EVANS v. CHAMBERS.

Case No. 4,555.

{2 Wash. C. C. 125;[1] 1 Robb, Pat. Cas. 7.}

Circuit Court, D. Pennsylvania. Oct. Term, 1807.

PATENTS—VALIDITY.

Action for a violation of a patent-right. If the allegations and suggestions in the petition for a patent are substantially recited in the patent, it will he sufficient; but the omission to do this will invalidate it.

{Cited in Hogg v. Emerson, 6 How. (47 U. S.) 481.}

This was an action for infringing the plaintiff's patent-right, to certain improvements made in the manufactory of wheat, &c. by means of a hopperboy. The petition, the patent, dated 18th December, 1790, and the specification, were read; with proof that the defendant had erected similar machinery in his mill without permission.

Hare and Binney, for plaintiff.

Mr. Rawle, for defendant.

A nonsuit was moved for on the following grounds. First, that the patent does not recite that a petition was presented, and the suggestions and allegations of which are recited in the patent. It begins with reciting, that the plaintiff "hath invented," &c. Second; the allegations and suggestions of the petition are not recited. Third; there is an interlineation in the patent and it is this alone which speaks of the hopperboy. This avoids the patent, as it will any deed. That it was interlined after executed, is to be presumed {Morris v. Vanderen} 1 Dall. 1 U. S.} 64. Fourth; it does not appear that the patent was recorded. Fifth; the patent is for

more than the discovery, and it is therefore void; Bull. N. P. 77. The discovery is only of the cross piece to the upright shaft for moving and cooling the flour; and it has been proved that the upright shaft, with a different kind of cross piece, had been used long before the date of this patent; so that the patent gives the exclusive use to that in which the plaintiff was not entitled to the exclusive property.

For the defendant, it was stated, that the law does not require that the presentation of a petition should be recited. Second; we have produced the petition, and the material suggestions are recited. Third; it is too late to object to the patent, on account of the interlineation, after it has been read. Fourth; the recording of the patent is merely directory to the officer. The right vests independent of it, by the express words of the act of 1790 [1 Stat. 109]. Fifth; the patent only grants a right to the upright shaft, and the other parts of the machinery, with the improvement of the hopperboy annexed. No person is precluded from using every part of the machine, without the newly invented hopperboy.

BY THE COURT. The second ground for a nonsuit is not to be gotten over. If the allegations and suggestions of the petition are substantially recited, it will be sufficient. But in this ease they are not. All the recitals in the patent refer to the elevators, and other parts of the mill machinery, except, that the use of the hopperboy is incidentally mentioned; without any description of its use, and the manner in which it is to work. But the petition gives a minute and full description of it, which substantially ought to have been recited; particularly in this case, where the patent does not in any manner refer to the petition which has been read. Not that we mean to say that such a reference was necessary, if the suggestion of the petition had been substantially recited. Nonsuit awarded.

[NOTE. For other cases involving this patent, see note to Evans v. Hettick, Case No. 4,562.]

[1] [Originally published from the MSS. of Hon. Bushrod Washington, Associate Justice of the Supreme Court of the United States, under the supervision of Richard Peters, Jr., Esq.]