

NAT. PUMP CYLINDER CO. *v.* GUNNISON.*Circuit Court, W. D. Pennsylvania.*

September 4, 1883.

PATENTS FOR INVENTIONS—CLAIM IN REISSUE
REPEATING CLAIM IN ORIGINAL PATENT.

Where the claim in a reissue, while differing verbally from the claim in the original patent, is substantially and in legal effect a mere repetition of that claim, the claim in the reissue may be sustained.

Gage v. Herring 2 Sup. Ct. Rep. 819; *Schillinger v. Greenway Brewing Co.* 17 FED. REP. 244, followed.

In Equity. *Sur* demurrer to bill.

John K. Hallock, for demurrer.

Mr. Taylor, *contra*.

ACHESON, J. *The first, second, and third* grounds of demurrer go to the entire bill of complaint, and, if sustained, would require the court to hold that the reissued letters patent are void *in toto* by reason 813 of the alleged unwarrantable expansion of the claim. But it has been authoritatively decided that the invalidity of a claim in a reissue does not impair the validity of a claim in the original patent which is repeated and separately stated in the reissued patent. *Gage v. Herring*, 23 O. G. 2119; [S. C. 2 Sup. Ct. REP. 819;] *Schillinger v. Greenway Brewing Co.* 24 O. G. 495; [S. C. 17 FED. REP. 244.] Now, in the present case, the second claim of the reissue, while differing verbally from the first claim of the original patent, is, it seems to me, substantially, and in legal effect, a mere repetition of that claim; and therefore, under the authorities cited, such second claim may be sustained. The *fourth* ground of demurrer is conceded.

And now, September 3, 1883, the fourth ground of demurrer is sustained, but the first, second, and

third grounds of demurrer are overruled, and leave is granted the defendant to answer within 30 days.

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