

"In this case there is no joint operation or effect in the construction of a railway car and the oil tank combined which is in any manner due from the simultaneous or successive action of the two as combined. It is a mere aggregation of old elements, producing no new result by the combination."

We have carefully examined the authorities cited upon this question, and, applying the principles as determined by the courts, we find that Judge Hawley has correctly interpreted the law applicable to the facts in this case. Decree affirmed.

FISK et al. v. MAHLER et al.

(Circuit Court, S. D. New York. March 21, 1892.)

PATENTS FOR INVENTIONS—INFRINGEMENT—ACCOUNTING—COSTS.

Where defendants' infringement of the patent sued on is plain, but they have denied the infringement until after the suit is brought, embodying a denial of infringement and of the validity of complainants' patent in their answer, they cannot defeat complainants' right to an accounting by offering then to pay royalty on a certain number of the patented articles, which they admit that they sold, and the costs of suit.

In Equity. Suit by Henry G. Fisk, Thomas R. Clark, and Thomas J. Flagg against Samuel Mahler and Louis Mahler for the infringement of a patent. Decree for complainants.

B. F. Watson, for complainants.

H. W. Grindall, for defendants.

WALLACE, Circuit Judge. There is nothing in this case to defeat the right of the complainants to the usual decree for an injunction and an accounting. It is entirely plain that the defendants have infringed the two patents in suit. The neck scarf sold by them in January, 1889, known as "Exhibit D," so plainly embodied the inventions claimed in the patents that expert evidence to establish identity is not necessary. The proofs show that they had quite a number of similar scarfs on hand before this suit was brought. If the defendants had not denied infringement before the suit was commenced, and had made an offer to pay complainants the established royalty for the use of the inventions, they might properly urge that they should not be subjected to the costs of the suit, and to the expense of an accounting. But they did not do this. They denied infringement until after the suit was brought. Then, after it was brought, in their answer, they denied the validity of the patents, and still denied infringement, although they inserted in their answer an offer to pay the royalty on a certain number of neck scarfs which they admitted having sold, together with the costs of the suit. There is no merit in the contention of the defendants that complainants have been guilty of laches. So far as appears, the complainants had no proof prior to January, 1889, that the defendants had sold more than a single one of the patented neck scarfs; and, if they had brought suit upon such a trival infringement, their suit would probably have been dismissed, with costs. There is enough in the proofs to suggest quite persuasively that the

defendants have infringed beyond the extent of the sales of the 18 dozen of neck scarfs purchased by them of Hellenberg & Lowenstein. If the complainants choose to take a decree upon the basis of the royalty upon the 18 dozen neck scarfs sold by the defendants, they are entitled to do so. But, if they prefer to go to an accounting, it is their right to do so. If it should turn out that the defendants have not sold any more than that number, the question will arise whether the costs of the accounting should not be imposed upon the complainants. The usual decree is ordered.

THE ALBERT DUMOIS.

RUSTAD v. FOUR HUNDRED AND FIFTY-SEVEN BAGS OF COFFEE
et al.

(District Court, E. D. New York. January 27, 1893.)

CHARTER PARTY—LIEN ON CARGO—BILL OF LADING STATING FREIGHT—LIABILITY OF CARGO FOR UNPAID CHARTER MONEY.

The provisions of a charter party gave the shipowner a lien "on all cargoes and all subfreights for any amounts due under this charter." The charterer subchartered the vessel by a charter party of similar terms, and claimant shipped certain cargo, for which bills of lading, fixing the freight due, were given by the purser of the subcharterer. Claimant having paid to the subcharterer the freight due on the cargo as per bills of lading, after notice that the shipowner claimed a lien thereon, *held*, that the shipowner could enforce a lien upon the cargo for the freight stated in the bills of lading, but for no more.

In Admiralty. Libel for balance of charter money. Decree for libelant.

Libelant was the master of the steamship *Albert Dumois*, and libeled 457 bags of coffee, 110 bales of deerskins, 151 bales of rubber, and 400 bales of hides, for the amount due under the charter party of the vessel, dated August 5, 1890, by which she was chartered to H. Dumois & Co. H. Dumois & Co. subchartered the steamer to the Central American & Honduras Steamship Company, under a charter party similar in its terms to the original charter party. The charter party contained a clause giving the owners a lien "upon all cargoes and upon all subfreights for any amounts due under this charter." The vessel was loaded by the steamship company at Honduras, and brought to this port the cargo above named. After the commencement of this action the cargo was claimed by Hoadley & Co., and a stipulation given by them. After the filing of the libel they paid to the Honduras Steamship Company the amount of the freight on the libeled cargo. The libelant claimed that he was entitled to his lien upon the cargo to the extent of the unpaid charter money, namely, \$1,433.53. The claimant insisted that the vessel had a lien on the cargo only to the extent of the freight named in the bills of lading which were given by the steamship company to shippers.

Goodrich, Deady & Goodrich, for libelant.
Wheeler, Cortis & Godkin, for claimants.

BENEDICT, District Judge. The charter party shows that it was the intention of the parties to confer upon the charterers authority to fix the freight to be paid by cargo that might be shipped under bills of lading. The cargo in question was shipped under bills of lading signed by the purser, by which the freight to be paid on each shipment was fixed. These bills of lading were authorized