

an accounting with an authorized agent of the plaintiff for the damages claimed in this action. To these, plaintiffs file eight replications. In two of them they set out and aver that on the thirteenth of March, 1860, nearly a year before they acquired their joint title to the invention alleged to have been invaded, the defendants purchased the seven sewing-machines, detailed in their declaration, from parties unknown to and with whom plaintiff had no connection, and that they thereafter used them as set forth and alleged in their declaration.

Possibly there may be some pertinency in these two replications; but if so this court is unable to see it. No recovery can be had in this suit for any infringement of the plaintiffs' patent before they acquired their title thereto. The defendants raise no question as to the validity of plaintiffs' patent, nor do they deny their title, or the alleged use thereof. Their defense is that they have accorded with and paid, or secured to be paid to an authorized agent, the damages claimed therein. This is the issue tendered by the defendants' special pleas. The replication is an effort to go behind the case made by the declaration, and add another and different cause of action. To these replications defendants demur, and we think the demurrer is well taken. But the case will proceed to trial on the other issues made by the pleading. This court, however, thinks that now, after the lapse of 21 years, 4 months, and 26 days since its institution, the case might be amicably adjusted, without offending the court or doing violence to the rights of the parties.

---

**POAGE v. MCGOWAN and others.\***

(Circuit Court, S. D. Ohio, W. D. March 5, 1883.)

**1. REISSUE INVALID BY REASON OF DEFECTIVE AFFIDAVIT—"INOPERATIVE AND INVALID" CONSTRUED.**

Where the affidavit, upon an application for the reissue of a patent, alleged simply that the patent sought to be reissued was not "fully valid and available," *held*, that that language is not the equivalent of the statutory requirement that the original must be "inoperative or invalid by reason of a defective or insufficient specification," and that a reissue predicated on such an affidavit is invalid.

**2. Reissue No. 5,544, for improvement in water tanks for railways, *held* invalid.**

\*Reported by J. C. Harper, Esq., of the Cincinnati bar

In Equity. Suit on reissued letters patent No. 5,544, granted to the McGowan Pump Company. The original patent was No. 63,418, issued to John Morton for an improvement in water-tanks for railways.

*L. M. Hosea*, for complainant.

*Stem & Peck*, for respondents.

BAXTER, J. Complainant complains of an infringement by defendants of a patent which he claims to own. His prayer is for an injunction and an account. The original, of which complainant's patent is a second reissue, was issued on the second of April, 1867. It was reissued September 5, 1871, and again on August 1, 1873. The defendants, among other defenses, deny the validity of the reissue sued on. A reissue may be had when the original "is inoperative or invalid by reason of a defective or insufficient specification, when the same arises from inadvertence, accident, or mistake, without any fraudulent or deceptive intention." They are obtained, as originals, upon petition and affidavit of the applicants. These set forth the grounds upon which the applicant demands either the original or reissued patent.

A petition and affidavit were filed upon which the reissued patent sued on herein was predicated. But the affidavit does not affirm that the original or the first reissue was either inoperative or invalid, but in lieu of this statutory requirement the affidavit alleges that the same was not "fully valid and available." The language thus employed is not the equivalent of that prescribed by the statute; it is an evasion, declared by this court in *Whitely v. Swayne*, 4 Fisher, 117, to be insufficient to support a reissued patent. For a full discussion of the question reference may be had to Judge LEAVITT'S opinion in that case. See, also, the following: *Giant Powder Co. v. Cal. Vigoré Powder Co.* 18 O. G. 1339; *Twain v. Ladd*, 19 O. G.; *Miller v. Bridgeport Brass Co.* 21 O. G. 201; and *James v. Campbell*, 21 O. G. 341.

The complainant's reissued patent, tested by these adjudications, was issued without authority of law, and is invalid. His bill will, therefore, be dismissed, with costs.

POPE MANUF'G Co. v. MARQUA and others.\*

(Circuit Court, S. D. Ohio, W. D. March 5, 1883.)

1. REISSUES INVALID BECAUSE OF UNREASONABLE DELAY IN APPLYING FOR THEM.  
On demurrer to bill of complaint, upon reissued patents, one of which was reissued 13 and the other 11 years after the originals were issued, *held*, that the right to have the patents reissued had been abandoned and lost by unreasonable delay, and that the reissues are, therefore, invalid.
2. SUITS ON PATENTS—MULTIFARIOUSNESS OF BILL.  
When the bill of complaint seeks relief upon two patents and fails to show that they are capable of conjoint use or have been in fact so used by defendants, *quære*, whether the bill is multifarious.
3. Reissues Nos. 7,972 and 8,252, for improvements in velocipedes, *held* invalid.

In Equity. Suits on reissues Nos. 7,972 and 8,252, for improvements in velocipedes. The original patents were Nos. 59,915 and 46,705, respectively.

*Coburn & Thacher*, for complainant.

*Stem & Peck* and *Wood & Boyd*, for respondents.

BAXTER, J. This is a bill to restrain further infringement and recover for past infringement of two reissued patents. The original of one of them was issued on the seventh of March, 1865, and was reissued May 23, 1878. The original of the other was issued twentieth December, 1866, and was reissued November 27, 1877. The bill is demurred to.

Complainant fails to show by his bill that the two inventions alleged to have been infringed are capable of conjoint use, or that they have in fact been so used by defendant. For the want of this averment it is insisted that the bill is multifarious, etc. 3 Fisher, 63; 6 Fisher, 286; and *Gamewell, etc., Co. v. City of Chillicothe*, 7 FED. REP. 354-5.

I am inclined to think the demurrer is well taken. But in view of another question raised by the demurrer, which is clearly fatal, I have not fully considered, nor have I deemed it necessary to decide, whether the bill is or is not multifarious.

One of the patents was reissued 13 and the other 11 years after the original. The right to this reissue had been abandoned and lost by unreasonable delay. *Bantz v. Frantz*, 105 U. S. 160, and *Miller v. Bridgeport Brass Co.* 104 U. S. 350, decided at the last term of the United States supreme court. The reissued letters sued on are therefore invalid. Complainant's bill will be dismissed, with costs.

\*Reported by J. C. Harper, Esq., of the Cincinnati bar.