

ADAMS & WESTLAKE MANUF'G CO. V.  
MEYROSE AND ANOTHER.\*

*Circuit Court, E. D. Missouri.* April 27, 1882.

PATENTS—PLEADING—DEMURRER.

The question of whether or not reissued letters patent sued on in an action for an infringement are broader and cover things not comprehended by original letters patent, upon which they are based, is not examinable on demurrer to the bill where the original letters patent are not set out in nor attached as an exhibit to the bill, and profert thereof is not made.

Demurrer to Bill.

This is a suit for an infringement of reissued letters patent for a new and useful improvement in lanterns. The bill states that the original letters patent were issued to one J. H. Miltmore August 8, 1865; that said patentee surrendered the same, and that reissued letters patent were issued to him on the ninth of April, 1867; that on the nineteenth of October, 1880, the complainant being the sole owner and assignee of said reissued letters patent, and the said patentee thereto consenting, surrendered said reissued letters patent, and made application for a reissue of the same, with an amended description and claim thereto attached; and that on the nineteenth day of October, 1880, the reissued letters patent of the United States sued on were issued and delivered to complainant. Profert of the last, but not of the first, reissued or original letters patent is made, and a copy of the letters patent sued on is annexed to the bill as Exhibit A.

The infringement is alleged in the following language:

“Yet the said defendants, well knowing the premises, as your orator believes, and without your orator’s consent or allowance, and without right, and in violation of the aforesaid rights of your orator, have, within the state

of Missouri and elsewhere in the United States, made, used, and vended, and are still making, using, and vending to others to be used, numbers of lanterns," etc.

In conclusion, the bill asks for as discovery for damages, and for an injunction.

The defendant demurred to the bill on the grounds, among others—

"That it is apparent from the letters patent and reissued thereof stated, and profert of which is by said bill made and taken as a part thereof, that said reissues, especially reissue No. 9,422, marked as Exhibit A to complainant's bill, is broader, and covers things not comprehended by letters patent No. 49,290, dated August 8, 1865, the original letters upon which said reissues are founded."

—And filed a copy of the original patent with the demurrer.

*Noble & Orrick* and *Coburn & Thatcher*, for complainant.

*Edward, J. O'Brien*, for defendants.

TREAT, D. J. As intimated at the hearing on the demurrer, the questions designed to be presented concerning the reissue are not before the court in such form as to enable a decision to be had. The defendant will, therefore, have to answer.

The demurrer is overruled, and leave given to answer within 10 days.

\* Reported by B. F. Rex, Esq., of the St. Louis bar.

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