appeal from either the original or supplemental decree had expired. If, however, it be conceded that the charge of fraud is established as to the supplemental decree, and that the arrangement therein specified with respect to redemption was unauthorized and void, as I have already said, this would leave the original decree ordering a sale of the premises without redemption in full force to fix and determine the rights of the parties. When the bill of review was filed, both the original and supplemental decrees had by lapse of time become final and conclusive, unless attacked for fraud, and as to the original decree, no attempt has been made to charge fraud. It is said that Taylor and wife were not advised as to the terms of the supplemental decree respecting redemption until after the year had expired. If this were proved (I do not think that it is) it would not avail them, for they were bound to know what was done and spread upon record in a case to which they were parties. *Putnam* v. *Day*, 22 Wall. 60.

Whether the complainants have any cause of action against the respondent on account of a misappropriation of the proceeds of the crops grown upon the place during the year given for redemption, need not now be considered. It is enough for the present that I hold that the complainants have not shown themselves entitled to an injunction. In reaching this conclusion, I have not considered the question whether it was necessary for the complainants to obtain the leave of the court to file this bill of review, nor whether it was necessary that they should have performed the decree before being heard. See *Ricker* v. *Powell*, 100 U. S. 107, 108, and cases cited.

Motion for injunction denied.

SPARE *v.* HOME MUT. INS. CO.

(*Circuit Court, D. Oregon.* August 13, 1883.

1. LIMITATION UPON RIGHT TO SUE ON POLICY OF INSURANCE.
   A policy of insurance against fire, issued by the defendant, provided that a loss thereunder should be payable 60 days after proof thereof; and that a suit for the recovery of any claim under the policy should be brought within 12 months after the loss occurred. *Held*, that the 12 months did not commence to run until the loss was due and payable—the expiration of the 60 days after the proof of the same.
2. ASSIGNMENT OF POLICY AFTER A FIRE.
   A clause in a policy providing that the same shall be void if assigned after a fire, is illegal, and such assignment is valid, and carries with it the right to maintain a suit to correct a mistake therein.
3. MISTAKE IN POLICY—CORRECTION OF, IN EQUITY.
   The owners of a warehouse, being indebted to the plaintiff, agreed to insure the same against fire for his benefit, and accordingly agreed with the defendant for such insurance in their names, with loss payable to the plaintiff, but by mistake the plaintiff's name was written in the policy as the assured and owner of the property. A loss occurred within the period of the risk, and after proof of loss by the owners, and adjustment by the defendant, the former assigned the policy and their rights thereunder to the plaintiff. *Held*, on demurrer, that

the equity of the case was with the plaintiff, and he was entitled to have the contract reformed according to the true understanding and purpose of the parties thereto.

Suit in Equity to Reform a Policy of Insurance.

George H. Williams and *W. Scott Beebe*, for plaintiff.

Cyrus A. Dolph, for defendant.

DEADY, J. This suit is brought by a citizen of Oregon against a corporation formed under the laws of California, to reform a policy of insurance, and recover an alleged loss thereunder as reformed.

It appears from the bill that on July 26, 1881, Aaron and Ben Lurch were doing business as Lurch Bros., at Cottage Grove, Oregon, and were the owners of a warehouse there of not less than $1,000 in value, and that at and before said date they were indebted to the plaintiff in a sum exceeding $1,000, and to secure him in the payment of the same it was agreed that they should insure the warehouse against loss by fire for the sum of $900 in their own names, for his benefit, and that, in pursuance of said agreement, it was agreed between Lurch Bros. and the defendant that the latter would insure said property accordingly; that on July 26, 1881, the defendant delivered to said Lurch Bros. its policy of insurance on said warehouse against loss by fire for the period of one year, in the sum of $900,—describing it as "his one-story frame warehouse occupied by the assured for the storage of grain only,"—but that in the execution of the policy the plaintiff's name was by mistake inserted therein as the assured, instead of that of Lurch Bros., and the provision that the loss, if any, should be payable to the plaintiff was omitted therefrom; that on February 14, 1882, said warehouse was totally destroyed by fire, and on March 24th, thereafter, Lurch Bros. furnished the defendant with the proof of loss, and the same was duly adjusted by it at $900; and that the plaintiff was not aware of the mistake in the policy until after the loss, and Lurch Bros. have since assigned the same, together with all their rights thereunder, to the plaintiff.

The defendant demurs to the bill, and for cause thereof alleges (1) that the suit is not brought within the 12 months limited therefor by the policy; (2) that the policy was void from its inception; (3) that the policy became void by the assignment thereof to the plaintiff contrary to its terms; (4) that the plaintiff is not the real party in interest; and (5) that the plaintiff is not entitled to any relief against the defendant.

The policy is annexed to the bill, and to understand the particular grounds of the demurrer some of its voluminous clauses must be stated; as, for instance: The assured shall give immediate notice and proof of any loss. Such loss is to be paid in 60 days after due notice and proof of the same. If the policy is assigned before or after a fire the same shall be void. "That no suit for the recovery of any claim by virtue of this policy shall be sustained unless commenced within 12 months next after the loss shall have occurred;