

OSBORN *v.* JUDD AND OTHERS.

Circuit Court, S. D. New York.

November 20, 1886.

PATENTS FOR INVENTIONS—INFRINGEMENT—PRELIMINARY
INJUNCTIONS—BANNER ROD.

A preliminary injunction will not be granted to restrain the infringement of a “design for a banner rod, consisting of a conventional imitation of a straight twig with the bark, and slantingly cut ends;” the section which relates to design patents demanding, it may be supposed, the exercise of more genius than is exhibited by it.

Motion for a Preliminary Injunction against the infringement of a design patent. Denied.

Joshua Pusey, for complainant.

Briesen & Steele, for defendants.

SHIPMAN, J. This is a motion for a preliminary injunction against the infringement of a design patent. The design is sufficiently stated in the claim, which is as follows: “The design for a banner rod, herein shown and described, the same consisting of a conventional imitation of a straight twig with the bark on, and slantingly cut ends.”

I have great doubt whether there is anything which shows genius, or which indicates the work of an inventive mind, and therefore whether there is anything patentable in merely making a banner rod to imitate measurably a straight twig with the bark on. This natural and simple design for a banner rod would, I think, readily suggest itself to the upholsterer. There is so much reason to suppose that the section which relates to design patents demands the exercise of more genius than is exhibited in the patented design that the motion should be denied.