it to meet new situations which demand equitable intervention, and to accord all the relief necessary to correct the particular injustices involved in these situations. It was this flexibility which enabled courts to meet the problem raised when leave to file a bill of review was sought in a court of original jurisdiction for the purpose of impeaching a judgment which had been acted upon by an appellate court. Such a judgment, it was said, was not subject to impeachment in such a proceeding because a trial court lacks the power to deviate from the mandate of an appellate court. The solution evolved by the courts is a procedure whereby permission to file the bill is sought in the appellate court. The hearing conducted by the appellate court on the petition, which may be filed many years after the entry of the challenged judgment, is not just a ceremonial gesture. The petition must contain the necessary averments, supported by affidavits or other acceptable evidence; and the appellate court may in the exercise of a proper discretion reject the petition, in which case a bill of review cannot be filed in the lower court. *National Brake Co.* v. *Christensen*, 254 U. S. 425, 430–433.

We think that when this Court, a century ago, approved this practice and held that federal appellate courts have the power to pass upon, and hence to grant or deny, petitions for bills of review even though the petitions be presented long after the term of the challenged judgment has expired, it settled the procedural question here involved. *Southard* v. *Russell*, 16 How. 547.[4] To reason otherwise would be to say that although the Circuit Court has the power to act after the term finally to deny relief, it has not the power to act after the term finally to grant relief. It would, moreover, be to say that even in a case where the alleged fraud was on the Circuit Court itself, the relevant facts as to the fraud were agreed upon by the litigants, and the Circuit Court concluded relief must be granted, that Court nevertheless must send the case to the District Court for decision. Nothing in reason or precedent requires such a cumbersome and dilatory procedure. Indeed the whole history of equitable procedure, with the traditional flexibility which has enabled the courts to grant all the relief against judgments which the equities require, argues against it. We hold, therefore, that the Circuit Court on the record here presented[5] had



[4] See also *Tyler* v. *Magwire*, 17 Wall. 253, 283: "Repeated decisions of this court have established the rule that a final judgment or decree of this court is conclusive upon the parties, and that it cannot be re-examined at a subsequent term, *except in cases of fraud*, as there is no act of Congress which confers any such authority." (Italics supplied.)

[5] We do not hold, and would not hold, that the material questions of fact raised by the charges of fraud against Hartford could, if in dispute, be finally determined on ex parte affidavits without examination and cross-examination of witnesses. It should again be emphasized that Hartford has never questioned the accuracy of the various documents which indisputably show fraud on the Patent Office and the Circuit Court, and has not claimed, either here or below, that a trial might bring forth evidence to disprove the facts as shown by these documents. And insofar as a trial would serve to bring forth additional evidence showing that Hazel was not diligent in uncovering these facts, we already have pointed out that such evidence would not in this case change the result.

Moreover, we need not decide whether, if the facts relating to the fraud were in dispute and difficult of ascertainment, the Circuit Court

both the duty and the power to vacate its own judgment and to give the District Court appropriate directions.

The question remains as to what disposition should be made of this case. Hartford's fraud, hidden for years but now admitted, had its genesis in the plan to publish an article for the deliberate purpose of deceiving the Patent Office. The plan was executed, and the article was put to fraudulent use in the Patent Office, contrary to law. U. S. C., Title 35, § 69; *United States* v. *American Bell Telephone Co.*, 128 U. S. 315. From there the trail of fraud continued without break through the District Court and up to the Circuit Court of Appeals. Had the District Court learned of the fraud on the Patent Office at the original infringement trial, it would have been warranted in dismissing Hartford's case. In a patent case where the fraud certainly was not more flagrant than here, this Court said: "Had the corruption of Clutter been disclosed at the trial . . ., the court undoubtedly would have been warranted in holding it sufficient to require dismissal of the cause of action there alleged for the infringement of the Downie patent." *Keystone Driller Co.* v. *Excavator Co.*, 290 U. S. 240, 246; cf. *Morton Salt Co.* v. *G. S. Suppiger Co.*, *supra*, 493, 494. So, also, could the Circuit Court of Appeals have dismissed the appeal had it been aware of Hartford's corrupt activities in suppressing the truth concerning the authorship of the article. The total effect of all this fraud, practiced both on the Patent Office and the courts, calls for nothing less than a complete denial of relief to Hartford for the claimed infringement of the patent thereby procured and enforced.

Since the judgments of 1932 therefore must be vacated, the case now stands in the same position as though Hartford's corruption had been exposed at the original trial.

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here should have held hearings and decided the case or should have sent it to the District Court for decision. Cf. *Art Metal Works* v. *Abraham & Strauss*, *supra*, Note 1.



In this situation the doctrine of the *Keystone* case, *supra*, requires that Hartford be denied relief.

To grant full protection to the public against a patent obtained by fraud, that patent must be vacated. It has previously been decided that such a remedy is not available in infringement proceedings, but can only be accomplished in a direct proceeding brought by the Government. *United States* v. *American Bell Telephone Co.*, *supra*.

The judgment is reversed with directions to set aside the 1932 judgment of the Circuit Court of Appeals, recall the 1932 mandate, dismiss Hartford's appeal, and issue mandate to the District Court directing it to set aside its judgment entered pursuant to the Circuit Court of Appeals' mandate, to reinstate its original judgment denying relief to Hartford, and to take such additional action as may be necessary and appropriate.

*Reversed.*

Mr. Justice Roberts:

No fraud is more odious than an attempt to subvert the administration of justice. The court is unanimous in condemning the transaction disclosed by this record. Our problem is how best the wrong should be righted and the wrongdoers pursued. Respect for orderly methods of procedure is especially important in a case of this sort. In simple terms, the situation is this. Some twelve years ago a fraud perpetrated in the Patent Office was relied on by Hartford in the Circuit Court of Appeals. The court reversed a judgment in favor of Hazel, decided that Hartford was the holder of a valid patent which Hazel had infringed and, by its mandate, directed the District Court to enter a judgment in favor of Hartford. This was done and, on the strength of the judgment, Hartford and Hazel entered into an agreement of which more hereafter. So long as that judgment stands unmodified, the agreement of the parties will be unaffected by anything involved in the suit under discussion. Hazel concededly now

desires to be in a position to disregard the agreement to its profit.

The resources of the law are ample to undo the wrong and to pursue the wrongdoer and to do both effectively with due regard to the established modes of procedure. Ever since this fraud was exposed, the United States has had standing to seek nullification of Hartford's patent.[1] The Government filed a brief as *amicus* below and one in this court. It has elected not to proceed for cancellation of the patent.[2]

It is complained that members of the bar have knowingly participated in the fraud. Remedies are available to purge recreant officers from the tribunals on whom the fraud was practiced.

Finally, as to the immediate aim of this proceeding, namely, to nullify the judgment if the fraud procured it, and if Hazel is equitably entitled to relief, an effective and orderly remedy is at hand. This is a suit in equity in the District Court to set aside or amend the judgment. Such a proceeding is required by settled federal law and would be tried, as it should be, in open court with living witnesses instead of through the unsatisfactory method of affidavits. We should not resort to a disorderly remedy, by disregarding the law as applied in federal courts ever since they were established, in order to reach one inequity at the risk of perpetrating another.

In a suit brought by Hartford against Hazel in the Western District of Pennsylvania charging infringement of Hartford's patent No. 1,655,391, a decree was entered against Hartford March 31, 1930, on the ground that Hazel had not infringed. On appeal, the Circuit Court

[1] *United States* v. *American Bell Telephone Co.*, 128 U. S. 315; 167 U. S. 224, 238.

[2] The facts with respect to the fraud practiced on the Patent Office have been known for some years.



of Appeals filed an opinion, May 5, 1932, reversing the judgment of the District Court and holding the patent valid and infringed. On Hazel's application, the time for filing a petition for rehearing was extended five times. On July 21, 1932, Hazel entered into a general settlement and license agreement with Hartford respecting the patent in suit and other patents, which agreement was to be effective as of July 1, 1932. Hazel filed no petition for rehearing and, on July 30, 1932, the mandate of the Circuit Court of Appeals went to the District Court. Pursuant to the mandate, that court entered its final judgment against Hazel for an injunction and an accounting. No such accounting was ever had because Hazel and Hartford had settled their differences.

November 19, 1941, Hazel presented to the Circuit Court of Appeals its petition for leave to file in the District Court a bill of review. Attached was the proposed bill. Affidavits were filed by Hazel and Hartford. The Circuit Court of Appeals heard the matter and made an order denying the petition for leave to file, holding that any fraud practiced had been practiced on the Circuit Court of Appeals and, therefore, that court should itself pass upon the question whether the mandate should be recalled and the case reopened. Leave was granted to Hazel to amend its petition to seek relief from the Circuit Court of Appeals. The order provided for an answer by Hartford and for a hearing and determination by the Circuit Court of Appeals.

The Circuit Court of Appeals, on the basis of the amended petition, the answer, and the affidavits, denied relief on the grounds: (1) that the fraud had not been effective to influence its earlier decision; (2) that the court was without power to deal with the case as its mandate had gone down and the term had long since expired; (3) that Hazel had been negligent and guilty of inexcusable delay in presenting the matter to the court; and

(4) that the only permissible procedure was in the District Court, where the judgment rested, by bill in equity in the nature of a bill of review. One judge dissented, holding that the court had power (1) to recall the cause; (2) to enter upon a trial of the issues made by the petition and answer, and (3) itself to review and revise its earlier decision, enter a new judgment in the case on the corrected record and send a new mandate to the District Court.

As I understand the opinion of this court, while it reverses the decision below, it only partially adopts the view of the dissenting judge, for the holding is: (1) that the court below has power at this date to deal with the matter either as a new suit or as a continuation of the old one; (2) that it can recall the case from the District Court; (3) that it can grant relief; (4) that it can hear evidence and act as a court of first instance or a trial court; (5) that such a trial as it affords need not be according to the ordinary course of trial of facts in open court, by examination and cross-examination of witnesses, but that the proofs may consist merely of ex parte affidavits; and (6) that such a trial has already been afforded and it remains only, in effect, to cancel Hartford's patent.

I think the decision overrules principles settled by scores of decisions of this court which are vital to the equitable and orderly disposition of causes,—principles which, upon the soundest considerations of fairness and policy, have stood unquestioned since the federal judicial system was established. I shall first briefly state these principles. I shall then as briefly summarize the reasons for their adoption and enforcement and, finally, I shall show why it would not be in the interest of justice to abandon them in this case.

1. The final and only extant judgment in the litigation is that of the District Court entered pursuant to the mandate of the Circuit Court of Appeals. The term of the



District Court long ago expired and, with that expiration, all power of that court to reexamine the judgment or to alter it ceased, except for the correction of clerical errors. The principle is of universal application to judgments at law,[3] decrees in equity,[4] and convictions of crime, though, as respects the latter, its result may be great individual hardship.[5] The rule might, for that reason, have been relaxed in criminal cases, if it ever is to be, for there, in contrast to civil cases, no other judicial relief is available.

In the promulgation of the Federal Rules of Civil Procedure this court took notice of the fact that terms of the district court vary in length and that the expiration of

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[3] *Bank of United States* v. *Moss*, 6 How. 31, 38; *Roemer* v. *Simon*, 91 U. S. 149; *Phillips* v. *Negley*, 117 U. S. 665, 672, 678; *Hickman* v. *Fort Scott*, 141 U. S. 415; *Tubman* v. *Baltimore & Ohio R. Co.*, 190 U. S. 38; *Wetmore* v. *Karrick*, 205 U. S. 141, 151–2; *In re Metropolitan Trust Co.*, 218 U. S. 312, 320; *Delaware, L. & W. R. Co.* v. *Rellstab*, 276 U. S. 1, 5; *Realty Acceptance Corp.* v. *Montgomery*, 284 U. S. 547, 549.

[4] *Cameron* v. *McRoberts*, 3 Wheat. 591; *Sibbald* v. *United States*, 12 Pet. 488, 492; *Washington Bridge Co.* v. *Stewart*, 3 How. 413, 426; *Central Trust Co.* v. *Grant Locomotive Works*, 135 U. S. 207; *Wayne Gas Co.* v. *Owens-Illinois Co.*, 300 U. S. 131, 136; *Sprague* v. *Ticonic Bank*, 307 U. S. 161, 169.

[5] *United States* v. *Mayer*, 235 U. S. 55, 67. In this case one Freeman was convicted in the District Court. After he had taken an appeal to the Circuit Court of Appeals he filed, after the term had expired, a motion to set aside the judgment on the ground that a juror wilfully concealed bias against the defendant when examined on his *voir dire*. After hearing this motion the district judge found as a fact that the juror had been guilty of misconduct and that the defendant and his counsel neither had knowledge of the wrong nor could have discovered it earlier by due diligence. The district judge was in doubt whether, after the expiration of the term, he had power to deal with the judgment of conviction. The Circuit Court of Appeals certified the question to this court which, in a unanimous opinion, rendered after full argument by able counsel, held in accordance with all earlier precedents that, even in a case of such hardship, the District Court had no such power.

the term might occur very soon, or quite a long time, after the entry of a judgment. In order to make the practice uniform, Rule 60–B provides: "On motion the court, upon such terms as are just, may relieve a party or his legal representative from a judgment, order, or proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect. The motion shall be made within a reasonable time, *but in no case exceeding six months after such judgment, order, or proceeding was taken.* . . . This rule does not limit the power of a court (1) to entertain an action to relieve a party from a judgment, order, or proceeding. . . ." Thus there has been substituted for the term rule a definite time limitation within which a district court may correct or modify its judgments. But the salutary rule as to finality is retained and, after the expiration of six months, the party must apply, as heretofore, by bill of review,—now designated a civil action—to obtain relief from a judgment which itself is final so far as any further steps in the original action are concerned.

The term rule applies with equal force to an appellate court. Over the whole course of its history, this court has uniformly held that it was without power, after the going down of the mandate, and the expiration of the term, to rehear a case or to modify its decision on the merits.[6] And this is equally true of the circuit courts of appeal.[7]

[6] *Hudson* v. *Guestier*, 7 Cr. 1; *Jackson* v. *Ashton*, 10 Pet. 480; *Sibbald* v. *United States*, *supra*, 492; *Washington Bridge Co.* v. *Stewart*, *supra*; *Brooks* v. *Railroad Co.*, 102 U. S. 107; *Barney* v. *Friedman*, 107 U. S. 629; *Hickman* v. *Fort Scott*, *supra*, 419; *Bushnell* v. *Crooke Mining Co.*, 150 U. S. 82.

[7] *Ex parte National Park Bank*, 256 U. S. 131. "That court was powerless to modify the decree after the expiration of the term at which it was entered. If the omission in the decree had been adequately called to the court's attention during the term it would doubtless have corrected the error complained of; or relief might have been sought in this court by a petition for a writ of certiorari. The bank failed to avail itself of remedies open to it." (p. 133.) The circuit courts of appeal have uniformly observed the rule thus announced. *Hart* v. *Wiltsee*, 25 F. 2d 863; *Nachod* v. *Engineering & Research Corp.*, 108 F. 2d 594; *Montgomery* v. *Realty Acceptance Corp.*, 51 F. 2d 642; *Foster Bros. Mfg. Co.* v. *Labor Board*, 90 F. 2d 948; *Wichita Royalty Co.* v. *City National Bank*, 97 F. 2d 249; *Hawkins* v. *Cleveland, C., C. & St. L. Ry. Co.*, 99 F. 322; *Walsh Construction Co.* v. *U. S. Guarantee Co.*, 76 F. 2d 240; *Waskey* v. *Hammer*, 179 F. 273.



The court below, unless we are to overthrow a century-and-a-half of precedents, lacks *power* now to revise its judgment and lacks *power* also to send its process to the District Court and call up for review the judgment entered on its mandate twelve years ago.[8] No such power is inherent in an appellate court; none such is conferred by any statute.

2. The Circuit Court of Appeals is without authority either to try the issues posed by the petition and answer on the affidavits on file, or, to do as the dissenting judge below suggests, hold a full-dress trial.

The federal courts have only such powers as are expressly conferred on them. Certain original jurisdiction is vested in this court by the Constitution. Its powers as an appellate court are those only which are given by statute.[9]

The circuit courts of appeal are creatures of statute. No original jurisdiction has been conferred on them. They exercise only such appellate functions as Congress has granted. The grant is plain. "The circuit courts of appeal shall have *appellate jurisdiction* to review by appeal final decisions . . . in the district courts . . ."[10] Nowhere is there any grant of jurisdiction to try cases, to

[8] *Sibbald* v. *United States*, *supra*, 492; *Roemer* v. *Simon*, 91 U. S. 149; *In re Sanford Fork & Tool Co.*, 160 U. S. 247.

[9] *Ex parte Bollman*, 4 Cr. 75, 93.

[10] Judicial Code § 128 as amended; 28 U. S. C. 225.