P. LORILLARD & Co. v. McALPIN and others.

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.*

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.

HALL *v.* BROOKS.*

1. REMOVAL OF CAUSE—FAILURE TO FILE RECORD—EXCUSE.

    Where, on a motion to remand a cause to the state court for failure to file the record in the circuit court before the first day of the next term, the defendant appeared and offered to file the record, and gave as excuse for not having done so that the information obtained at the clerk's office was understood to mean that the next term would be in December, when it actually began November 1st, *held,* that the excuse was sufficient, and the defendant must be allowed to file the record.

2. SAME—MOTIVE FOR REMOVAL IMMATERIAL.

    The failure to file the record having caused no delay of the trial, and in nowise prejudicing the plaintiff, the fact that the motive for removing the cause was to delay the trial is immaterial, and it is the duty of the circuit court to retain the cause, without regard to the motive which impelled the removal.

Hathaway & Montgomery, for plaintiff.

Clark Brooks, for defendant.

BENEDICT, D. J.   This is a motion to remand the cause to the state court because of a failure to file the record in this court on the first day of the next term, which was November 1st.   It is admitted that the record has not been filed.   The defendant offers now to file it, and his excuse for the failure sooner to file it is that his attorney made inquiry at the clerk's office as to the time of holding the next term of the court, and understood the information there given him to import that the next term of the court would be in December, and therefore supposed that he had until December to file the record.

According to the law as settled by the supreme court of the United States, (*Baltimore & O. R. R.* v. *Koontz,* 13 Reporter, 228,) failure to file the record on the first day of the next term does not deprive the circuit court of jurisdiction over the cause, and when a sufficient cause for the failure so to file the record is shown, it is the duty of the circuit court to permit the record to be filed, and allow the cause to proceed in the circuit court.

The excuse here made for the failure to file the record at the November term is sufficient, and the defendant must therefore be allowed to file the record at this time.   The fact, if it be a fact, that the motive for removing the cause to this court was to delay the trial, is immaterial.   The failure to file the record on the first day of the

*Reported by R. D. & Wyllys Benedict.