

ILLINGWORTH *v.* SPAULDING, JENNINGS &
Co.

Circuit Court, D. New Jersey.

July 23, 1881.

1. LETTERS PATENT—PRELIMINARY INJUNCTION.

A preliminary injunction will not be granted where the defendant's affidavits make out a case of reasonable doubt as to the novelty of the complainant's patent.

2. SAME—SAME.

Semble that the same rule applies as to its validity.

In Equity.

NIXON, D. J. This is an application for a preliminary injunction. None should ever be granted where the answering affidavits of the defendants show a reasonable doubt about the novelty or validity of the complainant's patent. This was done at the hearing by exhibiting a certified copy of English letters patent No. 3,801, for improvements in the manufacture of plated and gilded ingots of iron and steel, and in the moulds used for the purpose, ceded to William Morse on the nineteenth of May, 1874. After an inspection and examination of the provisional and complete specifications and drawings of the said Morse patent on the argument, I intimated that they suggested a sufficient uncertainty in regard to the novelty of the complainant's patent to warrant the court in refusing the application. The counsel for the complainant afterwards submitted to me several affidavits, taken without notice, and purporting to be verified 155 before a master in the court of chancery of New Jersey, tending to show that, although the patent to Morse antedated the Illingworth patent on which the suit was brought, the invention of the latter was in fact perfected several weeks before the actual sealing of the complete specifications of Morse, and claimed that, under the rule, he was entitled to use such affidavits in reply to the affidavits of the defendants on the

complainant's motion. But this is not allowable. Such a practice would often result in determining what seems to be the vital question of a cause upon *ex parte* affidavits.

The complainant must wait for his injunction until the final hearing, when the court will be better able upon the proofs to ascertain the facts. The injunction is refused.

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