

## AN IOWA FARMERS' PROTECTIVE ASSOCIATION

### A BARBED WIRE PATENT PROTEST MOVEMENT

Extralegal societies, such as the Iowa Farmers' Protective Association, have always been common in America; from the earliest days of our country the people in the West have resorted to "regulators", vigilance committees, and similar organizations to solve certain social and economic problems. Appeals to the National or State governments were more often ignored than heeded and it was necessary, if any solution was hoped for, for the people to band together to protect their lives, rights, and property. In Iowa during the eighties of the past century a problem arose that had to be solved in this manner. Barbed wire fencing, which became an absolute necessity for prairie farming, had gravitated through patent litigation into the hands of "monopolists" and the only apparent solution to this problem was in organizing the farmers into a protest association.

The story of barbed wire goes back to the early settlement in the Middle West. As immigrants from the East moved across the Mississippi River into the prairies they were confronted rather early with the problem of enclosing their land. In Iowa this problem was especially difficult. The period of unbounded pastures and free range, with miles of waving grass common to all, soon came to an end. At first livestock had to be fenced out; later it had to be fenced in. Farmers either had to fence or to move on to the west.<sup>1</sup> For those who chose to fence, the supply of

<sup>1</sup> Tyler's *A Treatise on the Law of Boundaries and Fences* (Albany, 1876), pp. 468-471; Hopkins's *Economic History of the Production of Beef Cattle in Iowa* (Iowa City, 1928), p. 75.

natural resources was extremely limited — about seventy-five per cent of the State being destitute of timber. This situation made the cost of rails — from seventy to ninety-six cents per rod — beyond the reach of the average homesteader even if he was willing to cut and split them; and as a result many resorted to pine board fencing, the materials for which came from the pineries of the upper Mississippi. The cost of these materials was very high, and so, with the introduction of the osage orange, many turned to it as a solution of their fence problems. It was cheaper — costing only from five to seven and one-half cents per rod — as far as the initial cost was concerned, but its defects were many and it was soon discovered that for most farmers it required a great deal of time and care.<sup>2</sup>

As population increased the fencing situation naturally became more acute and by 1860 it was recognized by Iowa farmers as one of the perplexing problems. J. H. Wallace, in his report to the Iowa Agricultural Society as early as 1859, gave a vivid account of the paucity and expensiveness of fencing materials in Iowa. His report reads as follows:

*What shall we do for fences?* is a question that is asked by every intelligent stranger who visits and looks over our State. . . . In

<sup>2</sup> Charles Baldwin's *Fences* in the *Annual Report of the Iowa State Agricultural Society*, 1863, pp. 260-268; Suel Foster's *Hedge Fence* in the same volume, pp. 298-301. Besides the cost of construction, there was also the expense of repair and replacement. A reporter in 1860 stated that "The annual cost of keeping up the Fences of our State, and interest on the investment, exceeds the annual sales of Cattle and Hogs, by over \$138,000." During the experimental stages of the hedges the best growths were secured by experienced hedgers who went about the counties guaranteeing a satisfactory fence. The weaknesses of the hedge were many. Prairie fires were disastrous to shrubs; small animals as well as sheep ate the bark and leaves; it was impossible to move them in case of faulty surveying; they served as nurseries for weeds and vermin as well as snow; they cast shade; and they required from three to five years for a good growth.—*Annual Report of the Iowa State Agricultural Society*, 1857, pp. 226-232, 322, 357, 404, 1858, p. 10, 1860, p. 110; *The Western Rural*, Vol. XIII, p. 241 (July 31, 1875), Vol. XV, p. 118 (April 14, 1877).

many portions of the State, the timber is about exhausted, and the efforts that are being made to produce artificial groves are so few in number, and limited in extent, that we may put this down at nothing. The pineries of the upper Mississippi, vast though they be, cannot be made available for more than one-tenth of the necessity. Hedges are very tardy in their introduction, and on account of the care, skill and time requisite to perfect them, they will probably not come into general use during the present generation. We have no rocks to enclose our fields with walls; and embankments are a nuisance. In the meantime, our present fences are rotting down, and we are still waiting from year to year "for something to turn up" by which we may replace them.<sup>3</sup>

Something did "turn up". With the development of smooth wire in the East it was only a matter of time until farmers and practical mechanics were experimenting with some form of pricker or barb. Wire with thorns or barbs attached, like many another agricultural invention, has a long history behind it. The writer here had no particular interest in tracing the origin of the invention, even if that were possible. However, the early beginnings were found to have been in the eastern States. A patent on a crude and quite impractical barbed wire was taken out by a William D. Hunt in Scott County, New York, as early as 1867; he was followed the same year by an L. B. Smith of Kent County, Ohio, and the next year by a Michael D. Kelly of New York.<sup>4</sup> These three inventors laid the foundations and furnished the "bottom" patents for this type of fencing, though none of these wires ever proved very practicable.

In 1873 Mr. Hunt came to Illinois to sell territory for his

<sup>3</sup> *Annual Report of the Iowa State Agricultural Society*, 1859, p. 9.

<sup>4</sup> *Washburn & Moen Manufacturing Company v. Jacob Haish, Complainants Record* (Chicago, 1880), pp. 1-6, 66. All references in this paper except the Iowa publications are found in the American Steel & Wire Company Museum at Worcester, Massachusetts (maintained by the company), in the Library of Congress, in the Perry Ellwood vault at DeKalb, which contains the records and papers of his father, Isaac L. Ellwood, and in the Haish Memorial Library also at DeKalb.

patent and while in the small village of Hinckley he came across a Charles Kennedy who likewise had been experimenting with a loose barb for a single wire. While there, Hunt sold Kennedy his patent. This is the beginning of the barbed wire history as far as Illinois is concerned.<sup>5</sup> Immediately new patents began to emerge in the vicinity of Hinckley and DeKalb. Of the large number in this area two inventors came out with patents on forms of barbed wire that were practicable, durable, and easily manufactured. J. F. Glidden, on his farmstead west of DeKalb, perfected a fence that became in time the pattern for most of the barbed wire producers and consumers of the country, while Jacob Haish, a lumber dealer in the same community, developed simultaneously in his carpenter shop the "S" barb that served as a close second for a few years.<sup>6</sup>

Both of these patents were of the same general type, having two twisted wires; the difference being mainly in the way the barbs were attached. By 1874, Isaac L. Ellwood, a hardware merchant in DeKalb, saw the possibilities of the Glidden barb and purchased for a few hundred dollars a one-half interest in the patent, formed a partnership with the inventor, and began producing by hand a few tons per year. Haish entered the business at the same time and from these two small factories came the first successful barbed wire on a commercial scale. Two years later, a wire mill in Worcester, Massachusetts, known as the Washburn & Moen Manufacturing Company, purchased interests in these bottom patents, secured reissues of them, and began

<sup>5</sup> *The Western Rural*, Vol. XV, p. 148 (May 12, 1877); 159 U. S. 423; *Iron Age*, June 24, 1926.

<sup>6</sup> *Sycamore True Republican* (Ill.), July 31, August 4, September 25, 1875, May 27, 1876. In examining the 394 patents listed by the American Steel & Wire Company in their three-volume set of *Early Barbed Wire Specimens* (pp. 1-433) it was found that 176, or nearly half of the total, were issued to Illinois inventors. Iowa was credited with forty-seven. This set was published at Worcester, Massachusetts, between 1924 and 1930.

the development and consolidation of the barbed wire industry.

If the prairie State of Illinois produced and manufactured the first practicable barbed wire fencing, Iowa followed immediately in her steps. Factories sprang up in most of the principal cities of that State, for the demand was far in excess of the supply. During the seventies and eighties Iowa had fifteen different factories. Several were owned by the same people but were operated under different names and patents. Des Moines, Burlington, Marshalltown, Red Oak, Manchester, Oskaloosa, Decorah, Boone, Keokuk, Grinnell, Dubuque, and Cedar Rapids had one or more factories at one time or another.

Each producer had his own particular style of barb and two or three of these companies became rather famous in the development of the industry. In 1875 George C. Baker of Des Moines, Iowa, invented a machine to make barbed wire, secured a patent, and began the production of the wire by hand machines. The Baker Wire Company of Des Moines, under the direction of Mr. Baker, began production in 1879 and by 1881 this concern was producing 1500 tons of barbed wire annually. The Iowa Steel Barb Wire Company of Marshalltown, under the direction of R. E. Sears and his brother, began production in 1877 and by 1882 they were doing an annual business of one million dollars. The Hawkeye Steel Barb Wire Fence Company of Burlington developed rapidly under the supervision of John McCosh not only in the production of barbed wire but in its many specialties of stretchers, lifters, gates, and posts.<sup>7</sup>

<sup>7</sup> *Iowa State Register* (Daily, Des Moines), March 19, 1879, February 17, April 13, August 3, 1881, May 9, 1883; *The History of Polk County, Iowa* (Des Moines, 1880), p. 716; *Chicago Industrial World*, June 23, 1881, May 8, 1884; *Iron Age*, June 30, 1881, June 22, 1882, April 17, May 8, 15, 1884; *Chicago Journal of Commerce*, June 11, 1879; *Keokuk Gate City*, January 5, 1884. In the Museum at Worcester there are credit memoranda issued by Bradstreet for each one of these concerns.

In 1876 Washburn & Moen and I. L. Ellwood began a series of lawsuits against manufacturers in various parts of the country for infringement of patents.<sup>8</sup> The principal suit was filed in Chicago against Jacob Haish and thirteen other defendants from the Middle West. These defendants mobilized themselves into a protective society, called the Barbed Wire Manufacturers Union, assessing themselves one-half cent per pound on their output to defray legal expenses and to protect their buyers.<sup>9</sup> The legal battle was fought out on the ground that the "bottom" patents were neither novel nor a work of inventive genius.

The defendants leveled their whole attack on the premise that barbed wire fencing was in use before the Hunt patent and therefore it should not be sustained. On this point a large mass of evidence was introduced to show that farmers had used barbed wire prior to 1867.<sup>10</sup> The country was combed in search of old fences; some were unearthed in Iowa and one was found as far south as Texas. The trial dragged on for more than four years, since each prior fence disclosed made it necessary for the plaintiffs to secure rebutting evidence.<sup>11</sup>

During the period of litigation both sides claimed victory through their publications and advertisements. Every farmer and railroad company in the Middle West was cir-

<sup>8</sup> Letter from I. L. Ellwood to H. B. Sanborn, dated DeKalb, November 16, 1876; *Sycamore True Republican*, November 15, 1876, January 17, 1877.

<sup>9</sup> *Sycamore True Republican*, March 15, 1879; *The Haish Barb Wire Regulator*, Vol. III, p. 4 (January, 1879); letter from Coburn & Thatcher to T. H. Dodge, dated Chicago, February 15, 1877.

<sup>10</sup> Isaac L. Ellwood stated that more than 10,000 pages of testimony was collected in this trial.—Letter from I. L. Ellwood to R. R. Plane, dated DeKalb, February 5, 1879.

<sup>11</sup> Eleven different prior fences were unearthed.—Washburn & Moen v. J. Haish, *Complainants Record* (Chicago, 1880), pp. 1-808. In a prior fence case from Austin, Texas, as many as twenty depositions were allowed each side.—*Complainants Record* (Chicago, 1880), pp. 598-604.

cularized as to the danger of using wire made by those who were infringing a patent. It was a tense period for dealers and consumers alike. Finally, in December of 1880, Judges Thomas Drummond and Henry W. Blodgett handed down their decision in favor of the validity of the "bottom" patents.

This decision caused considerable excitement throughout the country. A reporter in Chicago stated on the day of the decision, "it has created a most profound sensation, and is the topic of conversation on the streets, in the cars, in the hotels, in business houses, and in fact wherever men congregate." Repercussions were heard from sections as far west as Montana and, considering the decision in the light of subsequent developments, it was no doubt one of the famous patent decisions.<sup>12</sup>

This decision meant a turning point in the barbed wire industry. It threw fear and consternation into the hearts of producers everywhere. Following the trial, Mr. Washburn came to Chicago where he proceeded at once to issue licenses and make settlements for back damages. By February 24th all the defendants in the suit, with the exception of Jacob Haish, had settled for damages and had taken out licenses.<sup>13</sup>

Some of the special features of these licenses were: (1) the licensee must operate on a definite tonnage; (2) he must assign all his patents; (3) he was required to settle for back damages covering a two-year period; (4) he must pay a royalty of seventy-five cents a hundred on future produc-

<sup>12</sup> *Chicago Industrial World*, December 23, 1880; *Chicago Tribune*, December 16, 1880; *Montana Live Stock Journal*, Vol. XII, pp. 233-234 (June, 1881). For the decision see 10 *Bissell* (United States Circuit Court, Northern District of Illinois), pp. 65-89.

<sup>13</sup> *Iron Age*, January 13, 1881; *Chicago Industrial World*, January 13, 1881; *Age of Steel*, February 5, 1881. During the year 1881, thirty-three licensees settled for damages totaling \$334,642.05.—Washburn & Moen, *Letter Book*, Vol. I, pp. 246, 298.

tion; (5) he must sell to consumers at a fixed price; and (6) each month he must report to the licensors the amount produced and sold along with the names and addresses of those to whom it was sold.<sup>14</sup>

Following this work of Mr. Washburn's, there appeared in Iowa a rather strong opposition to this consolidation. It was logical that this protest should begin in Iowa, for it had been the leading State in the number of grange locals, as well as the leading State at the time in the consumption of barbed wire.<sup>15</sup> Furthermore, the farmers and local dealers had been for years circularized by the producers to the effect that anyone handling or consuming infringing wire would be liable for damages.<sup>16</sup> This situation naturally kept the people in a state of tension and uncertainty.<sup>17</sup> Moreover, there was a rather sizeable group of well-organized leaders within the State to lead the protest movement as well as a number of sympathetic newspapers to serve as

<sup>14</sup> Ohio Steel Barb Fence Company v. Washburn & Moen, *Defendants Record* (Chicago, 1885), pp. 184, 188-192, 194; *Iron Age*, January 27, 1881.

<sup>15</sup> Nixon's *The Populist Movement in Iowa* in THE IOWA JOURNAL OF HISTORY AND POLITICS, Vol. XXIV, p. 3 (January, 1926); Haynes' *Third Party Movements Since the Civil War*, pp. 311, 448. In examining Jacob Haish's account books for the period 1879-1893, it was found that Iowa was his largest consumer.—See Washburn & Moen v. J. Haish, *Complainants Record* (Chicago, 1885), p. 66b.

<sup>16</sup> Letter from Snyder & Manoth to J. Haish, dated Brooklyn, Iowa, September 5, 1878. The Haish Scrap-Book at Worcester contains a collection of circulars sent to him by his dealers who had received them from other concerns. These circulars varied in content. Some were affidavits showing evidence of prior fences; some were court decisions; some were nothing more than slanderous remarks calling their competitors "foul names"; while the majority were primarily meant to frighten and intimidate dealers and consumers. The Drive Well patent cases in Iowa also served as experience for the farmers. For several years they had been harassed by collectors for the patent owners until by 1879 several counties collected a fighting fund to carry the suit to the Supreme Court. Jed Lake of Independence, who later helped to organize against the barbed wire patents, was one of the attorneys for the farmers.—*Iowa State Register* (Daily, Des Moines), March 26, 1879, June 9, 1881.

<sup>17</sup> Letter from L. Reeve to R. G. Brown, dated Chicago, May 28, 1879.



outlets for their propaganda.<sup>18</sup> Economic conditions also aggravated the situation. In the late seventies Iowa was hit by a severe grasshopper plague; resumption of specie payments added to the hard times; in 1878 wheat was selling in Chicago for about ninety-six cents per bushel; by 1879 the foreign countries were beginning to restrict our cattle exports; and in 1881, according to Thorstein B. Veblen, there was the worst drought "since the inauguration of crop reporting."<sup>19</sup>

The first organized protest against the monopoly of the barbed wire patent owners was a meeting held by a small group of citizens in the township of Westburg in Buchanan County, on December 20, 1878. The *Independence Conservative* carried a lengthy report of this meeting. Resolutions were passed by the group embodying sentiments of "boycott" against the "patent right" sharks, and those features of the patent system that made a man liable for buying an article "offered for sale in what the law calls the open market" was condemned.<sup>20</sup>

Shortly after this meeting, "Father" C. F. Clarkson, agricultural editor of the *Iowa State Register* at Des Moines, began a series of articles which circulated rather widely throughout the Middle West. He attacked the "monopolists" as "bulldozers" and appealed to the farm-

<sup>18</sup> The agricultural editors of the following papers were the most prominent leaders in this protest movement: *Traer Clipper*, *Keokuk Gate City*, *Davenport Gazette*, *Fort Dodge Messenger*, *Iowa Homestead*, *Winterset Madisonian*, *Newton Journal*, *Marshalltown Times*, *The Iowa Farmer*, and the *Iowa State Register*.—*Iowa State Register* (Daily, Des Moines), January 12, 1881.

<sup>19</sup> *The Western Rural*, Vol. XIII, p. 201 (June 26, 1875), Vol. XV, p. 276 (September 1, 1877); *Chicago Journal of Commerce*, April 16, 1879; *Keokuk Gate City*, January 27, 1883; Wallace's *Uncle Henry's Own Story of His Life* (Des Moines, 1917-1919), Vol. III, pp. 25-28; Thorstein B. Veblen's *The Price of Wheat Since 1867* in the *Journal of Political Economy*, Vol. I, pp. 71-73, 77, 78, 81 (December, 1892).

<sup>20</sup> *Sycamore True Republican*, January 4, 1879; *St. Louis Journal of Commerce*, March 29, 1879.

ers for action. In one account Clarkson reviewed the patent litigation up to that point and illustrated by a concrete example just what consolidation of the patents would mean in dollars and cents to the Iowa farmer. He took as an example the Iowa Steel Barb Wire Company at Marshalltown which, he stated, manufactured 300 carloads of fencing annually. A royalty fee of seventy-five cents per hundred exacted from this one firm would amount to the staggering total of \$195,000, all of which the farmers would have to pay.<sup>21</sup>

Clarkson went on to condemn the whole patent system for allowing a company to gain control of the barbed wire industry by "purchasing two or three old patents", which before were worthless, by "manipulation of the Patent Office". He claimed that in many of the legal battles, instead of the patent owners pushing their suits to a conclusion, they had resorted to tricks, bribery, and profitable compromises. "By such methods", he continued, the farmers of Iowa "are left to the exclusive monopoly and extortion of Washburn and Moen." In May, 1879, he published a long article, addressed directly to the patent owners, asking them if they intended to prosecute the innocent farmers.<sup>22</sup>

The patent owners came back in sharp retort to these many articles and circulars. I. L. Ellwood & Company released a lengthy circular to the dealers — an excerpt of which will show how demoralized the trade had become:

They [opponents] have sent circulars broadcast that we dare not

<sup>21</sup> *Sycamore True Republican*, April 9, 1879; *The Haish Barb Wire Regulator*, Vol. III, p. 8 (June, 1879).

<sup>22</sup> *Sycamore True Republican*, April 9, 1879; *Iowa State Register* (Daily, Des Moines), May 21, July 30, August 27, 1879. In a vein of satire Clarkson said: "we have no doubt that the patent office . . . will soon . . . issue patents on the first practices of Adam and Eve, as being new devices."—*Iowa State Register* (Daily, Des Moines), January 19, 1881.

come to trial. They have called us swindlers, liars, Monopolists, and all kinds of low and foul names, such as only proceed from the mouths of men that have no honorable means of defence. The country has been flooded with these vile circulars, and they only show to an intelligent public the most infamous scheme to bolster up an unlawful manufacture and use [of] an inferior quality of barb wire, that they may well be compared to the mushroom stock companies that manufacture it.<sup>23</sup>

A year later Ellwood again addressed himself in two lengthy letters to the citizens of Westburg in order to refute the charges and to explain his position. In his argument he tried to allay the fears of the farmers, but at the same time he demanded his patent rights.

We will as briefly as possible define our positions. . . . We have never in a single instance brought suit against a consumer, but instead we have laid our ax at the root of the evil namely the Manufacturers and Wholesale Dealers. Although we have received offers of large sums of money for the privilege of collecting damages from Farmers, we have steadily refused all such offers, believing that as a rule they have been deceived by the misrepresentations of irresponsible and unscrupulous parties. But now that our suits are decided, which fact we have published through out the N. W. should any parties . . . persist in buying and using infringing wires, we should deem it our duty to protect that which the Courts have decided is our property, and we candidly ask our Farmer friends if they would not do the same?<sup>24</sup>

By the first of the year 1881 things began to hum, and circulars were sent out with an accelerated speed not only by the patent owners but by licensees as well.<sup>25</sup> The Baker

<sup>23</sup> *Circular to Dealers*, DeKalb, February 5, 1879; letter from I. L. Ellwood to R. R. Plane, dated DeKalb, February 5, 1879. See also *The Burlington Hawkeye*, April 27, 1879.

<sup>24</sup> Letter from I. L. Ellwood to Walrath & Sons, dated DeKalb, February 5, 1879; letter from Ellwood to R. R. Plane, dated DeKalb, February 5, 1879.

<sup>25</sup> A total of 22,000 copies of the *Chicago Inter-Ocean*, containing the 1880 decision, were mailed to the trade by Ellwood and a licensee in Chicago.—*Sycamore True Republican*, December 22, 1880.

Wire Company of Des Moines, a licensee, wrote letters to dealers and farmers informing them that if anyone handled, or purchased, any wire infringing the patent he would be "held responsible for the violation . . . to the full extent of the law."<sup>26</sup> Farmers were so bewildered they did not know what to do. Many wrote in to their local papers inquiring as to what wire they should purchase; while others were so jittery over the matter they refused to make any purchases.<sup>27</sup>

One of the first attempts to solve the problem was by appeal to the National government.<sup>28</sup> In 1880 the Iowa State Agricultural Society, representing most of the discontented elements, forwarded a resolution to Congress in which the following statement appeared:

That the outrages perpetrated by the aid of patent right laws or by their abuses are crying aloud for relief; and that we request our members of Congress to so amend them as to remedy the evils or, if this cannot be done, that their evils being so much superior to their benefits, that they should be totally abolished.<sup>29</sup>

A letter in the *Register* one month later, a part of which reads as follows, depicted the same sentiments:

No State is now suffering as much perhaps as Iowa for want of protection in patents. It was to be hoped that the *average* Iowa Congressman would have remembered the dear farmer before this, but perhaps they will wake up by the next election to the impor-

<sup>26</sup> *Iron Age*, April 14, 1881.

<sup>27</sup> *The Western Stock Journal and Farmer*, February, 1881, p. 27; *Iowa State Register* (Daily, Des Moines), March 19, 1879, March 30, 1881.

<sup>28</sup> *Keokuk Gate City*, February 24, November 30, 1880, January 25, 1881; *Iowa State Register* (Daily, Des Moines), March 2, 1881. The attack upon the patent system grew to such proportions that even Thomas Edison was drawn into the controversy. He made a direct appeal to Butler to use what political influence he had to protect the system.—Letter from Edison to Butler, dated Menlo Park, N. J., February 17, 1879, in the Butler Papers (Manuscript Division, Library of Congress).

<sup>29</sup> *Iowa State Register* (Daily, Des Moines), January 13, 1881.

tance of the farmer. If they will not, some of them might get fast on some of our barb wire fences.<sup>30</sup>

*The Western Rural* carried an article in which it stated that the "patent office needs a thorough purification, and a good deal more industry and practically inclined brains than it has had."<sup>31</sup>

Another solution for these grievances concerning the patents was promulgated by a group of Iowa citizens in the form of an appeal case to the United States Supreme Court. G. H. Crosby of Sheridan Center, Poweshiek County, Iowa, as well as a number of other leaders, likened the barbed wire patents to that of the Millers' Purifier patent. Mr. Crosby stated that a "group of sharpers bought up an old and worthless patent for bolting flour and got a reissue which was so changed . . . [as] to cover the whole process." The millers of the country organized and raised a "fighting fund"; they contested the patent in the Federal courts and in the final decision the "patent right sharks were routed."<sup>32</sup> In regard to barbed wire Crosby said:

<sup>30</sup> *Iowa State Register* (Daily, Des Moines), February 23, March 2, 1881. Newspapers outside the State were likewise just as denunciatory of the Patent Office. See also *Janesville Daily Recorder*, December 19, 1880; *Rocky Mountain Husbandman*, June 8, 1882.

<sup>31</sup> *The Western Rural*, Vol. XIX, p. 225 (July 16, 1881); *Keokuk Gate City*, June 30, 1881. This agitation in the West gave rise to a long series of debates and investigations in Congress.—Arguments before the Committee on Patents, 45th Congress, 2nd session, *Miscellaneous Documents*, No. 50 (1877-78); *Chicago Industrial World*, January 26, June 1, 1882, March 27, May 15, 1884; *Midland Industrial Gazette*, February 7, 1884. It likewise caused such a stir among American inventors that they began an organization. By 1884 they had a well integrated society.—*Western Manufacturer*, Vol. XII, p. 194 (October 31, 1884); *Chicago Industrial World*, July 17, October 30, 1884. At their national meeting in 1884, one member remarked that he hoped "the inventors, and those interested in patents, will unite in one solid phalanx to take the grangers and those members of Congress who are for annihilating the patent laws, place them upon a steel rail . . . down grade in a dirt car, with steam and electricity pushing them forward to the lowest depths of h—!" —*Iowa State Register* (Daily, Des Moines), July 31, 1884.

<sup>32</sup> *Iowa State Register* (Daily, Des Moines), February 23, March 2, 1881.

It seems to me that we cannot afford to sit tamely down and be robbed without making an effort to defend ourselves. . . . A small contribution from each one will make a sufficient fund to test the question. As the matter stands every man who has a rod of barbed wire fence is liable to be called upon to pay a good round sum for infringement. . . . Our only way would be to allow a new suit to be brought and make a test case of it.<sup>33</sup>

C. C. Cole, a prominent attorney in Des Moines, journeyed to Washington to examine the barbed wire patents. After a thorough investigation of them he encouraged the farmers to go ahead with a test case.<sup>34</sup> To fight this case in the courts they naturally turned to Jacob Haish of DeKalb, Illinois, who was the most recalcitrant manufacturer as far as the patent owners were concerned. He had been the principal defendant in the Chicago case and was the only one who refused to come to terms.<sup>35</sup>

In the spring of 1881 Haish leveled an attack on the "monopolists" through his *Barb Wire Regulator* that caused a stir throughout the Middle West. He became the "rallying point" for all the farmers and dealers who opposed the consolidation. In fact, he caused such a "rum-pus" by his propaganda that Washburn & Moen at one time offered him the liberal sum of \$50,000 if he would come to terms, fearing that unless he did capitulate there would be "an open rebellion against them." Charles F. Washburn characterized him as a "man who . . . is determined to fight, to wriggle, to scold and pull wires and issue ridiculous circulars; if necessary . . . [even] encourage Farmers Associations."<sup>36</sup>

<sup>33</sup> *Iowa State Register* (Daily, Des Moines), February 23, March 3, 1881.

<sup>34</sup> Letter from C. C. Cole to C. F. Clarkson, dated Washington, D. C., March 29, 1881.

<sup>35</sup> Haish had taken a large amount of testimony in the Chicago suit and it was already printed. This, the farmers felt, would save them a nice sum of money.—*Iowa State Register* (Daily, Des Moines), March 9, 1881.

<sup>36</sup> Letter from C. F. Washburn to I. L. Ellwood, dated Worcester, June 11,

To crystallize these varying opinions, it was necessary to have some sort of organization. On January 12, 1881, the Iowa Farmers' Alliance held its first meeting in Des Moines concurrently with the Iowa State Agricultural Society.<sup>37</sup> On the eve of the eleventh a group of agricultural editors — many of whom were officials of these two organizations — were invited to the residence of "Father" C. F. Clarkson to "discuss subjects of current interest." During the course of the evening Clarkson proposed that an organization of farmers be formed to fight the barbed wire monopoly.<sup>38</sup>

A few weeks after this gathering a call was sent out over the State to farmers, mechanics, and businessmen to attend a mass meeting at the courthouse in Des Moines. "The grasping world, combined capital, Congress and the Legislatures should be taught the lesson that the people are not yet ready to bear patiently unreasonable, unjust and tyrannical oppression", wrote Mr. Clarkson. "And we have faith to believe that this meeting will be only a commencement of the meetings which will be held throughout this State to declare their opinions and raise means to assert and maintain human liberty."<sup>39</sup>

In other articles Clarkson, with plenty of patriotic symbolism, appealed for action. "Our forefathers had spunk enough to cast the tea into the sea, because they were com-

1881; The Haish Scrap-Book; letter from B. F. Thurston to C. F. Washburn, dated Chicago, April 29, 1881; letters from C. F. Washburn to I. L. Ellwood, dated Worcester, April 28 and June 11, 1881.

<sup>37</sup> *Iowa State Register* (Daily, Des Moines), January 12, 13, 1881.

<sup>38</sup> *Iowa State Register* (Daily, Des Moines), January 12, 1881. Included in this group of editors were the following: James Wilson, S. A. Knapp, John Scott, L. S. Coffin, B. F. Gue, President Welch of the State Agricultural College, Henry Wallace, A. Taylor, Judge Batten, Alex. Charles, and Professor Budd. See also Wallace's *Uncle Henry's Own Story of His Life*, Vol. III, pp. 25-28.

<sup>39</sup> *Iowa State Register* (Daily, Des Moines), March 23, 1881; *The Western Rural*, Vol. XIX, p. 105 (April 2, 1881).

pelled to pay unjust stamp duties on it. . . . Have any of our farmers spirit enough not to use one pound of this wire, which has the blood of liberty staining it."<sup>40</sup>

Professor S. A. Knapp of the State College of Agriculture also stressed the importance of the struggle in the same patriotic manner by saying that "it is a contest which involves so much of liberty that if it fails the republic cannot long endure."<sup>41</sup>

On the appointed day the "whole face of Iowa" was covered with two inches of snow, and because of this inclement weather only a small number of delegates attended the meeting.<sup>42</sup> Mr. Clarkson was chosen president, since he was more or less responsible for the gathering, and B. F. Gue was selected as its secretary. The forenoon session was devoted largely to speeches and the reading of letters from such men as Jacob Haish, Jed Lake, and others. Haish sent them the following word: "I feel that I am right and will continue to manufacture the wire at prices the farmers can pay, if the people will sustain me." Mr. Lake's letter was a strong plea for the farmers of Iowa to back Haish and save the \$20,000 that it would cost them to form a new case.<sup>43</sup> A suggestion was made by J. A. Hull of Boone that they refer the case to General Benj. F. Butler who would, he thought, handle the whole matter for not more than \$2500. Hull was authorized to contact General Butler and ascertain if his services were available and just what his fees would be.<sup>44</sup>

<sup>40</sup> *Iowa State Register* (Daily, Des Moines), March 2, April 27, 1881.

<sup>41</sup> *Chicago Industrial World*, June 9, 1881.

<sup>42</sup> The number present varied with the reporters. The number no doubt was somewhere between eighty and one hundred.—*Sycamore True Republican*, April 6, 1881; *Chicago Industrial World*, April 7, 1881; *Iowa State Register* (Daily, Des Moines), April 3, 6, 1881.

<sup>43</sup> *Iron Age*, April 14, 1881.

<sup>44</sup> *Iowa State Register* (Daily, Des Moines), April 3, 1881. Butler replied



In the afternoon session, Judge W. E. Miller, who more or less secretly represented the patent owners, delivered a speech in which he attempted to counteract the movement by promising the farmers that he felt sure no suits would be brought against those "who purchased from licensed dealers." The delegates were anything but courteous to the judge for they suspected that he was "a mouthpiece for the trust."<sup>45</sup>

A man by the name of James H. Coon was present at this session. At the time he was engaged with two other parties — John H. Given and W. L. Carpenter — in the manufacture of barbed wire in Des Moines and the firm was, at the time, being sued by Washburn & Moen for infringement. Mr. Coon laid down a proposition to the farmers that if they would back him and his partners with financial aid to prosecute their suit, he "could supply all the farmers of

to Hull's inquiry by saying that he was "ready and willing for a very moderate fee to fight the barbed case through the Supreme Court."—*Iowa State Register* (Daily, Des Moines), April 22, May 11, 1881. Butler was probably selected because of his experience in handling patents. He had participated in the telephone and DeLaval cream separator suits.—Letter from O. D. Bennett to B. F. Butler, dated Washington, April 11, 18, 1884. He was also a favorite politically with many of the Iowa farmers. Occasional appeals were made to him to curb the railroads.—Letter from Geo. Crilly to Butler, dated Barnum Station, Iowa, January 24, 1879; letter from H. M. Hamblin to B. F. Butler, dated Primghar, Iowa, March 2, 16, 1885. Butler was nominated as the candidate for President at the Greenback convention in 1884 by James B. Weaver.—F. E. Haynes's *James Baird Weaver* (Iowa City, 1919), p. 215. Butler was never engaged beyond an advisory capacity in the barb wire case due to the fact that Haish came to terms with the patent owners and an appeal was out of the question until another case had gone through the lower courts.—Letter from I. L. Ellwood to C. F. Washburn, dated DeKalb, Ill., June 23, 1881; letter from Jacob Haish to C. F. Washburn, dated DeKalb, August 18, 1881; *Iowa State Register* (Daily, Des Moines), August 17, 1881.

<sup>45</sup> Following the meeting Miller sent the following characterizations to Washburn: "Ex. Lieut. Gov. Gue," he said, was "ready to sell out to the Greenbacks politically if he can make any money by it." J. D. Whitman was a "Democrat and Greenback candidate for Congress in 1876. *Anything for office.*" John Scott was "a gentleman farmer, acts with the republicans when he gets a nomination; otherwise, otherwise."—See Iowa Farmers' Protective Association Papers in the Museum at Worcester.

Iowa'' with barbed wire at one-third the price.<sup>46</sup> At the close of the meeting several resolutions were adopted, one of which was that an executive committee be appointed to perfect an organization.

A few weeks later this organizing committee met to make arrangements. The name given their organization was the Iowa Farmers' Protective Association. It was to be incorporated with authority to sue and be sued, to buy, sell, or manufacture barbed wire, and membership fees were to be one dollar per year. Any member sued "for infringement or using unlicensed wire will be given counsel in suit free of charge and where possible the Organization will become the defendant." A board of directors was appointed with a list of officers and C. C. Cole was engaged as their legal adviser. The capital stock was placed at \$100,000 to be secured by membership fees and annual dues of fifty cents; the largest indebtedness that could be incurred at any one time was limited to \$15,000 and members were eligible from Iowa, Minnesota, Nebraska, Kansas, and Missouri.<sup>47</sup>

On July 13th, the directors met in Des Moines and drew up a contract with the Coon concern to manufacture fencing to be furnished directly to members at seven and one-fourth cents per pound for enameled wire and eight and one-fourth cents for galvanized wire. Three-fourths of a cent was to be held in reserve for the purpose of paying royalty, or damages, in case the litigation resulted adversely; or to be returned to the members purchasing wire in case of success. Coon, Given, and Carpenter were to receive five-

<sup>46</sup> *Iowa State Register* (Daily, Des Moines), April 3, July 13, December 28, 1881; *The Western Rural*, Vol. XX, p. 12, January 14, 1882.

<sup>47</sup> See Articles II and XI in the *Iowa State Register* (Daily, Des Moines), May 25, 1881. The first officers were: M. L. Devin, president; L. S. Coffin, vice president; J. D. Whitman, secretary; and C. F. Clarkson, treasurer. In a short time a full time secretary was needed so Whitman resigned and G. H. Crosby was appointed.—*Iowa State Register* (Daily, Des Moines), July 6, October 12, November 9, 1881.

eighths of a cent for manufacturing the wire and the Association was to operate without profit. Barbed wire was to be "free"; that is no royalty was to be paid the Washburn & Moen concern.<sup>48</sup>

With the structure of the Association established, the next move was to get the farmers of the State behind it. Appeals were sent out requesting that farmers organize locals in the various counties, select officers, raise fees, and report their work to the Secretary. The appeals included the usual stock charges against the patent owners and courts.<sup>49</sup>

Within a short time the protest movement spread far and wide. C. F. Washburn, fearing a general rebellion among his licensees, came to Des Moines, and in the editorial office of the *Homestead* held a meeting with some of the directors of the Association to "ascertain if the interests and differences . . . could not be reconciled."<sup>50</sup> Having no success in securing an amicable settlement, he began distributing a series of pamphlets to the consumers as well as buying a goodly amount of advertising space in the local newspapers.<sup>51</sup> The Association, not to be outdone, got out a little monthly paper for fifteen cents a year called the *Farmers Advocate*, to "inform farmers of the monopolistic evils."<sup>52</sup>

<sup>48</sup> *Iowa State Register* (Daily, Des Moines), July 13, August 3, 24, September 14, 1881; C. Cole's *A History of the People of Iowa* (Cedar Rapids, 1921), pp. 428, 429.

<sup>49</sup> *Chicago Industrial World*, August 11, 1881; *Iowa State Register* (Daily, Des Moines), June 1, 1881.

<sup>50</sup> *Sycamore True Republican*, May 25, 1881; *Keokuk Gate City*, May 31, 1881.

<sup>51</sup> *Chicago Industrial World*, September 1, November 9, 1881. Advertisements in the *Register* cost the Washburn concern as much as forty cents a line. — Letter from T. G. Orwig to C. F. Clarkson, dated Des Moines, September 5, 1881; *The Western Rural*, Vol. XXIV, p. 408 (June 26, 1886); *Iowa State Register* (Daily, Des Moines), June 18, 1884.

<sup>52</sup> *The Western Rural*, Vol. XX, p. 60 (February 25, 1882); *Iowa State*

Washburn's next move was to attempt to close the factory just as he had done in the case of many others producing unlicensed wire.<sup>53</sup> An injunction against the Coon concern had been asked as early as 1879, but the case had been postponed until the fall of 1881. With the aid of the Association, Coon managed to secure another postponement from the judge until the January session. In the interim, a good deal of dickering took place between the two litigants. Coon led the patent owners to believe that he was the sole owner of the patents and machinery in the factory. Before the trial was to take place he agreed to a settlement whereby Washburn & Moen were to get possession of all the equipment for a certain price. He was to come to Des Moines from Chicago, where the arrangements had been drawn up, and deliver the machinery to them at an early hour of the morning.<sup>54</sup>

Since Given and Carpenter owned a two-thirds interest in the equipment and were suspicious of their partner they hired a detective to shadow Mr. Coon while he was in Chicago and when he came to the factory to deliver the ma-

*Register* (Daily, Des Moines), November 9, 1881. These pieces of literature were "placed in farmers wagons and sent directly or indirectly to every farmer in the North West."—*Chicago Industrial World*, September 1, 1881.

<sup>53</sup> J. W. Millington, one of the Washburn attorneys during the eighties, stated years later that he "closed up 139 factories in the States of Illinois, Iowa, Nebraska and Missouri without bringing suit."—*Reminiscences of J. W. Millington*, in the Museum at Worcester.

<sup>54</sup> *Iowa State Register* (Daily, Des Moines), October 26, 1881; *Keokuk Gate City*, January 17, 1882. Coon was promised \$12,000 to sell out, but when it was discovered that he had falsely testified as to the ownership of the machines he had, in order to "save himself from prosecution for perjury", to accept a smaller sum.—*Age of Steel*, January 7, 1882; *Iowa State Register* (Daily, Des Moines), December 28, 1881. At the Chicago meeting C. C. Cole, attorney for the Association, had a special conference with C. F. Washburn, the purpose of which was to try and raise the sum offered Mr. Coon for his patents. This extra amount was to be used to pay Cole "for his services." Cole apparently was in collusion with Coon as was evidenced in the suit, *Cole v. The Farmers' Protective Association*, Polk County District Court, August 30, 1882.—*The Farmers' Protective Association Papers*.

chines they were there to prevent the removal. Given and Carpenter, however, after some delay, finally capitulated and sold their interest in the patents and machinery for \$4,000.<sup>55</sup> Thus ended the first chapter in the "free barbed wire factory".

Following this "betrayal" by their own people, the directors of the Association began to perfect a new arrangement with other patent owners for machinery and barbs. "Sturdy John Given" was placed in charge of the factory with Carpenter as its agent and in a few months the factory was in operation again.<sup>56</sup> By this time the Association had become rather well known throughout the Middle West and much of the erstwhile opposition to it, especially in Iowa, was beginning to disappear. *The Western Rural*, which at first openly advised farmers not to join the Association, was by now opening its columns in active support.<sup>57</sup>

The National Farmers' Alliance at first opposed the Iowa Farmers' Alliance, and, naturally, the Farmers' Protective Association; but by the fall of 1881 they had forgotten many of their differences and were holding joint meetings.<sup>58</sup> Certain barbed wire factories, especially the

<sup>55</sup> *Iowa State Register* (Daily, Des Moines), December 28, 1881; *Age of Steel*, January 7, 1882; *St. Louis Globe Democrat*, January 4, 1882. Mr. Coon, following this episode, became an employee of the patent owners.—Letter from F. W. Lehmann to Thos. Dodge, dated Des Moines, October 31, 1883.

<sup>56</sup> *Keokuk Gate City*, January 17, 1882. The Association had trouble securing machines. They made an agreement with the Butler Brothers of Union in Hardin County for a number of machines but this caused friction with Jacob Haish who had built them. The upshot of the matter was that Haish sued out a writ of replevin and the Association was forced to surrender them.—See J. Haish Scrap-Book.

<sup>57</sup> *The Western Rural*, Vol. XIX, p. 225 (July 16, 1881), Vol. XXII, pp. 24, 604 (January 12, 1884); *Iowa State Register* (Daily, Des Moines), August 17, 1881. By 1884 Milton George, the editor, was making personal contributions to the Association.—*The Western Rural*, Vol. XXII, p. 29 (January 12, 1884).

<sup>58</sup> *Iowa State Register* (Daily, Des Moines), September 14, 1881.

Grinnell Wire Company, whose owners found it difficult to secure a license from the patent owners, rallied to the Association.<sup>59</sup> The State legislature by this time had been brought under the influence of the Association; so the future, in spite of the adversities, looked much brighter than the past.<sup>60</sup>

Realizing that a test case in the lower courts was quite improbable — due to the “refusal” of the Washburn concern to allow a “fair and thorough trial”—the Association now turned toward the Supreme Court of the United States. General Butler was again contacted to advise them as to the best procedure. He advised the farmers that a test could be made in the highest Court through the Attorney General of the United States, whom he said he had recently interviewed and found “willing to proceed against this unjust monopoly”.<sup>61</sup>

The initiative in this matter had to come through the legislature; so pressure was brought to bear upon the legislators, and on March 10, 1882, Senator John D. Nichols of Benton County introduced in the Iowa Senate a joint resolution requesting the President of the United States to have proceedings commenced by the Attorney General “to set aside patents and reissues” now “claimed to be owned by Washburn & Moen & Company.” The Iowa Secretary of State was requested to send a copy of this resolution to

<sup>59</sup> J. B. Grinnell was very friendly with C. F. Washburn while he was trying to secure a license. He wrote an article for him on the value of barbed wire which was published in the *Transactions of the Nebraska State Board of Agriculture* (1879-1880) and he entertained Washburn in his home on various occasions.—Letter from J. B. Grinnell to C. F. Washburn, dated Grinnell, Iowa, May 21, 1881; *The Western Rural*, Vol. XIX, p. 280 (September 3, 1881). By 1883 the Grinnell Company had definitely sided with the farmers and was selling “moonshine” Glidden wire throughout the West.—Letter from C. S. Martin to I. L. Ellwood, dated Hopkins, Missouri, October 8, 1883.

<sup>60</sup> *Dubuque Daily Herald*, January 16, 1883.

<sup>61</sup> *Iowa State Register* (Daily, Des Moines), March 11, 1882.

each United States Senator and Representative from Iowa and they were requested to try and get legislation to cancel patents issued inadvertently or void for lack of novelty.<sup>62</sup>

The resolution claimed that these patents were not novel inventions and that the reissued ones covered more than the original patents. The petitioners also averred that there was "no remedy for the public unless proceedings can be instituted", since the owners of the patents had thus far prevented the Iowa farmers from testing the validity "either by obtaining consent decrees or by default". A copy of the resolutions, as passed by both houses, was mailed to Mr. Washburn. In a few days he answered the petition by a direct appeal to the Attorney General, stating that the claim of the legislators "is full of gross errors" and that his concern had not made illegal settlements.<sup>63</sup>

By mid-summer, Washburn & Moen had brought suit against a number of producers in Iowa by asking for temporary injunctions.<sup>64</sup> Judge Love of the United States District Court in Des Moines refused to grant these requests and not to be outdone the patent owners turned for relief to the other Federal District Court in Keokuk under Judge McCrary.<sup>65</sup> The legal firm of Wright, Cummins and

<sup>62</sup> *Chicago Industrial World*, March 16, 1882; *Sycamore True Republican*, April 5, 1882; *Iowa State Register* (Daily, Des Moines), March 11, 1882. A few weeks earlier the legislature tabled a resolution making it a misdemeanor for any owner of a patent to send out secret agents to spy on the consumers.—*Chicago Industrial World*, January 26, 1882.

<sup>63</sup> *Sycamore True Republican*, April 5, 1882; *Iowa State Register* (Daily, Des Moines), March 11, 1882; The Farmers' Protective Association Papers. The *Vinton Eagle* carried on a heated debate with the *Chicago Industrial World* over this action of the legislature. The politicians were accused of "trying to gain favor with the farmers."—*Chicago Industrial World*, April 6, 27, 1882.

<sup>64</sup> *Iowa State Register* (Daily, Des Moines), June 14, 1882.

<sup>65</sup> Judge Love did allow the complainants a \$5000 bond from the Association and this was subscribed by some Des Moines bankers.—*Keokuk Gate City*, January 24, 1883.

Wright was engaged by the Association as their counsel while Washburn, as his critics remarked, brought from Chicago a "whole galaxy of sleek, well-fed, eastern patent lawyers." The battle was on now in dead earnest and both sides began to assemble their evidence.<sup>66</sup>

A. B. Cummins was a keen lawyer and caused plenty of anxiety for the patent owners. He made such a fine showing in this case that he was subsequently employed by the complainants. The experience in this work also prepared him for his vigorous attack on the iron and steel tariff schedules in 1909.<sup>67</sup>

While the arguments were being presented in Keokuk a similar trial was in session in St. Louis under Judge Samuel Treat. On June 4th, this judge held that the re-issues of the bottom patents were invalid, on the ground that they were enlargements. A few days later Judge McCrary handed down his decision at Keokuk, refusing an injunction on the same grounds—that the patents had been "illegally broadened." These two decisions, coming so close together, gave rise to considerable excitement among the farmers; so much so, in fact, that the directors of the Association released a report that their work was soon to draw to a close—they had accomplished their objective.<sup>68</sup>

But the battle was not over. Having been beaten in the

<sup>66</sup> *Iowa State Register* (Daily, Des Moines), November 1, 1882. The patent owners imported a number of barbing machines and secured a whole floor of the Keokuk Wind-Engine Company's factory where they were put in operation.—*Keokuk Gate City*, January 9, 1884; *Chicago Industrial World*, November 25, 1883.

<sup>67</sup> Letter from C. K. Offield to Thos. Dodge, dated Chicago, February 15, 1883; letter from J. W. Gates to John Lambert, dated Pittsburgh, August 9, 1893.

<sup>68</sup> *Chicago Industrial World*, June 7, 14, 1883; *The Western Rural*, Vol. XXI, p. 186 (June 9, 1883); *Keokuk Gate City*, June 12, 1883; *Western Manufacturer*, Vol. XII, p. 47 (March 31, 1884); *Iowa State Register* (Daily, Des Moines), March 5, 1884.



matter of reissued patents, Washburn & Moen still had another card to play. They next turned to the original Glidden patent and began a series of suits to test its validity. Nine cases were to be tried in the State of Iowa with a large number in other western States.<sup>69</sup>

Judge McCrary in the meantime had resigned his judgeship to become the general counsel for the Santa Fe Railway and his district was placed under Judge Brewer of Kansas.<sup>70</sup> To aid the Farmers' Protective Association in their suit an appeal was made to the Iowa State legislature for funds.<sup>71</sup> The receipts from membership, annual fees, and royalty were inadequate to finance a legal battle of this proportion. By a two-thirds vote in both houses an appropriation of \$5000 was made to the Association. The friends of the patent owners attempted to block the appropriation through an injunction restraining the State Treasurer from paying the sum, but the State Supreme Court finally decided that the appropriation was constitutional and the injunction was disallowed.<sup>72</sup>

It appeared that the Iowa farmers had the patent owners on the run. Licensees at the same time were becoming re-

<sup>69</sup> There were fifty-five cases in Iowa, Missouri, Kansas, Nebraska, and Minnesota.—*Chicago Industrial World*, March 13, June 5, 1884; *Keokuk Gate City*, January 9, 1884.

<sup>70</sup> *Keokuk Gate City*, January 3, 1884; *Chicago Industrial World*, February 28, 1884.

<sup>71</sup> The receipts from these two sources in 1882 were: membership and annual fees, \$505.55; royalty, \$636.78. In 1883 receipts were \$4,632.77 and expenses were \$3,734.15. The Association probably never had more than 3000 paying members.—*Keokuk Gate City*, January 24, 1883, January 22, 1884; *Chicago Industrial World*, January 1, 1883.

<sup>72</sup> *Iowa State Register* (Daily, Des Moines), March 12, April 2, 1884; *Iron Age*, May 15, October 22, November 6, 1884; *Age of Steel*, July 26, 1884. The patent owners claimed they tried to get the appropriation bill, which originated in the Agricultural Committee, referred to a committee "where they may be heard" but were unsuccessful.—*Chicago Industrial World*, June 5, 1884.

bellious under the royalty yoke and many of them defaulted on their payments. "Moonshiners" took heart and circularized the trade with greater intensity. In one of these circulars they stated that the trust now failing in courts is "adopting a course of intimidation and threats, in the vain hope of thereby bolstering up their tottering monopoly."<sup>73</sup>

The patent owners redoubled their efforts; expostulators were sent among the farmers to warn them of the dangers involved; contracts were mailed to dealers in order to secure a promise from them that they would not "sell any barbed wire except that made by licensees" or "patent owners"; and their regular dealers were urged to report all unlicensed jobbers.<sup>74</sup> The uprising had reached such a point in February, 1885, that, in order to quell the agitation, all licensees were called into Chicago. At this meeting the patent owners were forced to lower the royalty fees from thirty to twelve and one-half cents per hundred pounds so that the licensees could better compete with the western "moonshiners".<sup>75</sup> This rate was to remain in effect until the Glidden patent cases were decided in the western courts.

The two test cases that concerned the Iowa farmers were held in Leavenworth, Kansas, and Des Moines, both before the same judge. In the early part of May Judge D. J. Brewer handed down his decision in the former place sustaining the original Glidden patent and on June 10th the same decision was given in Des Moines. In the latter court the Farmers' Protective Association and the Grinnell Wire Company were the two important defendants. The decision

<sup>73</sup> *Western Manufacturer*, Vol. XII, pp. 186, 210 (October 21, November 29, 1884); *Age of Steel*, April 5, 12, 1884.

<sup>74</sup> Letter from Deering & Monroe to I. L. Ellwood, dated Osceola, Iowa, August 4, 1883; *Midland Industrial Gazette*, April 17, 1884; *Chicago Industrial World*, June 18, 1885.

<sup>75</sup> Minutes of the Barbed Wire Manufacturers, Chicago, February 3, 4, 1885; *Chicago Industrial World*, March 5, 1885.

was a difficult one for the judge to render since A. B. Cummins and his aides had unearthed a number of "prior fences" that added to the confusion.

Among these fences was the Freeman fence discovered in Scott County, near Hickory Grove, sometime in 1881. This fence, it was claimed, antedated the bottom patents by nearly twenty years. Another fence, known as the Morley fence, was unearthed near Delhi, in Delaware County. Morley lived in Iowa between 1858 and 1864 and was supposed to have displayed this crude form of barbed wire at the Delhi fair in 1858. This fence was considered one of the most important of the prior fences and the evidence introduced on this one fence covered several hundred pages.<sup>76</sup> Judge Brewer said in his decision:

This question has troubled me greatly. I am no mechanic; have no taste for mechanics; no mechanical turn of mind. And it has been very hard for me to weigh or appreciate the reasons and arguments based upon the facts and laws of mechanics, and I can only say, in concluding this branch of the case, that I have done the best I could.<sup>77</sup>

This decision entitled the complainants to the right to collect back damages for infringement as well as to a bond in case an appeal was made to the higher court. After an accounting of the business of the Association, the judge allowed them, in his interlocutory decree, to continue manufacturing barbed wire as before, pending an appeal, by paying fifteen cents per hundred royalty into the Court and depositing a \$5000 bond.<sup>78</sup>

<sup>76</sup> *Iowa State Register* (Daily, Des Moines), August 24, September 21, October 12, 1881; *Chicago Industrial World*, September 1, 22, 1881; *Keokuk Gate City*, January 12, 1884; *Iron Age*, January 26, 1888.

<sup>77</sup> 24 *Federal Reports*, pp. 23-32.

<sup>78</sup> *Iron Age*, June 18, 1885. The accounting showed a production for the period September, 1883, to May, 1885, of 38 tons per month or 456 tons per year.—Letter from C. F. Washburn to I. L. Ellwood, dated Worcester, July 7, 1887.

Cummins insisted on going forward with the appeal on the strength of a new fence that he had recently discovered.<sup>79</sup> A special appeal was made to the legislature for \$1000; but by now the legislators had cooled off somewhat so that it was not possible to get the necessary two-thirds vote, though a majority did support the request.<sup>80</sup> Without this aid it was an up-hill proposition to carry on the litigation, for many of the members had dropped out along the way, and following this adverse decision many felt it a useless task to go further. Moreover, the prices of barbed wire as well as the royalty fees had been forced down.

When the Association began production in 1881, barbed wire was selling in Iowa for around nine to eleven cents per pound; by 1885 the price had fallen to as low as four and five cents per pound.<sup>81</sup> With these prices it was difficult for the Association to compete with the "pool" and unless they could do so, the farmers saw no reason for supporting the "free barbed wire factory" any longer. It was also getting increasingly difficult to secure the smooth wire at a reasonable figure, for the Smooth Wire Pool in the East was now working in conjunction with the licensed barbed wire producers.<sup>82</sup> Furthermore, the St. Louis group of "moonshiners", who had been for several years a source

<sup>79</sup> Letter from C. F. Washburn to I. L. Ellwood, dated Worcester, October 21, 1885.

<sup>80</sup> *Iowa State Register* (Daily, Des Moines), May 5, 1886.

<sup>81</sup> *Iron Age*, April 14, 1881; *The Western Rural*, Vol. XX, p. 68 (March 4, 1882), Vol. XXIII, p. 359 (June 6, 1885); *Iowa State Register* (Daily, Des Moines), April 3, May 4, June 8, 1881; B. F. Gue's *History of Iowa* (New York, 1903), Vol. III, pp. 102, 103; C. Cole's *History of the People of Iowa*, pp. 428, 429.

<sup>82</sup> *Age of Steel*, February 7, 1885, November 20, 1886; *Sycamore True Republican*, March 4, 1885; *Iron Age*, August 6, 1885. Henry Wallace tells how they secured their wire. It "was bought at wholesale by a merchant who was friendly to us, put in his warehouse, and after night transferred to our factory, not far distant."—Henry Wallace's *Uncle Henry's Own Story of His Life*, Vol. III, p. 26.

of encouragement to the Association, began taking licenses in the fall of 1885, leaving only a few small concerns in Iowa to carry the burden of litigation.<sup>83</sup>

Carpenter, however, carried on his production under these adverse conditions with his production and sales falling off gradually each month until by April, 1887, he was forced to close down.<sup>84</sup> A. B. Cummins came to his rescue and perfected a reorganization by discontinuing the method of selling directly to the farmers and securing a loan to purchase the smooth wire.<sup>85</sup>

Circulars were sent broadcast throughout the Northwest notifying the trade of the reorganization, and in bold relief they mentioned the fact that they were planning to establish exclusive agencies. Their price list to dealers quoted wire about twenty-eight cents a hundred under that of the patent owners and immediately there was a stir in the enemy's camp.<sup>86</sup> In June, Ellwood wrote to his attorney (F. W. Lehmann) in Des Moines:

The fact is friend Lehmann, I cannot help but feel that we have made a terrible mistake in not purchasing that concern when we had an opportunity to do so; I agree with you in that the time ought to be here when we would not be compelled to purchase peace, yet I feel that we have never up to the present time made a purchase of this kind but what has proved a good investment. . . .

<sup>83</sup> *Iron Age*, March 5, December 17, 1885; *Age of Steel*, March 6, 1886.

<sup>84</sup> For the period from October, 1885, to March, 1887, he averaged about 18 tons per month compared with 38 tons for the period 1883-1885.—Letter from F. W. Lehmann to C. F. Washburn, dated Des Moines, April 27, 1887. For the six months period, November, 1886, to March, 1887, he produced "less than 75 tons."—Letter from C. F. Washburn to I. L. Ellwood, dated Worcester, April 29, 1887.

<sup>85</sup> Alex. Swan, the "cattle king" of Wyoming, was supposed to have furnished the money for the reorganization.—Letter from F. W. Lehmann to C. F. Washburn, dated Des Moines, April 27, 1887; letter from I. L. Ellwood to C. F. Washburn, dated DeKalb, May 19, 1887.

<sup>86</sup> Letter from I. L. Ellwood to C. F. Washburn, dated DeKalb, June 8, 1887.

Today the country is being flooded with that Carpenter circular and it is doing us more damage than ten such concerns are worth, or in other words it would have been cheaper for us to have bought them at \$50,000 than to have had circulars issued that is [sic] now being sent to the trade. What this thing will lead to, it is hard to say. . . . You will readily realize that it is a very hard matter for us . . . to hold exclusive agencies through the country on the Glidden wire when another concern can put up their royalty in Court and sell to the competitors of our agents in different towns. . . . It seems to me that everything possible should be done to annoy this concern and to give them the hottest fight possible, and in the mean time . . . use your own good judgment to investigate this matter and find out whether we cannot yet purchase that concern . . . and get them out of the way.<sup>87</sup>

There were two possible ways of controlling this concern by the patent owners: one was to keep the tonnage within the amount set by the Court in the interlocutory decree; the other was an outright purchase. After careful consideration the patent owners chose the latter alternative.<sup>88</sup>

Two of the Washburn & Moen licensees in Iowa — Baker and Sears — came to their rescue and offered ways of purchasing this concern. These two men were sure that Cummins was anxious to get his legal fees that had accumulated over the years and they were also aware that Carpenter was anxious to secure a good price for his machinery.<sup>89</sup> Mr. Baker was commissioned to "close out" the company probably for the simple reason that Cummins was on the Board of Directors of the Baker Wire Company.<sup>90</sup>

<sup>87</sup> Letter from I. L. Ellwood to F. W. Lehmann, dated DeKalb, June 13, 1887.

<sup>88</sup> Letter from I. L. Ellwood to C. F. Washburn, dated DeKalb, June 6, 1887; letter from I. L. Ellwood to F. W. Lehmann, dated DeKalb, June 27, 1887.

<sup>89</sup> Letter from C. F. Washburn to I. L. Ellwood, dated Worcester, August 16, 1887; letter from I. L. Ellwood to C. F. Washburn, dated DeKalb, October 22, 1887.

<sup>90</sup> *Organization and Proceedings of the Board of Directors of the Baker*

On November 5, 1887, Baker reported to Ellwood that "they have come to an agreement in reference to the Carpenter concern." The only hitch, however, in the proposed settlement was that Carpenter had on hand some barbed wire which Ellwood would have to buy. After some hesitation he decided to take the wire for \$3000. He later turned it over to the Comparet Hardware Company in Des Moines at a considerable loss. He afterwards wrote that it "was miserable stuff, but we thought it better to stand the loss than to allow them to put it on the market."<sup>91</sup> Mr. Baker effected the settlement with the concern for exactly \$6350 and the last chapter of the "free barbed wire factory" was brought to an end.

Patent litigation continued, however, for there still existed in Iowa some small "moonshine" factories. A small producer at Waterloo, called the Beat 'Em All Barb Wire Company, was brought to trial for infringement of the Glidden patents before Judge O. P. Shiras at Dubuque in the Northern Iowa District Court.<sup>92</sup> The suit was a contest over the prior fences that had been unearthed in Iowa. The defendant called in a number of witnesses who testified that they had seen the Alvin Morley fence displayed at the Delhi fair in 1859; while the plaintiff introduced as many from the same section who claimed that no such fence existed.<sup>93</sup> Judge Shiras after some deliberation handed down

*Wire Company* (Des Moines, 1883-1884), p. 10. Mr. Baker received a thousand ton increase in his license for this work.—Letter from C. F. Washburn to I. L. Ellwood, dated Worcester, October 18, 1887.

<sup>91</sup> Letter from I. L. Ellwood to F. W. Lehmann, dated DeKalb, November 28, 1887; letter from I. L. Ellwood to C. F. Washburn, dated DeKalb, March 22, 1888; letter from I. L. Ellwood to H. B. Cragin, dated DeKalb, March 22, 1888.

<sup>92</sup> *Dubuque Daily Herald*, January 6, 1888; *Iron Age*, January 12, 19, 1888.

<sup>93</sup> *Age of Steel*, January 14, 1888; *Iron Age*, January 12, 1888. Nearly 300 witnesses were examined with something like 10,000 pages of testimony.—*Dubuque Daily Herald*, January 6, 1888. There was but one exhibit of barbed

a "voluminous decision" in which he declared that the Glidden patents were "void for want of novelty."<sup>94</sup> The plaintiffs, in order to protect their monopoly, made an appeal to the United States Supreme Court and on February 29, 1892, Justice Brown delivered an opinion in favor of the Glidden barbed wire and the matter of patent rights was established once and for all.<sup>95</sup>

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wire and that was an old rusty piece about eighteen inches in length containing two barbs.— *Age of Steel*, January 14, 1888.

<sup>94</sup> *Iowa State Register* (Daily, Des Moines), January 6, 1888.

<sup>95</sup> 143 *U. S.* 275; 33 *Federal Reports*, p. 26.