

BALDWIN *v.* CONWAY & CO., LIMITED.

*Circuit Court, S. D. New York.*

December 1, 1887.

PATENTS FOR INVENTIONS—INFRINGEMENT—INJUNCTION.

The plaintiff applied for a preliminary injunction to restrain the infringement of a patent. The patent had not been adjudicated on, and it was questionable if the invention was patentable. *Held*, that a preliminary injunction should not issue.

*G. G. Frelinghuysen*, for complainant.

*John H. Kitchen*, for defendant.

LACOMBE, J. This is an application for a preliminary injunction to restrain the defendant from infringing the patent for improvement in police nippers granted to the plaintiff July 7, 1874, and numbered 152,822.

It appears that police nippers consisting of a small chain of suitable length with a cross-bar attached at each end, similar to those used on chain halters and trace chains, were in use for many years prior to plaintiff's application. When nippers thus made were used, the links of the chain being twisted between the fingers of the policeman, pinched and hurt them, thus preventing his keeping as firm a hold as necessary. When, also, for any cause it became necessary to twist the chain more or less, in order to adapt the nippers to prisoners having small hands or wrists, the difficulty was increased. In the original nippers the chain is fastened to an eye which projects inwardly from the cross-bar about three-eighths of an inch. The plaintiff's alleged invention consists merely in elongating this eye to about four times its original length, thus bringing the chain entirely without the hand, and preventing the injury to the fingers from the movement of the links.

There has been no adjudication upon the patent; and, while it may be that the elongation of this eye is, as the plaintiff claims, a patentable invention within the decisions, and not obnoxious to the criticisms so forcibly expressed in *Atlantic Works v. Brady*, 107 U. S. 200, 2 Sup. Ct. Rep. 225, still its claim to be considered such rests on so slender a foundation

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that, in the absence of an adjudication in its favor, a preliminary-injunction should not issue.

The motion is denied.