Case No. 12,470b.

SCHNEIDER v. THILL.

[5 Ban. & A. 595.][1]

Circuit Court, E. D. New York.   Aug., 1880.

EQUITY–PRACTICE–REHEARING–PLEADING–AMENDMENT.

It appearing doubtful whether, under the allegations of the answer, a decree adverse to one of the complainant's patents could probably be passed, upon the ground on which the court had held the said patent to be void, a rehearing of the case was ordered, so far as it related to the said patent, with liberty to the defendant to apply for leave to amend the answer.

[This was a bill in equity by Bennett V. Schneider against Francis Thill, for the infringement of reissued letters patent No. 7,511, granted to Carl Votti February 13, 1877, the original letters patent, No. 182,973, having been granted October 3, 1876.]

George Gifford, A. J. Todd, and C. H. Watson, for complainant.

Edwin H. Brown, John J. Allen, and Robert Payne, for defendant.

BENEDICT, District Judge. My attention having been directed by this motion to the averments of the answer, it appears doubtful, to say the least, whether, in the present state of the pleadings, a decree adverse to the Votti patent could properly be passed upon the ground stated in the opinion filed herein. Schneider v. Thill [Case No. 12,470a]. It will be advisable, therefore, and perhaps avoid the necessity of an examination of the other grounds of defense, to direct a rehearing of the case so far as it relates to the Votti patent, with liberty to the defendant to apply for leave to amend the answer. I see no reason for a further hearing in regard to the mold patents. An order may, therefore, be entered directing a rehearing of the cause upon the issues raised in regard to the

Votti [719] patent, with leave to the defendant to apply for permission to amend the answer.

{For other cases involving this patent, see note to Case No. 12,469.}

[1] {Reported by Hubert A. Banning, Esq., and Henry Arden, Esq., and here reprinted by permission.}