

Meyer *v.* Pritchard.

termination, or that it was decided, or that its decision was in any manner necessary to the judgment as rendered.

Mr. Robert Palethorp for the motion. *Mr. Samuel Gormley* and *Mr. W. S. Price* opposing.

MEYER *v.* PRITCHARD.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

No. 171. October Term, 1876.—Decided January 15, 1877.

The surrender of letters patent for an invention extinguishes them; and if made after appeal to this court, no substantial controversy remains.

MOTION TO DISMISS. The case is stated in the opinion.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

In *Moffitt v. Garr*, 1 Black, 273, we held that a surrender of a patent "means an act which, in the judgment of law, extinguishes the patent. It is a legal cancellation of it, and hence can no more be the foundation for the assertion of a right, after the surrender, than could an act of Congress which has been repealed. . . . The reissue of the patent has no connection with or bearing upon antecedent suits; it has as to subsequent suits. The antecedent suits depend upon the patent existing at the time they were commenced, and unless it exists and is in force at the time of trial and judgment the suits fail." To the same effect is *Reedy v. Scott*, 23 Wall. 352. We are satisfied with this ruling.

Since the appeal in this case, the appellants, who represent the original patentees, have surrendered the patent upon which the suit was brought and obtained a reissue. This fact is conceded. If we should hear the case and reverse the decree below, we could not decree affirmative relief to the appellants, who were the complainants below, because the patent upon which their rights depend has been cancelled. There is no longer any "real or substantial controversy between those who appear as parties to the suit" upon the issues which have been joined, and for that reason the appeal is dismissed, upon the authority of *Cleveland v. Chamberlain*, 1 Black, 419, and *Lord v. Veazie*, 8 How. 250.

The cause is remanded to the Circuit Court to be dealt with as law and justice may require.

Mr. George Harding and *Mr. J. Hervey Ackerman* for the motion. *Mr. B. F. Thurston* and *Mr. S. D. Law* opposing.