

SCHALSCHA *v.* SUTRO AND OTHERS.

Circuit Court, S. D. New York. February 6, 1884.

LETTERS PATENT—PERFORATED CIGAR.

Letters patent No. 186,628, for a cigar with a hole in the end, cover only cigars manufactured by the machine described in the specifications. It is no infringement to punch a hole in the cigar with a pencil.

In Equity.

Edmonds & Jerome, for complainant.

Hamilton Cole, for defendants.

WALLACE, J. The claim of the patent to Schalscha (No. 186,628, granted January 3, 1877) is “a cigar constructed as described, with a longitudinal opening, H, in its drawing end, and the end of the wrapper, A, secured permanently within the aperture, as and for the purpose 320 set forth.” Read with the description, however, the claim must be limited to one for the cigar when made by the machine described in detail by the patentee as employed by him for the purpose, or a substantially similar machine. No mode of making such a cigar is disclosed in the specification except by means of the machine described. The machine is described with particularity, and the mode of operating it; and among the advantages enumerated as the result of the invention are those which could only result from the employment of the particular machine. There is no evidence that the defendants’ cigars were made by a machine; on the contrary, the proof is that the hole in the tip was punched by a pencil. The bill is dismissed.