

ing the reissue was to enable the complainant to assert a colorable title to an invention to which all subsequent inventors must pay tribute, this was an illegitimate and oppressive motive, and the court should not be eager to come to their assistance when their patent is assailed, by granting them a remedy preliminary to final hearing. As was said by Lord ELDON in *Rundell v. Murray*, Jac. 311:

"Not only conduct with the party with whom the contest exists, but conduct with others, may influence the court in the exercise of its equitable jurisdiction by injunction."

This remark was cited with approval by Lord COTTENHAM in *Saunders v. Smith*, 3 Mylne & C. 711, 730. The patent, as reissued, is well calculated to suggest doubts as to its validity, and lead those who examine it to suppose that such an abuse of the statutory privilege cannot be tolerated. The officers of the complainant have only themselves to blame if others had acted on the assumption that the patent cannot stand. The defendant has acted upon this belief.

Under such circumstances the complainant should not have the stringent remedy applied for, and it is not only within the fair discretion, but it is the duty, of the court to deny preliminary relief, and leave the complainant to the ordinary relief at final hearing.

LADD, Trustee, etc., v. CAMERON.

(Circuit Court, D. New Jersey. August 15, 1885.)

1. PATENTS FOR INVENTIONS—PRELIMINARY INJUNCTION—DECISION IN ANOTHER CIRCUIT AS TO VALIDITY OF PATENT.

Where a patent has been declared valid by a decision in another circuit in a contest respecting a preliminary injunction, such decision will be followed unless new evidence is presented of such a character and significance that it would probably, if introduced in the first cause, have led to a different decision.

2. SAME—LACHES.

A preliminary injunction will not be granted when it is shown that the defendant has, with the knowledge of complainant, openly used the infringing mechanism for more than seven years before the institution of the suit.

Motion for Preliminary Injunction.

Chas. D. Adams and W. C. Witter, for the motion.

M. T. Newbold and A. Z. Keasby, contra.

NIXON, J. The application for a preliminary injunction in this case must be refused. The complainant's patent has been declared valid, after protracted litigations, by the circuit court of the United States for the Southern district of New York. I fully recognize the propriety of following the decisions of my brethren in other circuits, and in all contests respecting preliminary injunctions. I accept as conclusions such adjudications, unless new evidence is presented of such a character and significance that it would probably, if intro-

duced into the first case, have led to a different decision. See *Bailey Wringing-machine Co. v. Adams*, 3 Ban. & A. 96. Upon this motion I must accept the uncontradicted affidavit of the defendant as true. He swears to the existence of two facts, either of which is sufficient to defeat this application. (1) That he has been in the open, notorious use of the flexible and elastic foundation strips, in the construction; (2) that the owners of the patent have, since 1878, known of his use of the mechanism now complained of, and have taken no steps, except making idle threats, to restrain him. This laches is accounted for, and attempted to be excused, by the statement that the owners of the patent were quarreling among themselves, from the date of the patent until 1882, and that since that latter date they have been constantly engaged in establishing their rights against other infringers. This is not satisfactory for such a long delay. If the complainant and those whom he represents could, for any cause, refrain from proceeding against open infringers for more than seven years, it will be no hardship for them to wait for a few months longer for an injunction, if it shall appear, on final hearing, that one should be issued.

SHIRLEY v. MAYER.

(Circuit Court, E. D. New York. June 11, 1885.)

1. PATENTS FOR INVENTIONS—IMPROVEMENT IN LAMP CHIMNEYS—DEFECTIVE CLAIM.

Where a patentee has not claimed as much as he is entitled to claim, he is bound to discover the defect in a reasonable time or lose his right to a reissue.

2. SAME—REISSUE—EXPANSION.

Where there is a substantial expansion in a reissue of letters patent, so as to include a combination not included in the original, such reissue is void.

3. SAME—LAMP CHIMNEY—REISSUE VOID.

Reissued patent granted to Frederick S. Shirley, assignee of Robert R. Crosby, May 8, 1877, the original patent having been granted to Crosby, July 14, 1868, held void.

In Equity. On motion for temporary injunction.

J. Edgar Bull and *T. Frank Brownell*, for complainant.

Miles B. Andrus and *Wm. B. Lynes*, for defendant.

BENEDICT, J. This is a motion for a preliminary injunction to restrain the defendant from making lamp chimneys which, as the plaintiff asserts, infringe a patent reissued to him as assignee of Robert R. Crosby, the inventor, on May 8, 1877, the original patent having been granted to Crosby, July 14, 1868. The validity of the reissue is disputed by the defendant, upon the ground that the claim of the original patent has been expanded in the reissue, and the reissue having been obtained nearly nine years subsequent to the issue of the original, must be held void upon the authority of *Miller v. Bridgeport*