

statute did not begin to run against him. This is too clear to need amplification.

It is argued, however, that upon the defendants' omission to pay the debt at its maturity the plaintiff might *then* have required them to exonerate him from his liability, and that hence from that time the statute of limitations began to run. *Ardesco Oil Co. v. North American Oil & Mining Co.* 16 P. F. Smith, 66 Pa. St. 375, is referred to to sustain this argument. It is there held to be "well settled that as soon as the surety's obligation becomes absolute he is entitled in equity to require the principal debtor to exonerate him," 381, and that this right is enforceable by an action, in which the measure of damages is the amount of the debt for which the surety is liable. It is distinctly recognized as strictly an equity, which may be thus enforced only because, under the peculiar system which exists in Pennsylvania, equity is administered through common law forms. But this exceptional mode of administration does not change the character of the right. It is still an equitable incident to the relation of principal and surety, which entitles the latter to demand protection against the former's possible default, and is, in its nature, distinct from and independent of the surety's *legal* remedy where the burden of payment has been actually cast upon him. Out of the payment of the debt the surety's right to employ such remedy springs, and hence it is clear that the statute of limitations has no relation to it until it accrues.

The motion for a new trial is, therefore, denied, and judgment is directed to be entered on the verdict.

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WOVEN WIRE MATTRESS COMPANY *v.* WIRE WEB BED COMPANY.

(Circuit Court, D. Connecticut. March 18, 1880.)

Injunction for violation of patent.

SHIPMAN, J. This is an application for a temporary injunction to restrain an alleged violation of reissued letters patent.

dated May 29, 1877, for an improvement in bedstead frames. The original patent was issued November 30, 1869, to J. M. Farnham, assignor to the plaintiff.

The validity of the patent has recently been sustained by Judge Blodgett, holding the circuit court for the northern district of Illinois, in three contested cases, which were apparently tried together.

The claims of the patent are as follows:

1. The combination of the side bars and end bars, and elastic coiled wire, fabric "D," attached only to the end bars, with the end bars of the frame elevated above the side bars, so that the fabric will be suspended above the side bars from end to end of the frame.

2. The combination in a removable bed bottom or bedstead frame, of the side-bars "A," standards or corner pieces "B," end bars "C," and the elastic fabric "D," combined and arranged substantially as and for the purposes specified.

3. The inclined double end bars "C" of a bedstead frame, arranged substantially as and for the purposes herein shown and described.

4. The standards "B," constructed as described, arranged longitudinally, adjustable on the side bars of a bedstead frame, to permit the inclined end bars to be set a suitable distance apart, as set forth.

Judge Blodgett, in construing the first two claims by the light of the evidence as to the state of the art, says that while these claims "may be sustained for the combination of the side rails, standards, end rails, and elastic coiled wire fabric, yet it must be limited to the peculiar kind of side rails, standards and end rails shown, or their manifest equivalents. Side rails, end rails, and elastic coiled wire fabric were old; but the inclined end rail, made in two parts for the purpose of clamping the fabric and holding it suspended by means of the inclination between the points of attachment, seems, so far as the proof of these cases shows, to have been the invention of Farnham. So, too, his 'standards,' or corner pieces, 'B,' are not shown to have been anticipated by any prior user or inventor."

The first two claims of the patent are found only in the reissue. The third and fourth claims were in the original patent. Judge Blodgett is evidently of opinion that the end bars of the first claim must be the "inclined double end bars" of the third claim, and that the standard of the second claim must be adjustable on the side bars, so as to permit the enclosed end bars to be set a suitable distance apart, substantially as stated in the fourth claim. The point in dispute between the parties in this case, upon the question of infringement, is in regard to the inclination of the end rails. It is admitted that the frame which is produced is a fair sample of the articles made by the defendants. The end rails are certainly inclined, not nearly to such an extent as in the plaintiff's bed frames, but they are plainly inclined, so that the strain of the bed bottom comes upon the double end of the end bar, and the under side of the fabric does not rest substantially upon the end bars. How this inclination is effected was not made clear. I do not think that it results from the strain of the fabric upon an uninclined bar. The bar must be inclined when the frame and the fabric are put together.

Upon the question of novelty the old bed frame which came from Baltimore did not impress me as originally and designedly having inclined end bars. If the end bars are now inclined I think such inclination is the result of wear and tear.

An injunction should issue against violation of the first and third clauses of claim.

WASHBURN & MOEN MANUFACTURING COMPANY v. COLWELL  
STEEL BARB FENCE COMPANY and others.

WASHBURN & MOEN MANUFACTURING COMPANY and another v.  
COLWELL STEEL BARB FENCE COMPANY and others.

SAME v. SAME.

(Circuit Court, D. Connecticut. March 18, 1880.)

Motion to vacate or modify decrees obtained in the above suits by the Iowa Barb Steel Wire Company, upon the ground that said decrees are being used in other courts in applications for injunctions against it or its agents.

SHIPMAN, J. At the September term, 1878, of this court, three final decrees for the plaintiffs were obtained—one in the suit of the Washburn & Moen Manufacturing Company against the Colwell Steel Barb Fence Company and others, and two in two suits of the same plaintiff and Isaac L. Ellwood against the same defendants. These three decrees were obtained by consent of the parties, no argument having been had thereon, and by unusual inadvertence this fact was not incorporated in the decrees. The patents which were involved in the suits were reissued letters patent, Nos. 6976, 6913, 6914, 7136, 6902, 7036, (division "B,") and 7566.

The Iowa Barb Steel Wire Company, not a party to these suits, now moves that it be permitted to intervene in said causes; and, alleging in substance that it is incidentally affected by the decision of the questions involved in said decrees, and that said decrees are being used, to a certain extent, in applications for injunctions against itself, or its agents, in other circuit courts, prays that this court will vacate said decrees, or will modify them so far as to express the true circumstances and facts under which they were obtained.

Service of said motion was made upon the solicitor for the plaintiffs in this court. The plaintiffs' counsel have not appeared, for the alleged reason that, in their opinion, the court