testimony taken out of court under authority, which will entitle it to be read as evidence." The service in taking a deposition is rendered when it is taken, and for this compensation is given. Merely reading or listening to it during the trial is service of another character. The exception is disallowed.

HOLYOKE MACH. CO. v. JOLLY et al.

(Circuit Court, D. Massachusetts. June 23, 1896.)

No. 150.

PATENTS—ANTICIPATION—WATER WHEELS.

The McCormick patent, No. 265,689, for an improvement in turbine water wheels, consisting in providing the acting face of the buckets with corrugations to better retain the water therein, and in so constructing these corrugations that substantially equal amounts of water will pass through them, is void, because of anticipation and want of invention.

This was a suit in equity by the Holyoke Machine Company against James Jolly and others, for alleged infringement of a patent for an improvement in water wheels.

John L. S. Roberts, for complainant.

George D. Robinson and William H. Chapman, for defendants.

CARPENTER, District Judge. This is a bill in equity to enjoin an alleged infringement of the second claim of letters patent No. 265,689, issued October 10, 1882, to John B. McCormick, for water wheel. The claim is as follows:

"(2) The buckets provided with water-guiding grooves or corrugations on their acting faces, substantially as and for the purpose set forth."

The scope of the invention is stated by the complainant as follows:

"The invention in question relates more particularly to water wheels of the kind commonly known as 'turbine' wheels, in which the axis of rotation is vertical, the water entering at the sides and striking against the face of the buckets, so called, giving the wheel a rotary motion. One of the inventions mentioned in the preamble of the patent in suit consists in providing the acting face of the buckets of a turbine wheel with corrugations in order to enable the water to be better retained thereon, and thereby producing an increased force. Another invention mentioned relates to the construction of these grooves or corrugations by which the water is guided, so that substantially equal amounts of water will pass through them."

Interpreting the patent in this way, I find the claim fully anticipated by letters patent No. 21,578, of September 21, 1858, to Alpha Smith; No. 60,983, of January 1, 1867, to Anthony Wrealsh and William Burns; No. 116,071, of June 20, 1871, to George W. Leonard; and No. 172,140, of January 11, 1876, to John B. McCormick and James L. Brown; and I therefore find that the claim involves no patentable invention.

The bill will be dismissed.

LA FONCIERE COMPAGNIE D'ASSURANCES CONTRE LES RISQUES DE TRANSPORTS DE TOUTE NATURE v. KOONS et al.

(Circuit Court of Appeals, Ninth Circuit. June 1, 1896.)

No. 278.

MARINE INSURANCE—INTERPRETATION OF POLICY—SETTLEMENT OF LOSS.

An insurance company issued a policy of marine insurance to K., on 500 cases of salmon, on a voyage from Portland, Or., to New York. The policy provided that perishable articles were insured only against general average and absolute total loss, and the insurer should not be liable for a constructive total loss if any portion of the articles were delivered in specie at the port of destination. It also provided that the merchandise was warranted by the insured free from particular average and partial loss, unless caused by perils insured against, and amounting to 50 per cent. or more on the sound value of the whole shipment at the port of delivery, and all such loss should be settled on the principles of salvage loss, with benefit of salvage to the insurers. The vessel on which the goods were shipped sustained damage from a peril insured against, which made it necessary for her to put into San Francisco, where 392 of the 500 cases of salmon, being found to be damaged, were sold by the master, the remainder being carried to New York, where a part arrived in sound condition. *Held*, that the clause in the policy, requiring a partial loss to be "settled" on the principles of salvage loss, applied to the ascertainment of the loss as well as to its payment, and, the loss sustained amounting, when ascertained on such principles, to more than 50 per cent. of the sound value of the goods at New York, the insurance company was liable.

Appeal from the District Court of the United States for the Northern District of California.

There was a libel in admiralty by Frederick A. Koons and others against La Fonciere Compagnie D'Assurances to recover a balance claimed to be due on a policy of insurance. The district court gave judgment for the libelants. 71 Fed. 978. Defendant appealed. Affirmed.

Andros & Frank, for appellant.

Charles Page, for appellees.

Before GILBERT and ROSS, Circuit Judges, and HAWLEY, District Judge.

ROSS, Circuit Judge. This case was submitted to the court below upon an agreed statement of facts, from which it appears that on the 8th day of July, 1892, the appellant underwrote a policy of marine insurance, whereby it insured, in the sum of $3,000, on account of concerned, 500 cases of salmon, valued at $3,000, laden on the bark Belle of Oregon for a voyage from Portland, Or., to the port of New York, "beginning the adventure upon the said property or interest from and immediately following the loading thereof on board said vessel at Portland, aforesaid, and so shall continue and endure until said property or interest shall be safely landed as aforesaid." The perils insured against were those of the seas, etc. The vessel sailed from Portland on the 8th day of August, 1892, and in the course of the voyage sustained sea damage to an extent that rendered it necessary for her to proceed to San Francisco as a port of distress, where she arrived