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 28, 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.

WALLERTON *v.* SNOW and others.

(Circuit Court, D. Kansas. November 28, 1882.)

1. EQUITY—PRE-EMPTION—GOVERNMENT PATENTS.
   By joint resolution of April 10, 1869, congress provided that a *bona fide* settler upon certain lands known as the "Osage ceded lands," in Kansas, should have a right to purchase on certain terms. The defendant, Snow, was such a settler, and, having the right to purchase under said joint resolution, he made the requisite proof and tender of the purchase money to complete such purchase. *Held*, that he was entitled to a patent from government, and has an equity in the land and improvements thereon which he is at liberty to sell and convey.
2. SAME—LOCAL LAND-OFFICER.
   The refusal of a local land-officer to receive the purchase money, on the ground that it was too late to give notice to others who were supposed to have an adverse claim, will not defeat such settler's rights.
3. SAME—RIGHTS OF SUBSEQUENT PURCHASERS.
   Where one holding an equitable title as above conveys that equity and gives up possession to another, who agrees to pay therefor when the grantor's equity shall have ripened into a legal title, such purchaser will not be allowed to make use of the possession so obtained to perfect a title in himself, and thus release himself from his liability to the party whose equity he has so purchased; and subsequent purchasers of land so acquired take whatever rights they have in the land, subject to the rights of the party in whom the equity thereto was first vested.

In Equity. On demurrer to bill.

The material allegations of the bill are, in substance, as follows:

(1) On the twenty-ninth day of August, 1876, one Stephen Hardin filed his declaratory statement in the proper local land-office for pre-emption upon the quarter sections of land now in controversy, and on the twenty-second of December following he made proof and payment, under the act of congress of August 11, 1876, (19 St. 127,) and obtained the usual certificate and receipt.

(2) Subsequently, on the first day of June, 1877, the said Hardin and his wife, being then in possession of the land, executed to complainant a mortgage to secure the sum of $1,000.

(3) Default having been made on the payment of said debt, suit was brought to foreclose the same, to which suit defendant Snow was made a party, but as to him the suit was dismissed, and decree of foreclosure, with the usual order of sale, was taken against the other defendants. At the sale under said decree the land was purchased by one Noble for complainant, to whom he subsequently made conveyance; but when possession under the master's deed was demanded, it was refused, the said Hardin having yielded possession to one Sherrill, who claimed to hold under defendant Snow.

(4) At the time of the foreclosure suit, the defendant Snow held a patent from the United States for the land in controversy. The complainant claims,