
Larman v. Tisdale's Heirs.

Southern District of Mississippi, and was argued by counsel. On consideration whereof, it is now here ordered, adjudged, and decreed by this court, that the decree of the said District Court in this cause be, and the same is hereby, reversed and annulled, and that this cause be, and the same is hereby, remanded to the said District Court, with directions to dismiss the petition of the claimants.

ISAAC LARMAN, PLAINTIFF IN ERROR, v. JAMES TISDALE'S HEIRS.

The fifty-fourth rule of this court, requiring an appearance to be entered on or before the second day of the term next succeeding that at which the case is docketed, does not include an adjourned term; but applies only to regular terms.

MR. STANTON, of counsel for the defendants in error, moved the court, on the 28th of February, 1851, to dismiss this case, under the fifty-fourth rule of the court, which rule is repeated amongst the preliminary matter in 8 Howard, and is as follows :—

“No. 54.

“Ordered, that where an appearance is not entered on the record for either the plaintiff or defendant on or before the second day of the term next succeeding that at which the case is docketed, it shall be dismissed at the costs of the plaintiff.”

Whereupon this court, not being now here sufficiently advised of and concerning what order to render in the premises, took time to consider.

On the 4th of March, 1851, Mr. Chief Justice TANEY delivered the opinion of the court.

The fifty-fourth rule applies to cases docketed at the regular term; and not to an adjourned term. For it may happen that an adjourned term may be held immediately preceding the regular session.

*587] *This case was not docketed until after the close of the regular term of the court, and is, therefore, not within the rule.

Hogg et al. v. Emerson.

ORDER.

On consideration of the motion made in this case by Mr. Stanton, on a prior day of the present term, to wit, on Friday the 28th ultimo, it is now here ordered by the court, that said motion be, and the same is hereby, overruled.

PETER HOGG AND CORNELIUS H. DELAMATER, PLAINTIFFS
IN ERROR, v. JOHN B. EMERSON.

The decision of this court in the case of *Hogg et al. v. Emerson*, 6 How., 437, reviewed and affirmed.

The specification of Emerson's patent "for certain improvements in the steam-engine and in the mode of propelling therewith either vessels on the water or carriages on the land," constituted a part of the patent, and must be construed with it. Anterior to 1836, the law did not imperatively require that the specification be made a part of the patent, but the inventor had a right to advise the Commissioner of Patents to make the specification a part of the patent, and it was peculiarly proper that he should comply with the request.

This court again decides that the patent is sufficiently clear and certain, and does not cover more ground than one patent may cover. Only one is necessary for two kindred and auxiliary inventions.

The drawings which accompany the specification may be referred to for illustration. Within what time drawings ought to have been replaced, after the destruction of the Patent-Office by fire, so as to avoid the imputation of negligence or of a design to mislead the public, was a question which was properly left to the jury.

The principles stated, within whose operation a jury can properly act in assessing damages against the maker of a patented machine.¹

THIS case was brought up from the Circuit Court of the United States for the Southern District of New York.

It was reported in 6 How., 437, and at the conclusion of the report of that case is the following note:—

"NOTE.—After the delivery of this opinion, the counsel for the plaintiffs in error suggested that other questions were made below, which they desired to be considered, and therefore moved for another *certiorari* to bring them up. This was allowed, and judgment suspended till the next term."

Another *certiorari* was issued, which brought up the entire record. The case, as now to be reported, consists of three records, in parts. Instead of republishing those parts already

¹ See also *Burke v. Partridge*, 58 N. H., 351.