N. J. A. MAARSCHALK, Agent for Hendrik Muller & co., Appellant, vs. ISAAC ZAGURY and F. F. MORAES, Appellees.
LRSC 14; 1 LLR 117 (1878)

[January Term, A. D. 1878.]

Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.

Joinder of improper parties-Patentee-Jurisdiction of the Supreme Court.

Assignment of patent or any part thereof where made must by statute be recorded in the State department.

A patentee who has not assigned his patent rights or any part thereof must alone bring suit for the infringement of his patent; a declaration setting forth that the whole or part of a patent right granted has accrued to persons not named in the letters patent must contain the assignment, to entitle the assignees to maintain a suit'

The Supreme Court of Liberia has original jurisdiction over offences mentioned in Article IV of the Constitution only; in all other cases its jurisdiction is appellate.

This case comes up on an appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County. The action was brought to recover damages for an alleged infringement of rights secured by letters patent from this Republic.

The bill of exceptions upon which the defendant, now appellant, has brought the case before this court, embraces objections raised to certain matters ruled upon during the progress of the suit in the court below, and also to the charge given to the jury by the judge who presided at the trial.

The first exception that claims our attention is, Because, upon the defendant's plea of joinder of improper parties, plaintiffs were overruled by the court. Here arises the question as to who are the proper parties as plaintiffs to an action of this kind. A patentee who has not assigned any part of his privilege must be the sole plaintiff, or if he has assigned a part only of his patent right, he and his assignee may be joined as plaintiffs in any action for infringing the patent. (Hindmarch on Patents, pp. 251—2.)

Our law has granted the right of assignment of the whole interest or any individual part thereof by a patentee, but in such cases it requires that said assignment shall be recorded in• the office of the Secretary of State within one year from execution. The declaration sets forth that one Isaac Zagury and Francisco F. de Moraes, doing business under the firm name and style of ' 'The Liberia India Rubber Association," are the legal owners of letters patent granted by the Republic of Liberia on the third day of November, A. D. 1875, to one Francisco Ferreisa de Moraes & Co., but there is no statement of assignment or other title under which the said Zagury claimed to have any share or interest in the patent right. If "any one of several plaintiffs claim under an assignment of the patent declared upon, the assignment must be stated in the declaration, so as to show his title to the patent right." (Hindmarch p. 255.) Title ' 'is the right of action which the plaintiff has" "the declaration must show the plaintiffs title, and if such title be not shown in that instrument the defect cannot be cured by any of the future pleadings." (Bouv. Law Dict. Vol. 2.)

Isaac Zagury's right to join as a plaintiff in this suit not having been set forth in the declaration, the court erred in its ruling on the plea.

2nd. That in defendant's objection to the jurisdiction of the court, the court decided that it had jurisdiction. The Constitution has clearly determined in what cases the Supreme Court shall have

original jurisdiction, and has also provided that ' 'in all cases not arising under martial law or upon impeachment the parties shall have a right to a trial by jury." This right, thus granted, could not be enjoyed if the Supreme Court had original jurisdiction in the case; it is only, therefore, on appeals that suits arising under the patent act are cognizable by this court, and without that construction of the ninth section of the act it would be in opposition to the Constitution and consequently null and void. It was therefore no error in the court in ruling that "it had jurisdiction over the case."

3rd. That the question asked witness King, ' 'Is the plaintiff the first and original discoverer of the process of congealing and preparing rubber and gutta percha?" was irrelevant. This question was relevant, because it tended to prove one of the issues.

4th. The question asked witness D. B. Warner, "Do you know that India rubber and gutta percha have ever been prepared in and exported from this country, that was prepared according to the specifications attached to the letters patent before these letters patent were obtained by Mr. Moraes from the Liberian Government?" was relevant for the same reason.

5th. The court erred in sustaining the objection to the admission of "Colling's Book on the Preparation of Caoutchouc." Firstly, because our law provides that in seeking a patent the subject for which such right is to be obtained must not have been described in any book or publication in this country; not that the book or publication must have been published in this country, but that the description is not to be in any book or publication that is in the country. And secondly, because the book was relevant, tending to prove an issue. "If it be shown that an invention comprised in a patent was described in any published work or paper, or in any public records, before the date of the patent, the invention was not then new as to the public knowledge of it, and therefore the patent is void." (Hindmarch on Patents, p. 107.) The book or publication presumes a knowledge of the invention by the public, or, what is the same thing, that it possessed the means of knowledge available to all. (Hindmarch, 457—8.)

6th. "That when defendant's attorney requested the court to charge the jury that the patent law of Liberia does not confer an exclusive right of export, the said court refused to so charge and said that it does grant an exclusive export right."

The court manifestly erred in said charge, because the act authorizing the granting and issuing of letters patent, and entitled "An act to promote the progress of the arts, manufactures, agriculture and commerce," does not create an exclusive right of exportation, or provide that such shall be a part of letters patent. Under this act every patent grants "the full and exclusive right and liberty of using and vending to others to be used," the invention or discovery patented; every grant beyond this is without warrant of law.

7th. The last exception is, Because upon the defendant's motion to set aside the verdict of the jury and award a new trial because the same was contrary to law and evidence in said case, the said court decided that the verdict was not contrary to law and evidence, and ordered the same to be recorded.

In an action of infringement of a patent the onus probandi rests upon the plaintiffs, as to almost all of the issues raised, and in failing to prove an infringement the verdict should be for the defendant.

Upon a careful examination of the evidence as it appears by the record, we have failed to discover any proof of the allegations contained in the plaintiffs' declaration, as to an infringement of the patent right, under which the claim is made. While it was shown that the defendant had exported rubber, there was no evidence adduced, as by the record, to show that the rubber exported had been prepared after the manner described in the specification filed and forming part of the letters patent. And even in that case the legal right of a patentee to an exclusive exportation has not been sustained by law.

The plaintiff having failed to prove an infringement, the verdict should have been for the defendant. The verdict of the jury having been contrary to law and evidence, a new trial should have been granted. Therefore, the court adjudges that the judgment of the court below is reversed, and appellees ruled to pay costs.

Key Description: Actions (Patents, Infringement)