tory, reserving his right to other portions of the territory covered by the patent,—and therefore I cannot hold that the form prescribed by Mr. Fisher has the same efficacy as that prescribed by the statute itself. Where a man assigns all the right which was conveyed to him by letters patent, the meaning is that the assignment takes with it everything that the letters patent conveyed. It is certainly different from an assignment which declares merely that he assigns all the interest which he, at the time he makes the assignment, has in the letters patent, provided, as in this case, he had previously assigned a part of the interest which he had to another person. So that, admitting that the question is one of difficulty and doubt, I must still adhere to the view which I originally took of this case, and hold that it was not the intention of the assignment which was made to Weir, and through which the defendants claim, to convey to him the interest, which had been previously conveyed by the patentee, in the counties of Warren and Henderson, in this state.

Another objection made to the right of the plaintiffs to recover is that the conveyance to them did not include the right to use as well as to make and sell the improvement patented within those counties. I think that the assignment to make and sell includes necessarily the right to use the thing patented, because without the right to use, the right to make and sell would be a barren right. It must be construed as having been the intention of the parties that the right to manufacture and sell, included the right in the vendee to use the thing sold.

There is nothing in the case to estop the plaintiffs from setting up a claim under this patent in consequence of any supposed laches that they may have committed; and I think it must be considered that the defendants, under all the circumstances in the case, have infringed upon the right of the plaintiffs. I have not the models of the machines here, without which a statement of the particular points constituting the claim of infringement by the defendants would be unintelligible. It is sufficient to say that I have heretofore fully considered those questions, and have reconsidered them on the argument which has been made, and have reached the conclusion which I then formed, although, perhaps, I did not particularly state it at the time.

It may be said the case is not one of very great importance in some respects; that is, it includes only two counties in this state; but, as I have said, some of the questions involved are quite important, and particularly as to the construction, under the patent law, of the assignments in this case.

P. LORILLARD & Co. *v.* MCALPIN and others.

(*Circuit Court, S. D. New York.* February 28, 1882.)

PATENTS FOR INVENTIONS—REISSUE.

A claim in a reissue cannot be extended so as to embrace an invention not specified in the original.

Gifford & Gifford, for plaintiffs.

B. F. Thurston and *S. A. Duncan*, for defendants.

BLATCHFORD, C. J. In view of the decision in *James* v. *Campbell*, 3 Morr. Trans. 439, there is so much doubt as to the validity of the reissue ["Improvement in Plug Tobacco," granted to Charles Siedler, October 24, 1876,] in this case, if construed, in regard to claims 1, 3, and 4, as covering labels not put under wrappers, that those claims must be construed, for the purposes of this motion, as not extending to labels not under wrappers. That being so, the defendants do not infringe.

The motion is denied.

THE MARKEE.*

(*Circuit Court, E. D. Pennsylvania.* October 27, 1882.)

ADMIRALTY—OPINION OF DISTRICT COURT—3 FED. REP. 45, AFFIRMED.

Appeal from a decree of the district court in a case fully reported in 3 FED. REP. 45.

MCKENNAN, C. J. At the argument of this appeal I entertained some doubt as to the libelant's right to recover. Subsequent reflection has removed that doubt, and it is, therefore, now adjudged and decreed that the libelant recover from the respondent and his stipulator $910.50, with interest from August 31, 1877, and costs, except the costs of depositions taken by libelant since the appeal.

See *Kenah* v. *The Tug John Markee, Jr.*, 3 FED. REP. 45.

*Reported by Frank P. Prichard, Esq., of the Philadelphia bar.