

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

would not entertain favorably a summary motion of a stranger to said suits to vacate or modify said decrees upon the grounds stated in said motion. Said counsel also sent their motion papers in the now pending Massachusetts case.

I find, upon examination of the affidavit of Charles L. Washburn, that the court is informed that the decrees in all the cases therein mentioned, including the Connecticut cases, were submitted to, or were consented to, and that the end of the litigation was by agreement. Entertaining serious doubts of the power to grant the motion for the cause alleged, at the instance of a stranger to the suits, the motion is denied.

HALL v. THE PENNSYLVANIA RAILROAD COMPANY.

(*Circuit Court, W. D. Pennsylvania.* January 23, 1880.)

COMMON CARRIER—BILL OF LADING—LIMITATION OF LIABILITY—GOODS BURNED BY A MOB.—An exception in a bill of lading exempting a common carrier from liability for "loss or damage on any article or property whatever, by fire or other casualty, while in transit, or while in depots or places of transshipment," is applicable to goods forcibly taken from the carrier, while in transit, and burned by a lawless mob, where such carrier was not guilty of any negligence by which the efficiency of the exception was in any way impaired.

Action against a common carrier for damages.

John Fallon, for plaintiff.

Wayne McVeagh and *Chapman Biddle*, for defendant.

MCKENNAN, J. This suit was brought to recover from the defendant the value of certain wool, delivered to it at Chicago for transportation to Philadelphia. A jury having been waived, the case was tried by the court upon the evidence submitted by the parties. The following facts are found as established by the evidence:

1. The value of the goods in controversy was, on the twenty-second day of July, 1877, at the point of shipment, \$18,060.38, and at the point of destination, \$20,972.97.
2. "The said goods had, in course of transit from their place of shipment to their respective destinations, reached