CHAPIN *v.* SEARS and others.

(*Circuit Court, D. New Jersey.* December 20, 1883.)

1. BILL IN EQUITY FOR SETTLEMENT OF TITLE AND PARTITION—MULTIFARIOUSNESS.
   A bill in equity to determine and settle a disputed legal title, and for a partition of the land, is multifarious.
2. SAME—BILL FOR PARTITION RETAINED TILL TITLE IS SETTLED AT LAW.
   A bill for partition will not lie when the legal title is in dispute, or when it depends on doubtful facts or questions of law; and when one is filed and the pleadings or proofs show a dispute about the legal title of the real estate, the usual course is for a court of equity to retain the bill until the title is settled at law.

On Bill, etc.

James Buchanan, for the demurrer.

W. S. Logan, contra.

NIXON, J. The bill of complaint has been demurred to for multifariousness, and the demurrer must be sustained. It appears from the prayer and the allegations of the bill that the complainant has filed it for two objects: (1) to determine and settle a disputed legal title; and (2) for the partition of a tract of real estate. In other words, it asks the court to ascertain who are the owners of the property and then to divide it according to the interest of the parties as determined. Such a proceeding violates well-settled principles, and is against the practice of a court of chancery, unless the dispute is in regard to an equitable title. A bill for partition will not lie when the legal title is denied, or where it depends on doubtful facts or questions of law. See *Dewitt* v. *Ackerman*, 2 C. E. Green, 215; *Manners* v. *Manners*, 1 Green, Ch. 384. Where one is filed, and the pleadings or proofs show a dispute about the legal title of the real estate to be divided, the usual course is for a court of equity to retain the bill until the title is settled at law. *Hay* v. *Estell*, 3 C. E. Green, 251; *Obert* v. *Obert*, 2 Stockt. 98; *Wilkin* v. *Wilkin*, 1 Johns. Ch. 111; *Coxe* v. *Smith*, 4 Johns. Ch. 271. The counsel for defendant, on the argument, suggested that he was shut up to this course because he was in possession of the premises and hence could not bring an action for ejectment to try the title. But provision is made for such a case by an act of the legislature of the state of New Jersey entitled "An act to compel the determination of claims to real estate in certain cases, and to quiet the title to the same," approved March 2, 1870. Rev. St. N. J. 1189. By the terms of that act all persons in the peaceable possession of lands in New Jersey are authorized to bring and maintain a suit in chancery to settle the title to said lands, and to clear up all doubts and disputes concerning the same; the fifth section reserving to either party the right to apply to the court for an issue at law to try the validity of the claims or to settle the facts. My first impression was to allow complainant

to amend his bill, conforming it to the requirements of the statute when such a suit is brought, and to try the title in the pending action. But upon reflection I am of the opinion that the more proper course is to order the present bill to stand as a simple partition bill, and to give leave to the complainant, if he is in the peaceable possession of the premises, to institute another suit, under the provisions of the state statute, to ascertain and determine the title to the land. And it is so ordered.

NORTHERN R. R. *v.* OGDENSBURG & L. C. R. CO.

(*Circuit Court, D. New Hampshire.* December 18, 1883.)

EQUITY PLEADING—CROSS-BILL—DEMURRER—ANSWER—REFORMATION OF CONTRACT.

It is not necessary to file a cross-bill to reform a contract which is already before the same court in equity at the suit of the other party; but the defendant should plead the facts relied upon by way of answer, even if they vary a written contract, and the court will enforce the contract as it is found to have been made or as it ought to be reformed, as the case may be.

In Equity.

J. H. Benton, Jr., for complainants.

S. Bartlett, for defendants.

LOWELL, J. The Ogdensburg & Lake Champlain Railroad Company was one of four parties to a contract made in 1871, by which it was intended to secure for 19 years the service of steam-boats to bring freight to Ogdensburg. The Ogdensburg Company, having in 1870 leased its road for 20 years to two of the other companies, parties to the contract, had only an indirect and reversionary interest in the arrangement; but that company agreed to advance, for the purpose of the contract, the sum of $600,000, which was to be repaid to it by the several railroad companies, parties to the contract of the third part, in the proportions of their gross receipts from the business brought to them by the line of steam-boats. The Ogdensburg Company afterwards made this advance. The contract failed of its full effect and came to an end in 1876, without fault on the part of any of the parties to it.

At this time the Ogdensburg Company had received payment of only about one-third of its advance of $600,000. That company has since filed bills against some or all of the railroad companies, parties to the contract of the third part. A more particular statement of the contract will be found in *Ogdensburg & L. C. R. Co.* v. *Boston & L. R. Co.* 4 FED. REP. 64. In that case, the court, consisting of Mr. Justice CLIFFORD and the circuit judge, held on demurrer that the contract to repay the advances of the Ogdensburg Company was a several one by each of the parties of the third part, and that the