13 U.S. 199 (1815)
9 Cranch 199

EVANS
v.
JORDAN AND MOREHEAD.

Supreme Court of United States.

March 2, 1815.
March 4, 1815.

Absent... . TODD, *J.*

HARPER, for the Plaintiff.

E.I. LEE, and *P.B. KEY,* contra.

WASHINGTON, *J.* delivered the opinion of the Court as follows:

The question certified to this Court, by the Circuit Court for the district of Virginia, and upon which the opinion of this Court is required, is, whether, after the expiration of the original patent granted to Oliver Evans, a general right to use his discovery was not so vested in the public as to require and justify such a construction of the act passed in January, 1808, entitled "an act for the relief of Oliver Evans" as to exempt from either treble or single damages, the use, subsequent to the passage of the said act, of the machinery therein mentioned, which was erected subsequent to the expiration of the original patent and previous to the passage of the said act.

The act, upon the construction of which the judges of the Circuit Court, were opposed in opinion, directs a patent to be granted, in the form prescribed by law, to Oliver Evans for 14 years, for the full and exclusive right of making, constructing, using, and vending to be used, his invention, discovery and improvements in the art of manufacturing flour and meal, and in the several machines which he has discovered, invented, improved, and applied to that purpose.

The *proviso* upon which the question arises is in the following words: "*provided,* that no person who may have heretofore paid the said Oliver Evans for license to use the said improvements, shall be obliged to renew said license, or be subject to damages for not renewing the same; and, *provided also,* that no person who shall have used the said improvements, or have erected the same for use, before the issuing of the said patent, shall be liable to damages therefor."

The language of this last proviso is so precise, and so entirely free from all ambiguity, that it is difficult for any course of reasoning to shed light upon its meaning. It protects against any claim for damages which Evans might make, those who may have used his improvements, or who may have erected them for use, *prior to the issuing of his patent* under this law. The

protection is limited to acts done prior to another act thereafter to be performed, to wit, the issuing of the patent. To extend it, by construction to acts which might be done subsequent to the issuing of the patent, would be to make, not to interpret the law.

The injustice of denying to the Defendants the use of machinery which they had erected after the expiration of Evans's first patent and prior to the passage of this law, has been strongly urged as a reason why the words of this proviso should be so construed as to have a prospective operation. But it should be recollected that the right of the Plaintiff to recover damages for using his improvement after the issuing of his patent under this law, although it had been erected prior thereto, arises, not under this law, but under the general law of the 21st of February, 1793.[*] The provisoes in this law profess to protect against the operation of the general law, three classes of persons; those who had paid Evans for a license prior to the passage of the law; those who *may have used* his improvements; and those who *may have erected* them for use, before the issuing of the patent.

The legislature might have proceeded still further, by providing a shield for persons standing in the situation of these Defendants. It is believed that the reasonableness of such a provision could have been questioned by no one. But the legislature have not thought proper to extend the protection of these provisoes beyond the issuing of the patent under that law, and this Court would transgress the limits of judicial power by an attempt to supply, by construction, this supposed omission of the legislature. The argument, founded upon the hardship of this and similar cases, would be entitled to great weight, if the words of this proviso were obscure and open to construction. But considerations of this nature can never sanction a construction at variance with the manifest meaning of the legislature, expressed in plain and unambiguous language.

The argument of the Defendants counsel that unless the construction they contend for be adopted, the proviso is senseless and inoperative, is susceptible of the same answer.

Whether the proviso was introduced from abundant caution, or from an opinion really entertained by the legislature that those who might have erected these improvements or might have used them prior to the issuing of the patent, would be liable to damages for having done so, it is impossible for this Court to say. It is not difficult however to imagine a state of things which might have afforded some ground for such an opinion.

Although this Court has been informed, and the judge, who delivers this opinion knows, that the former patent given to Evans had been adjudged to be void by the Circuit Court of Pennsylvania, prior to the passage of this law, yet that fact is not recited in the law, nor does it appear that it was within the view of the legislature: and if that patent right had expired by its own limitation, the legislature might well make it a condition of the new grant that the patentee should not disturb those who had violated the former patent. This idea was certainly in the mind of the legislature which passed the act of the 21st of February, 1793. which after repealing the act of the 10th of April, 1790, preserves the rights of patentees under the repealed law only in relation to violations committed after the passage of the repealing law.

If the decision above mentioned was made known to the legislature, it is not impossible but that a doubt might have existed whether the patent was thereby rendered void *ab initio,* or

from the time of rendering the judgment; and if the latter, then the proviso would afford a protection against all preceding violations. But whatever might be the inducements with the legislature to limit the proviso, under consideration, as we find it, this Court cannot introduce a different proviso totally at variance with it in language and intention.

It is the unanimous opinion of this Court that the act passed in January, 1808, entitled "an act for the relief of Oliver Evans," ought not to be so construed as to exempt from either treble or single damages, the use, subsequent to the passage of the said act, of the machinery therein mentioned, which was erected subsequent to the expiration of the original patent, and previous to the passage of the said act. Which opinion is ordered to be certified to the Circuit Court for the district of Virginia.

[*] The 5th § of the act of 21st of February, 1793, which is the only section of that act which gives damages for violation of the patent right, is repealed by the 4th § of the act of the 17th of April, 1800, vol. 5, p. 90, the 3d § of which act gives treble damages, for the violation of any patent granted pursuant to that act, or the act of 1793.