

This falls short of proving that they did, and far short of proving beyond a reasonable doubt that they did, as is necessary to defeat a patent.

The patent in suit describes the upper end of the ink reservoir as "closely filled with a mass of sponge or other porous, absorbent material" for preventing accidental discharge of the ink, and assisting "in sustaining the same in the holder," but says: "The column of ink will, however, be sustained in the reservoir, when the latter is held upright, by atmospheric pressure, aided, perhaps, by a slight capillary attraction without the presence of the sponge." Two other claims include the porous material; these do not in express terms, but are said in argument on the question of infringement to do so by implication, which would avoid infringement. As the specification describes the invention both with and without the porous material, it might well be claimed both ways, however it might be otherwise. Upon these considerations, these claims appear again to be valid, and the defendants to infringe. Decree for plaintiff.

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FENTON METALLIC MFG. CO. v. CHASE et al.

(Circuit Court, S. D. New York. February 9, 1898.)

PATENTS—BOOKCASES.

The Hoffman patent, No. 450,124, for improvements in skeleton-frame, roller-shelf bookcases, with hand holes or re-entrant recesses, to facilitate lifting the books from the shelves, is void for want of invention. 73 Fed. 831, affirmed.

This was a suit in equity by the Fenton Metallic Manufacturing Company against Samuel W. Chase, the St. Louis Art Metal Company, and others, for alleged infringement of a patent for an improvement in bookcases. The patent was heretofore held invalid on defendants' motion to vacate a default order for a preliminary injunction. 73 Fed. 831. The cause is now on final hearing.

Edwin H. Brown, for plaintiff.

Paul Bakewell, for defendant.

WHEELER, District Judge. This suit is brought upon two claims of patent No. 450,124, dated April 7, 1891, and granted to Horace J. Hoffman, assignor, to the plaintiff, for storage cases for heavy books, placed horizontally. They are for:

(1) In a storage-case for books, etc., the combination of a supporting rack or shelf composed of metallic strips, and having a re-entrant bend or recess in its front edge, and rollers journaled in said rack, and projecting above and in front of the same on each side of said bend or recess, substantially as described.

(2) In a bookshelf, the combination of a supporting frame, a series of horizontal rollers, the front roller in two separated sections, the intermediate part of the frame being carried back to permit the admission of the hand between said roller sections, substantially as described.

This case was before this court, held by Judge Lacombe, on a motion to dissolve an injunction, and the patent was then much consid-

ered. 73 Fed. 831. Not much more has been made to appear now, and little more seems necessary to be said. The hand recess was well known before Hoffman's supposed invention, and its use is the same in one form as in another of such a bookcase. Rollers were known for relieving the books and their supports from friction; and so were rollers at each side of room for handling the books. Rollers at each side of the hand recess in front of and above the frame may be new in that exact position; but they operate there as such rollers had done before, and no differently because of any relation to the hand recess formed of the frame. There does not seem to be any new working combination in either of these claims. Bill dismissed.

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#### LEITER v. RONALDS.

(Circuit Court, S. D. New York. February 5, 1898.)

##### SHIPPING—CHARTER OF YACHT—OPTION TO EXTEND—CONSIDERATION.

Under a charter of a steam yacht for two months, at a fixed sum paid, fully equipped for a voyage to Galveston, with an option to the hirer of extending the charter at pro rata rates by giving 15 days' notice, the original consideration, together with the promise to pay pro rata rates, is a sufficient consideration for an extension thereof by exercising the option; so that if, through lack of equipment and unseaworthiness at the beginning of the original voyage, the yacht breaks down during the extended period, to the charterer's injury, he may recover therefor.

This was an action at law by Joseph Leiter against George L. Ronalds to recover damages alleged to have resulted from the breach by defendant of his obligations under a charter of a steam yacht.

Robert H. Griffin, for plaintiff.

Elijah G. Boardman, for defendant.

WHEELER, District Judge. This cause has now been heard on demurrer to the complaint, which alleges that the plaintiff, by charter, hired the defendant's steam yacht for two months from January 9, 1896, at \$3,000 paid, fully equipped for a voyage to Galveston, insured to cover the term of the charter, or any extension thereof, with an option to the hirer of extending the charter, at pro rata rates, by giving fifteen days' notice prior to the expiration of the two months; that notice was so given, extending the charter to include, upon the same terms and warranty, the port of Tampico; that the yacht was not tight, staunch, and strong, and fitted for such service, but that the propeller shafts and hangers were inadequate, and the deck and hull sprung, whereby, while the plaintiff was proceeding with it southerly to the port of Tampico, a propeller shaft broke, and with the propeller fell into the sea, causing leakage, and \$5,441.97 expenses and damages to the plaintiff, not covered by adequate insurance. The defendant's counsel argues in support of the demurrer that the express guaranties only covered the safe voyage to Galveston and return, and would be without consideration for any voyage beyond, where the loss occurred, if so agreed to. But the price paid for the original voyage, and the