

WIRT *v.* BROWN.¹

Circuit Court, E. D. New York.

January 21, 1887.

PATENTS FOR INVENTIONS—INJUNCTION—NEW PATENT—CONTEMPT.

Where defendant was enjoined from making a certain kind of pen, and thereafter made a different pen, on which he obtained a patent, *held*, on motion to attach for contempt of injunction, that the fact that a patent had been issued to defendant entitled him to have the question of infringement determined on a motion to prevent the making of this form of pen, and that the present motion should be denied.

In Equity. On motion to attach for contempt.

W. S. Logan, for plaintiff.

Charles H. Bulkley, for defendant.

BENEDICT, J. The motion for an attachment in this case presents the same question that arose in *Onderdonk v. Fanning*, 2 Fed. Rep. 568.

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The defendant has not, since the injunction was issued, made any pen similar in all respects to the pens he made prior to the injunction. The pen he is shown to have made since the injunction was not presented when the injunction was granted. Since then the defendant has obtained a patent for the form of pen presented on this motion; It may be that the pen now complained of infringes upon the plaintiffs patent, but the fact that a patent has been issued to the defendant, which covers this form of pen, should, I think, entitle the defendant to have the question of infringement determined on a motion for an injunction to prevent the making of this form of pen, instead of by a motion to attach him for contempt by violating an injunction issued to prevent the making of another form of pen. Motion denied.

¹ Reported by Edward G. Benedict, Esq., of the New York bar.