

"The plaintiff's title rests upon a patent for improvements in a machine for harvesting clover and grass seed, which improvements, after a full and fair trial, resulted in unsuccessful experiments, and were finally abandoned. They never went into any useful or practical operation, and nothing more was heard of them from Steadman, (the patentee,) or any other person, for a period of six years. * * * Clearly, if any other person had chosen to take up the subject of the improvements where it was left off by Steadman, he had a right thus to enter upon it, and, if successful, would be entitled to the merit of them as an original inventor."

See, also, *Union Paper Bag Co. v. Pultz & Walkley Co.* 15 O. G. 423.

And this brings me to consider what was done by another experimenter in the same field.

It appears from the proof that about the same time the company employed Mr. Farnham, and gave him the key to its shop, with directions to "go to work and see what he could do," a Mr. E. W. Ellsworth, who seems to have been to some extent a successful inventor of other mechanical devices, was employed "to get up a more portable frame" than the iron one they had been using. Mr. Ellsworth took an unframed fabric to his house, and some time (as he testifies from recollection, without *data*) in March he produced and took to the shop of the company a mattress frame which, like those of his predecessors, Billings and Farnham, was fastened only to the end rails. But I consider it quite clear from the proof—*First*, that Ellsworth's frame was not produced until some time after Farnham's; *second*, that it was not a practicable frame,—not a portable or salable frame,—such as wanted for the trade.

I come, then, to the conclusion that there is nothing in the proof, as to the frames made by Billings and Ellsworth, which anticipates the Farnham frame for want of novelty. He undoubtedly took up the experiment where Mr. Billings left off, and it may be presumed that he profited by what had been done up to that time. The problem all were seeking to solve was to obtain a cheap, portable frame upon which the woven-wire fabric could be stretched, so as to make a comfortable bed bottom, and Farnham seems to have hit the mark at once. Billings had not attained the desired end, and what Ellsworth did was after Farnham. It must be remembered that all these efforts were made in one common interest. The mattress company was the party for whom all were working, and it cannot be supposed that this company would have employed both Farnham and Ellsworth to continue experiments if Billings had attained success.

I will here remark that one difficulty all of them seem to have encountered was in fastening the fabric at the end. The fabric, from its elasticity and strength, would seem to be well adapted to the purposes for which this company was trying to utilize it; yet the difficulty they all met with, and the one they were all trying to surmount, was to make, in the first place, a cheap, light, portable frame, and, in the second place, to secure these ends so they would be firmly held, and at the same time not ragged and rough, and not make an expensive fastening. Ellsworth devised a series of hooks interlocked to the wire fabric, which were, to say nothing else of them, exceedingly awkward and unsightly. Mr. Billings' efforts in that direction were certainly not successful. The fastening which he devised was ragged and liable to tear the clothing, if not to be uncomfortable to the occupants of the bed; and whatever Billings did produce that approximated towards success, seems to have been partly the suggestion of Sperry, because that which was nearest to success was the bottom, which was fastened into the frame with the hook-screws, which were hooked into the iron bar clamped across the webbing, and then fastened into the end pieces with screws on the outside, so as to tighten it up and give the requisite tension to the fabric. The difficulty all encountered up to Farnham was to fasten the ends securely and cheaply.

If the frame produced by Mr. Ellsworth had commended itself as better or more practical than Farnham's, it would undoubtedly have been adopted, because this company, having paid these men for the purpose, would undoubtedly have made arrangements in some manner for the control of the patent, if one was to be issued, for whatever device they should succeed in producing. But Ellsworth not only came later into the field, but he failed to produce a frame which met the demand. None of the manufacturers have adopted the Ellsworth frame, so far as the proofs in this case show.

Mention should also be made of the fact that in the first bed bottom made by Farnham the fabric was fastened to the side rails; but it is clear, from the evidence, that the skirt or curtain which fell from the line of tension between the tops of the end rails down to the side rails was intended only for a finish, to fill up what would otherwise be a vacant space between the fabric and the side rails; it being apparent, as I have already said, that the idea of the Farnham device was to fasten the fabric into the frame, and for all purposes of supporting the weight it was to bear only by the end attachment; and the curtain for fill-

ing the space between the side rail and line of tension was undoubtedly soon abandoned as of no practical utility.

Nor do I find the principle of the Farnham frame in any of the devices referred to in the answers, to-wit, the Dye, Wegman, Rouillion, and Franklin patents, nor in those shown in the proof, outside of the references in the answer, for the purpose of showing the state of the art, such as the Walbridge, Boone & Bell, Payne, Schligman, Merriweather, and Hughes patents. The steam-boat bunk bottom shown in the testimony of Robert E. Campbell, and the Dreusike and Dye patents, must be considered as operating to limit the claim of this patent to the special devices shown.

The Campbell bunk bottom was made of canvas stretched from end rail to end rail, without outside fastenings; and, although canvass may not come within the definition of an "elastic sheet," there can be no doubt that it is a "flexible sheet."

The Dreusike bed was made of coiled wire fabric; and while provision was made for the side fastenings, I think there can be no doubt he intended that the strain of supporting the weight to be borne by the bed was to come upon the end fastenings.

In the light of this evidence I think that while these first two claims in the reissued patent 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 attachments, 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.

I think, therefore, that the owner of the Farnham patent had the right to claim, by the reissue, the combination of the elastic coiled-wire fabric with these parts, whether they were new or old; but he had not the right to claim broadly for Farnham the sole right of suspending the fabric of which the bed bottom is made from "end to end of the frame," because Campbell, Dye, and Dreusike had suspended the flexible sheets of a bed bottom from end to end of the frame before Farnham made his frame. Of course the court will so far protect the combination patented as not to allow it to be defeated by a mere substitution of something for one of the parts which performs

the same, or substantially the same, function, and no other, as the part for which it is substituted.

With these views as to the construction to be given to this patent, I will now examine the evidence as to infringement in each separate case, beginning with that of Ames and Frost.

The mattress shown in the proof in this case (complainants' Exhibit 1) shows a frame with the end rails raised above the side rails, and held in place by corner irons or standards. These standards perform the same function as the standards, B, in complainants' patent. The elements of adjustability on the side rails by means of slots are not shown, but the standards are made adjustable on the side rail by means of a set-screw.

So, too, the recesses in the standards for holding the ends of the end rail are not inclined, but some inclination of the end rail is obtained by purposely, as it seems to me, making the end rail smaller than the recess, so that the tension of the fabric will tip or incline it sufficiently for all practical purposes. Probably some inclination to the end rail is, at least in theory, desirable in this kind of bed, so that the fabric will swing clear from its points of attachment at the ends; but it occurs to me that this is not a feature to which the ordinary buyer would attach much importance.

I conclude, therefore, that all the substantial characteristics of the complainants' frame are used in the Ames and Frost frame. They have standards like Farnham's and an inclined end rail practically like his. Their end rail is double, although they claim the second piece is only used for a finish, and is not intended to clamp and hold the fabric to the end rail. But I think this is a mere subterfuge. It is obvious that if the ends of the fabric are bent over the corner of the end rail, and the second piece, or cleat, fastened to the first piece of the rail over these bent ends, it must aid in holding the fabric to the frame. It makes what sailors call a "bight," and must re-enforce the other fastenings. I have no doubt, therefore, that these defendants must be held to infringe the reissued patent.

In the Zimmerman and Dean frames (complainants' Exhibit 1, Zimmerman, and complainants' Exhibit 1, Dean) I find the Farnham frame in all its distinctive parts, standard B, double end pieces inclined, and, in fact, all the parts covered by the Farnham claims, with hardly an effort to evade or avoid them.

The cases will be referred to a master to take proof and report as to damages.

See, also, *Woven-wire Mattress Co. v. Whittlesey*, 8 Biss. 23.

EVANS v. KELLY and others.

(Circuit Court, N. D. Illinois. January, 1880.)

PATENTS FOR INVENTIONS—HOW CONSTRUED.

A patent claim must be construed in the light of the specifications, and where the specifications describe the entire article, parts of the description cannot be separately considered, to show an infringement of one of the parts.

In Equity.

Lawrence, Campbell & Lawrence, for complainant.

Charles W. Griggs, for defendants.

DRUMMOND, C. J. I do not think this case is so clear as to warrant the court in allowing the injunction to issue. As I understand the claim set forth in the plaintiff's patent, it is for a covering made of a particular material, being a non-conductor of heat, in sections, so as to be easily put on and off any drum, pipe, steam generator, etc., in the way described. There is a particular description given of the manner in which this covering is applied around the steam-pipe. It is not clear that there is claimed absolutely the mere construction of a covering of a non-conducting material made in sections, so as to be put on and taken off the steam-pipe, drum, etc., easily; but in the particular way which is described. It is not necessary for me to decide here whether a claim for that in itself would be patentable, because, as it seems to me, the claim which is set up here is for the covering of the material, put on in the way described. This is the claim:

"The shells or tiles, A, A, constructed and applied to steam-pipes, drums, or other heated vessels, so as to produce a non-conducting covering, either with or without the confined air space between the said shells and the vessel covered thereby, substantially as and for the purpose hereinbefore set forth."

I admit, in order to properly construe the claim, we have to take the description given in the specifications of the subject-matter of the claim, and apply it to the description therein contained. Adopting that rule here, it seems to me we cannot sever the claim from the description contained in the specifications, and that we must assume that it is co-extensive with that description. If it was intended to claim parts of that which is described in the specifications as a whole, it should have been so stated; but where it claims the whole as described, we cannot sever one part of the description from another; but we must take it in its totality, and apply the description to the claim.