UNITED STATES *v.* EVANS.

(*District Court, D. California.* April 3, 1884.)

PROCURING THE COMMISSION OF PERJURY— ELEMENTS OF THE CRIME — KNOWLEDGE.

To constitute the crime of procuring perjury to be committed, it is not enough that both the accused and the false witness knew the falsity of the statements sworn to, but the accused must also have known that the witness knew the statements to be false.

Indictment for Subornation of Perjury. On demurrer.

S. G. Hilborn, U. S. Atty., and *Carroll Cook*, Asst. U. S. Atty., for the United States.

A. P. Van Duzer and *J. J. De Haven*, for defendant.

HOFFMAN, J. The indictment, after the usual formal allegations, which seem to be quite sufficient, charges in substance that the defendant procured one Burnett to commit the crime of perjury by swearing to certain allegations contained in an affidavit made and subscribed by him on an application for an entry of certain timber lands. It avers that Burnett knew that these allegations were false, and it negatives them by averring what the facts were. It also avers that the defendant, when he procured Burnett to swear to these allegations, also knew that they were false. It does not aver that he knew that Burnett was aware of their falsehood. To sustain an indictment for procuring a person to commit perjury it is obviously necessary that perjury has in fact been committed. It cannot be committed unless the person taking the oath not only swears to what was false, but does so willfully and knowingly. He who procures another to commit perjury must not only know that the statements to be sworn to are false, but also that the person who is to swear to them knows them to be false; for unless the witness has that knowledge the intent to swear falsely is wanting, and he commits no perjury. It is therefore essential that the indictment should aver, not only that the statements made by the witness were false in fact, and that he knew them to be false, but also that the party procuring him to make those statements knew that they would be intentionally and willfully false on the part of the witness, and thus the crime of perjury would be committed by him.

The allegations of the indictment in this case are consistent with a belief on the part of the defendant that the party alleged to have been suborned supposed the statements he was expected to make to be true. In that case he would not be guilty of perjury, nor could the defendant be adjudged guilty of procuring him to commit perjury.

Demurrer sustained.

See *U. S.* v. *Dennee*, 3 Woods, 39; *Com.* v. *Douglass*, 5 Metc. 244; 2 Archb. Crim. Pr. & Pl. Pom. Notes, 1750; 2 Whart. Crim. Law, (8th Ed.) 1329.

BRADLEY and others *v.* DULL and others.

(Circuit Court, W. D. Pennsylvania. March 24, 1884.)

1. PATENTS FOR INVENTIONS—DEATH OF PATENTEE—TITLE VESTS IN ADMINISTRATOR.
   Under the act of July 8, 1870, and the Revised Statutes, upon the death of a patentee intestate, the title to the patent vests in his administrator, and not in his heirs.
2. SAME—CONNSTRUCTION OF PATENT.
   In the interpretation of a patent, the court, proceeding in a liberal spirit, should sustain the construction claimed by the patentee himself, if this can be done consistently with the language he has employed.
3. SAME—PATENT NO. 121,746—INFRINGEMENT.
   Letters patent No. 121,746, for an apparatus for drying sand and gravel, granted to Allen H. Bauman, December 12, 1871, construed, and the defendants *held* to infringe.

In Equity.

Bakewell & Kerr, for complainants.

George H. Christy, for defendants.

ACHESON, J. The grounds of defense are—*First*, that the plaintiffs have not shown title to the patent sued on; and, *secondly*, that there has been no infringement by the defendants.

1. The patent was granted on December 12, 1871, to Allen H. Bauman. He subsequently died intestate, and letters of administration upon his estate were duly issued to Reuben F. Bauman, who as administrator sold and assigned the patent to the plaintiffs. The defendants controvert the title thus acquired, maintaining that upon the death of the patentee, intestate, the patent became vested in his heirs, and therefore that the administrator was without authority to make sale and assignment thereof. The argument is based on the change in the patent law made by the twenty-second section of the act of July 8, 1870, (reproduced in section 4884 of the Revised Statutes,) whereby it is enacted that the patent shall contain "a grant to the patentee, his *heirs* or assigns," the previous legislation having provided for a grant to the patentee, his heirs, *administrators*, *executors*, or assigns. This change, in connection with some other provisions of the existing law, it is contended indicates an intention on the part of congress to secure the benefits of the invention to the heirs of the deceased patentee, in case of intestacy, to the exclusion of the administrator. An impressive argument was made by counsel in support of this view. But the contrary has just been decided in the first circuit in the case of *Shaw Relief Valve Co.* v. *City of New Bedford*, 19 FED. REP. 753, in which was involved the identical question now before me. To the able opinion of Judge LOWELL in that case I can add nothing. Adopting his conclusion I must overrule this defense.

2. Whether or not the defendants infringe depends on the construction to be given to the claim. The subject-matter of the patent is a