

hidden away somewhat in the inner leaves of the book; and it will be readily recalled, from plaintiff's testimony and manner on the witness stand, how greatly inflamed was he with admiration of this offspring of his original conception and severe mental par-turition. Is it then to be presumed that he could patiently have such a child of his genius, with his own face stamped upon it, concealed for three months in his art gallery? A little matter like the absence of the copyright certificate could hardly have stood so long between his caution and his consuming pride of a wider fame, and ambition for more customers. It became painfully apparent on the hearing of this case that the plaintiff and his witnesses, since the taking of his deposition herein, and from the contest at the trial, recognized the necessity of placing the distribution of the pamphlets after the 15th day of March, 1897; but, without impugning the integrity of the witnesses, the other facts and circumstances in evidence are of such persuasive force that the court feels constrained to say that the weight of evidence tends to show that at least some of the pamphlets printed in 1896 were prior to March 15, 1897, distributed in such manner as to constitute a publication, within the letter and spirit of the law. It is therefore unnecessary for the court to discuss other questions of law raised by counsel in this case,—among which is that raised on the fact that after the plaintiff obtained his copyright he never corrected the statement on the page following the title page, that it was copyrighted in 1896. On this question of law the court expresses no opinion. Verdict and judgment for the defendant.

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#### HOERTEL v. RAPHAEL TUCK SONS & CO.

(Circuit Court, S. D. New York. June 8, 1899.)

#### COPYRIGHTS—FALSE NOTICES.

A false copyright notice, impressed on a book or other publication, to subject the person so impressing it to the penalty imposed by Rev. St. § 4963, must contain all the essentials of a valid notice, as prescribed by section 4962, and a notice which omits the date of the alleged copyright will not sustain an action for the penalty.

#### On Demurrer to Complaint.

Harry E. Knight, for complainant.

Wm. A. Jenner, for defendant.

LACOMBE, Circuit Judge. The defendant in this case is not liable for the penalties sued for, since he has kept carefully outside of the express language defining the offense charged. The notices which are found impressed on the fancy cards which it has imported and sold do not contain any date of alleged copyright,—an essential element of the copyright notice required by section 4962, Rev. St. The phrases used in section 4963, viz. "such notice of copyright or words of the same purport" and "a notice of United States copyright," refer most clearly to the notice specified in section 4962; and, while

the courts have been liberal in holding any form of notice sufficient which contains the essentials of "name," "claim of exclusive right," and "date when obtained" (*Lithographic Co. v. Sarony*, 111 U. S. 53, 4 Sup. Ct. 279; *Bolles v. Outing Co.*, 23 C. C. A. 594, 77 Fed. 966), they have not yet sustained the sufficiency of a notice which wholly omits some one of these three essentials. The demurrer is sustained.

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FRUIT-CLEANING CO. V. FRESNO HOME-PACKING CO. et al.

(Circuit Court, N. D. California. May 22, 1899.)

No. 12,529.

1. JURISDICTION OF COURT—PARTNERSHIP NAMED AS PLAINTIFF.

The introductory part of a bill was as follows: "The Fruit-Cleaning Company, a co-partnership consisting of [three persons, named in full], doing business at the city of Brooklyn, in the state of New York, complainant, brings this, its bill of complaint," etc. The bill further alleged that, "at all the times hereinafter mentioned, the said [naming such three persons] were and are co-partners in trade under the firm name and style of the Fruit-Cleaning Company, having its principal place of business at the City of Brooklyn, in the state of New York." *Held* that, while the co-partnership was named as the complainant, the bill sufficiently disclosed the real parties in interest, and therefore should not be dismissed, after answer, on the ground that there was no legal party plaintiff sufficient to give the court jurisdiction.

2. PATENTS—PARTNERSHIP AS PATENTEE—VALIDITY.

A co-partnership, to which an invention has been assigned, possesses legal capacity to take the legal title to a patent when issued; and hence a patent issued to the co-partnership, as patentee, is valid, and confers the exclusive right to the invention.

3. SAME—INVENTION—COMMERCIAL SUCCESS.

Though one follows the general ideas of a patent issued many years before, yet if, by adding thereto other devices, he produces the first machine, which, in a commercial sense, successfully performs the work sought to be done, he is entitled to a place among inventors.

4. SAME—CONSTRUCTION OF CLAIMS—REFERENCE TO SPECIFICATIONS.

If a claim contain the phrase, "substantially as described" or its equivalent, the entire specification is entitled to be considered in connection with the claim.

5. SAME—INFRINGEMENT—MECHANICAL EQUIVALENTS.

In a raisin-seeding machine, a laminated rubber roll employed to force the fruit upon the teeth of a carrier is the mere mechanical equivalent of a brush roll, used for the same purpose, and its substitution therefor does not avoid infringement.

6. SAME—FRUIT OR RAISIN SEEDERS.

The La Due patent, No. 543,834, for a fruit-seeding machine, adapted especially to the seeding of raisins, construed, and *held* not anticipated, valid, and infringed, as to claims 1, 2, 3, 4, and 5, by the Cox patent, No. 608,108, and not infringed as to claims 6, 7, and 8.

John H. Miller and Tracy, Boardman & Platt (T. D. Merwin, of counsel), for complainant.

Wheaton & Kalloch and Bigelow & Titus, for defendants.

MORROW, Circuit Judge. This is a suit in equity for infringement of letters patent on mechanism for seeding fruit. The bill of com-