those goods over, so far as necessary, to Treusch Brothers, in payment of his debts to them, and they were so turned over, and Treusch Brothers, or either of them, had notice that the goods thus received were so purchased by Lustig with the intent and purpose stated, then you should find that those goods came into the hands of the defendants unlawfully, for it would be a fraud upon creditors, and they would be chargeable with their value in this suit.' "

In my view, the statement by the court to the jury that there was no evidence to impeach the validity and bona fides of Lustig's debt to the Treusch Brothers was not warranted by the evidence, and was prejudicial to the plaintiffs below; but, as the plaintiffs below recovered a verdict, it requires no further comment. My object in making the above quotation from the charge is to show that the court, in effect, charged the jury that, if Lustig obtained the goods which were the subject of this suit by fraud on his vendors, in which fraud the Treuschs connived, then the plaintiffs below were entitled to recover in the action. Now, it is conceded that there was no evidence whatever to show that the goods sought here to be recovered were ever owned by the plaintiffs below. Therefore the court's charge to the jury was that A., a creditor of C., might recover from B. goods transferred to B. by C. in payment of an honest debt owing by C. to B., because B. and C. had conspired together to defraud D., the fraud consisting in the intention on the part of C., known to B., not to pay D. the price of the goods. This, I submit, is a confusion of elementary principles. D., of course, would have the right in an action of trover, without regard to the statute of 13 Eliz., or the Michigan statute, under which this action was brought, to recover the goods fraudulently obtained, either from C. or B. But A. had no interest, and was not prejudiced by the fraud practiced on D. by B. and C. The only complaint which A. could make of the transfer of goods by C., which A. had never owned or had any interest in, must have been entirely predicated on C.'s title to the goods and on A.'s right as a general creditor to have his debt paid by levy or other process on goods owned by C. The charge which I have quoted was duly excepted to. As it was, to my mind, erroneous, and presented the theory to the jury upon which the verdict doubtless rested, the judgment should, in my opinion, be reversed, and a new trial ordered.

CARTER & CO., Limited, v. FRY et al.

(Circuit Court, E. D. New York. December 28, 1892.)

PATENTS FOR INVENTIONS—PRELIMINARY INJUNCTIONS—PRIOR ADJUDICATIONS—NEW EVIDENCE—DUPLICATE MEMORANDUM SLIPS.

On a motion based on prior adjudications for an injunction against the infringement of letters patent No. 288,048, issued November 26, 1883, to J. H. Frink, for duplicate memorandum or sales slips, there was produced as entirely new evidence a sales slip called the "Taft Book," which was shown to have been in use in Detroit prior to the time of Frink's invention, and that Frink had knowledge thereof. From this evidence it appeared highly probable that the Frink combination contained no patentable invention. *Held*, that the preliminary injunction should be denied.

In Equity. Bill by Carter & Co., Limited, against Willliam H. Fry and Charles B. Wolfe for an infringement of the Frink patent for duplicate memorandum slips. The patent has been passed upon in the following reported cases: Hurlburt v. Carter, 39 Fed. Rep. 802; Carter v. Houghton, 53 Fed. Rep. 577; Same v. Wollschlaeger, Id. 573. The present case is heard on motion for preliminary injunction. Denied.

W. Caryl Ely, for complainant.
Worth Osgood and Arthur M. Pierce, for defendants.

BENEDICT, District Judge. This action is brought by the owners of a patent numbered 288,048, dated November 26, 1883, issued to J. H. Frink, for an invention of duplicate memorandum or sales slips. It now comes before the court upon a motion for a preliminary injunction to prevent the defendant from manufacturing sales slips which are alleged to infringe the Frink patent. The defendants deny the validity of the Frink patent. This patent has been before several courts, and has each time been sustained; the last time by Judge Coxe, in the northern district of New York. Carter v. Wollschlaeger, 53 Fed. Rep. 573. Upon the present motion facts are shown which did not appear in any of the prior adjudications, and the question to be decided was never before presented.

On this motion it appears that, prior to the date of Frink's invention, there was in use in Detroit a certain kind of sales slip, called in these proceedings the "Taft Book." The proofs presented show that the Taft book was made and in use prior to the time of Frink's invention, and that it was known to Frink before his application for a patent. The defense here relied upon, therefore, is not based upon oral testimony and the uncertain memory of witnesses as to the character of the Taft book. The book itself is produced, and it is proved to have been used prior to the date of Frink's invention, and that Frink knew of it. Indeed, Frink himself says that the original specification of his application for a patent referred to the Taft book as then existing. There is therefore no doubt or uncertainty as to the facts relied on to show the Frink patent to be invalid. A consideration of these facts has led me to the conclusion that it is highly probable that upon final hearing it will be held that the combination of old devices effected by Frink, constituting the first claim of his patent, involved no invention, and that his patent is invalid for that reason. Under such circumstances, it would be improper to grant an injunction.

Motion denied.

REECE BUTTONHOLE MACH. CO. v. GLOBE BUTTONHOLE MACH. CO. et al.

(Circuit Court, D. Massachusetts. March 29, 1893.)

No. 2,938.

1. PATENTS FOR INVENTIONS—BUTTONHOLE MACHINE.
Letters patent 240,546, granted April 26, 1881, to John Reece, for a buttonhole sewing machine, are not infringed as to claims 5, 11, 12, 13, and 18 by the machine made under letters patent 450,844 and 450,950, issued April 21, 1891, to James H. Reed and Charles A. Dahl, for a buttonhole stitching and barring machine; for the Reece patent, by its specifications and claims, is a machine moving the cutter and stitcher to and over the cloth clamp and cloth, while the Reed and Dahl machine moves the cloth clamp and cloth to and under the cutter and stitcher.

2. SAME—EXTENT OF CLAIM—LIMITATION.
Reece's eleventh claim was in part for a device "to change the positions of the frame and bedplate longitudinally." This was objected to on the ground that no means were shown for moving the bedplate relatively to the framework, as the claim would seem to imply. The claim was modified so as to read, "move said framework longitudinally upon said bedplate." *Held*, that the patentee was limited to a machine wherein the frame moved and the bedplate was stationary, although a machine built substantially according to the description of the patent could be made to operate by fixing the frame and moving the bedplate.

In Equity. Bill by the Reece Buttonhole Machine Company against the Globe Buttonhole Machine Company and others for infringement of letters patent. Bill dismissed.

James H. Lange, F. P. Fish, and J. J. Storrow, for complainant.

Charles E. Mitchell, Clarke & Raymond, and Frederic H. Betts, for defendants.

CARPENTER, District Judge. This is a bill to enjoin an alleged infringement of claims 5, 11, 12, 13, and 18 of letters patent No. 240,546, granted April 26, 1881, to John Reece, for a buttonhole sewing machine. The machine made by the respondents is described in general and essential features in the specifications and drawings of letters patent Nos. 450,844 and 450,950, both issued April 21, 1891, to James H. Reed and Charles A. Dahl, for a buttonhole stitching and barring machine. The only issue here is whether the respondents have infringed.

In constructing a machine to make buttonholes there are two classes of elements to be taken into account: First, the cloth or leather in which the buttonhole is to be made; and, secondly, the various devices (1) to support and clamp the work; (2) to cut the buttonhole; and (3) to stitch the buttonhole. At the time the Reece invention was made, the known machines for this purpose, none of which were entirely automatic, were divided broadly into two classes. In one class, the cloth being supported on the cloth plate and there clamped, the cloth plate remained at rest, and the cutting and stitching mechanisms were moved with relation thereto; in the second class, the cloth being in like manner supported, the cloth plate moved so as to present the work in the proper