

REISSNER ET AL. V. ANNESS ET AL.  
{13 O. G. 7.}

Circuit Court, D. New Jersey. 1877.

PLEADING IN EQUITY—REPLICATION TO  
PLEA—EFFECT OF—TAKING TESTIMONY—RIGHT  
TO OPEN AND CLOSE.

1. Where a replication is put in to a plea, the parties proceed to the examination of witnesses in the same way as in case of a replication to an answer.
2. This course having been prescribed by order of the court, a motion to revoke was denied.

{This was a bill in equity by Christoph Reissner and others against S. W. Anness and others for the infringement of reissued letters patent No. 7,751, granted to J. A. Fray June 19, 1877, the original letters patent, No. 156,149, having been granted October 20, 1874. The defendants filed a plea containing three separate and independent defenses. The court ruled that they must elect which one they intended to stand by and strike out the other two. Case No. 11,686. They elected to stand on their second defense, which was that new matter had been introduced into the reissue which was not shown and described in the original patent. An order was made as to the taking of testimony, which order the defendants now attempt to have revoked.]

B. F. Bee, for complainants.

A. Briesen, for defendants.

NIXON, District Judge. This is an application by the defendants to revoke the order, made by the court November 30, 1877, as to the taking of testimony, and to substitute therefor a new order giving to the defendants the right to begin and close the proofs.

The application is denied. The first order is the correct one. Where a replication is put in to a plea, the

parties proceed to the examination of witnesses in the same way as in case of a replication to an answer. The force of the replication in such a case is the admission that the plea is sufficient in itself, but is not true in fact, and the testimony is to be taken as to its truth. If found true on the weight of evidence, a dismissal of the bill on the hearing is a matter of course. See *Hughes v. Blake*, 6 Wheat. [19 U. S.] 472.

{For final decision, in favor of plaintiff, see Case No. 11,688.

{For another case involving this patent, see *Reissner v. Sharp*, Case No. 11,689.}

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