

his authority; that there is such repugnancy between the old and the new patent that it must be held, as a matter of legal construction, that the new patent is not for the same invention as that embraced and secured in the original patent."

This limitation upon the power of the court was substantially reasserted in *Russell v. Dodge*, 93 U. S. 460-464, and in *Ball v. Langles*, 102 U. S. 128.

In the case of *Kells v. McKenzie*, 9 FED. REP. 284, decided in 1881, we had occasion to examine all the cases up to that time, and then came to the conclusion that there was nothing in the statute or in the opinions of the supreme court to indicate that we were at liberty to review the action of the commissioner in this particular. Such, too, I understand to be the general principle of law, applicable not only to judgments of courts of competent jurisdiction, but to the determinations of all officers acting judicially. *Hancock Inspirator v. Jenks*, 21 FED. REP. 911. Whether, under the later opinions of the supreme court, this doctrine is modified to the extent of permitting us to institute an inquiry into the action of the commissioner, and to determine whether there was such accident, inadvertence, or mistake as authorized him to grant a reissue, it is unnecessary to decide, since it is clear to my mind that the first claim of this reissue cannot be supported upon any theory of the law.

In the case of *Kells v. McKenzie*, above referred to, we followed what seemed to be the tenor of the most recent decisions of the supreme court, and held that the validity of a reissued patent did not depend wholly upon the fact that the new features attempted to be secured thereby were suggested in the models, drawings, or specifications of the original, and hence that where a patentee, in his specifications, claimed as his invention a particular part of the machine, and his claims were all limited to that part, a reissue embracing other and distinct portions of the machine was not for the same invention, and was *pro tanto* void, although the designs accompanying the original patent showed all the features contained in the reissue. Subsequent cases in the supreme court indicate that the right to a reissue should be still further restricted; but the rule adopted in that case is quite a sufficient guide to us for the determination of this. In this connection, then, it becomes important to consider of what invention Bailey was endeavoring to secure the monopoly when he applied for his original patent. In his specifications he declares that his invention "relates to a new and improved method of constructing fire-plugs or hydrants; and the invention consists in operating a cylinder valve in a suitable case, and in the arrangement and combination of parts connected therewith, as hereinafter described." Words could hardly be chosen to indicate more clearly that his invention was that of a cylinder valve in a case fitted to receive it, and in the arrangement and combination of other parts of the hydrant connected therewith. The mere operation of a valve would not be patentable unless the

valve itself, or the combination of valve and case, were patentable. Nothing is said regarding a loose case having an end play, and the theory of plaintiffs, that the invention may be made to consist also "in a suitable case" by inserting a comma after the words cylinder valve, is too fanciful to be worthy of serious consideration.

Following this description of his invention is a reference to his drawing, in which A is said to represent the hydrant tube, B, the horizontal section connected with the water-main, C, a loose case around the hydrant tube for protecting the tube from dirt, etc., D, the cylinder valve, E, a rod having a screw-thread on its upper end, F, a sleeve-nut, G, the head of the hydrant, H, the stuffing box, etc. Having thus described his invention, in which a loose case is merely mentioned as one of the parts of the hydrant, and having no especial value except for protecting the tube from dirt, and in which no mention whatever is made of its having an up-and-down movement, the patentee claims: *First*, a hydrant or water-plug, constructed substantially as shown and described; that is to say, with the parts, A and B, connected together as shown, and with a cylinder valve and a waste-water valve, connected and operated in combination, substantially as herein specified. *Second*, the arrangement of the parts, A, B, valve, D, case, C, and stuffing box, H, as herein described, for the purpose specified. In the drawing attached to this original there is no indication that C has any up-and-down movement, as it rests at its lower end upon the horizontal main, and at its upper end is confined by a flange which would effectually prevent such movement. In the reissued patent the description, the specifications, the claims, and the drawing are all changed, and the loose case, C, with an entirely distinct and new function assigned to it, is thrust prominently forward as the leading feature of the invention. In his new specifications the patentee says that his invention "relates to improvements in the construction of fire-plugs or hydrants," but no mention is here made of its consisting of a cylinder valve in a suitable case, or of the combination suggested in the corresponding portion of the original specifications. C is first described as "a loose, *movable* case around the hydrant tube." After having at length described the entire hydrant substantially as before, he introduces the loose case, C, as a distinct feature of his invention in the following language:

"It will be observed that the casing, C, loosely rests upon the main, B, or upon a branch projecting upward from the same. This casing extends upward, enveloping the main portion of the water-pipe, A; at least that portion which is subterranean. Said casing extends upward and fits loosely about the plug or hydrant at the portion, A. Above the upper terminus of the casing, C, is provided the bead, *a*, upon the hydrant proper. Sufficient space is left between the bead, *a*, and the upper terminus of the casing, C, to permit of sufficient up-and-down play of the said casing, C, for the purpose which will hereafter more fully appear. This distance between the bead and casing may be adjusted to any described distance, thus lengthening or shortening it by means of its screw attachment at its base.

"The main function of the casing, C, is to prevent derangement of parts