

DEDERICK *v.* FARQUHAR.

*Circuit Court, E. D. Pennsylvania.*

June 28, 1889.

PLEADING—AMENDMENT—LACHES.

Plaintiff had filed an amendment to his bill, after the expiration of the patent sued on, introducing new causes of action, and moved to extend the time for taking testimony. He had allowed three years to elapse in total inactivity on account of the alleged unsettled state of the law. *Held*, the delay not being sufficiently excused, the amendment will be stricken off and the motion dismissed.

In Equity. Motion to strike off amendment, and to extend time for taking testimony.

*Church & Church*, for complainant.

*W. G. King*, for defendant.

BUTLER, J. The amendment was filed without hearing, subject to a motion to strike off. The patent had expired. New causes of action are embodied in the amendment. If suit were brought upon them it could not be sustained. The expiration of the patent terminated the right to sue here. Whether we could obtain jurisdiction by their introduction into the pending suit is open to doubt. The question, however, need not be decided. An examination of the record has satisfied me that if the court may allow such introduction it would be an unwise exercise of its discretion to do so. The suit was commenced in the summer of 1886, and nothing whatever has been done to prepare it for trial. The complainant's recent affidavit does not show a sufficient excuse for this delay. The supposed unsettled state of the law did not constitute a reason for total inaction during all this time. If complainant did not believe he had a cause of suit which could be sustained, he should not have sued. If he did so believe, he should at least have prepared for trial. The suit is virtually dead, and might be stricken off for want of prosecution. We should not, therefore, breathe new life into it by extending the time to take testimony, and allowing the amendment, thus depriving the respondent of the opportunity to try before a jury, which now seems to be his right as respects the new causes of action, and virtually as respects the old. The amendment must be stricken off, and the motion to extend be disallowed.