

BATE REFRIGERATING CO. *v.* EASTMAN.

Circuit Court, S. D. New York. September 5, 1881.

PATENTS—ATTACHMENT DENIED.

Where there is so much doubt on the question of infringement as to require that the new apparatus be embraced in a new suit, the motion for an attachment will be denied.

BLATCHFORD, C. J. In view of the state of the art as shown in the prior patents, referred to on the hearing of the motion for injunction, and of the construction which Judge Nixon found to be the proper one on which to sustain the patent as against those prior patents, and of the grounds on which the motion for injunction was granted, and of the fact that no process is claimed in the patent, but the claims are for apparatus having a specific mode of operation, and of the fact that the defendant uses new air all the time, although getting the 903 benefit of cooling the new air by the cold of the old air, I think there is so much doubt on the question of infringement as to require that the new apparatus be embraced in a new suit, and that the motion for attachment be denied.

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