We order that the judgment be reversed, and the cause remanded to the Supreme Court of Louisiana, to be further proceeded in.

ISAAC HARTSHORN AND DANIEL HAYWARD, PLAINTIFFS IN ERROR *v.* HORACE H. DAY.

Where a patentee is about to apply for a renewal of his patent, and agrees with another person that, in case of success, he will assign to him the renewed patent, and the patent is renewed, such an agreement is valid, and conveys to the assignee an equitable title, which can be converted into a legal title by paying, or offering to pay, the stipulated consideration.

An agreement between Chaffee, the patentee, and Judson, after the renewal, reciting that the latter had stipulated to pay the expenses of the renewal, and make an allowance to the patentee of $1,200 a year, during the renewed term, and then declaring: "Now, I (Chaffee) do hereby, in consideration of the premises, and to place my patent so that in case of my death, or other accident or event, it may enure to the benefit of Charles Goodyear, and those who hold a right to the use of said patent, under and in connection with his licensees, &c., nominate, constitute, and appoint, said William Judson my trustee and attorney irrevocable, to hold said patent and have the control thereof, so as none shall have a license to use said patent or invention, &c., other than those who had a right when said patent was extended, without the written consent of said Judson, &c.," passed the entire ownership in the patent, legal and equitable, to Judson, for the benefit of Goodyear and those holding rights under him.

If this annuity was not regularly paid, the original patentee had no right to revoke the power of attorney, and assign the patent to another party. His right to the annuity rested in covenant, for a breach of which he had an adequate remedy at law.

Evidence tending to show that the agreement between the patentee and the attorney had been produced by the fraudulent representations of the latter, in respect to transactions out of which the agreement arose, ought not to have been received, it being a sealed instrument.

In a court of law, between parties or privies, evidence of fraud is admissible only where it goes to the question whether or not the instrument ever had any legal existence. But it was especially proper to exclude it in this case, where the agreement had been partly executed, and rights of long standing had grown up under it.

THIS case was brought up, by writ of error, from the Circuit Court of the United States for the district of Rhode Island.

It was an action brought by Day against Hartshorn and Hayward, for the violation of a patent for the preparation and application of India-rubber to cloths, granted to E. M. Chaffee in 1836, and renewed for seven years in 1850. Day claimed under an assignment of this patent from Chaffee, on the 1st of July, 1853. The defences taken by Hartshorn and Hayward are stated in the opinion of the court, in which there is also a succinct narrative of the whole case.

The defendants below first pleaded four special pleas, which were overruled upon demurrer. They then gave notice of eleven defences, assailing the validity of the patent. The record was very voluminous, being upwards of a thousand printed pages. One hundred and thirty-five exceptions were taken during the progress of the trial, which lasted for six weeks. After the testimony was closed, the counsel for the defendants offered seventy-four propositions to the court, by way of instruction to the jury, and six supplemental ones with regard to the fraud alleged to have been practised upon Chaffee by Judson. The court then charged the jury as contained in fifteen printed pages of the record, and the case came up to this court upon the following exception:

The court refused to instruct the jury as requested by the defendant's counsel, except so far as the propositions presented by them were adopted or approved in the charge as made, and refused to charge otherwise than as the jury had been instructed. The defendant's counsel excepted to such refusals, respectively, and also to the refusal of said court as to each of said requests. They also excepted to each instruction given by the court contrary to such requests, or either of them.

All this vast mass of matter was open to argument in this court.

It was argued by *Mr. O'Connor*, upon a brief filed by himself and *Mr. Brady* for the plaintiffs in error, and by *Mr. Richardson* and *Mr. Jenckes* for the defendant, upon which side, also, a printed argument was filed by *Mr. Gillet.*

There is only room to notice the general points taken by the respective counsel, omitting all subdivisions and illustrations. These would occupy half a volume. The points made on behalf of the plaintiffs in error were the following:

First Point.—The agreement of May 23, 1850, was a valid executory agreement by Chaffee to sell and convey to Goodyear the renewed patent now in question, in case such a patent should issue; and, upon its issue, the equitable ownership thereof vested in Goodyear, subject only to the license reserved to Chaffee to use it in his own business. (Curtis on Patents, secs. 195, 196.)

Second Point.—Chaffee having, by the agreement of September 5, 1850, without notice to Goodyear, without his consent, and, as it would appear, against his will, made another deposition of the patent, and having thereby put it entirely out of his (Chaffee's) power to execute a formal assignment to Goodyear, and thus entitle himself to the payment of the $1,500 by

Goodyear, which formed the only condition precedent to a complete investiture of Goodyear with at least the whole equitable ownership of the patent, he, Chaffee, and Day, his assignee, are precluded from availing themselves of such nonpayment by Goodyear as an objection to the use of the patented invention by Goodyear and his licensees. (Hockster *v.* Delatour, 2 Ellis and Blackburn, 688, and cases cited.)

Third Point.—The agreement between Chaffee and Judson, dated September 5, 1850, construed by itself alone, or in connection with the supplement thereto, dated November 12, 1851, and whether read, as it rightfully may be, in the light of surrounding and attending circumstances, or without such aid, (6 Peters, 68,) was, on the part of Chaffee, an executed contract. No further act of any kind was to be performed on his part; and, as it contained no condition subsequent, nor any clause of cessor, nor any reservation of power to rescind for any cause, the interest vested by it in Judson and his *cestuis que trust* could not be divested by Judson's omission to make prompt and punctual payments of the annuity. (Brooks et al. *v.* Stolley, 3 McLean, 526; Woodworth *v.* Weed, 1 Blatch., 165.)

Fourth Point.—Although it is not deemed material whether the interest acquired by Judson under the agreements between him and Chaffee was of an equitable or legal character, it is submitted that the whole legal title to the patent was thereby vested in Judson, subject to the license reserved to Chaffee to use the invention in his own business.

Fifth Point.—If the grant or agreement set forth in the paper dated September 5, 1850, is to be regarded as having been authenticated by the seal of Chaffee, and the actual execution by him, when of sound mind, of full age, and with knowledge of its contents, was established, neither Chaffee, nor Day, the plaintiff, who was his assignee and privy in estate, could be permitted to allege or prove, in a court of common law, for the purpose of defeating such grant or agreement, or for the purpose of varying its effect, that Chaffee was induced to execute it by threats of a lawsuit, or of hostility, or by false, deceitful, or fraudulent representations.

Sixth Point.—The court below erred in admitting the evidence of Woodman and Chaffee, touching the alleged fraudulent representations, and also in submitting the allegation of fraud to the jury, notwithstanding Woodman's professed nonrecollection that the instrument bore a seal when executed, and his asserted, but groundless disbelief of that fact.

Seventh Point.—Independently of the positions assumed in the preceding fifth and sixth points, the court erred in submitting it to the jury, to find that the instrument of September 5,

1850, was obtained by fraud, because there was no legal evidence in the case to support that allegation.

(The other points related to the pleas and demurrers.)

The points made on behalf of the defendant in error are taken from the brief of *Mr. Jenckes*, omitting all except those which relate to the power of Chaffee to revoke the power of attorney to Judson, and to assign the patent to Day.

I. The paper of the 5th of September, 1850, supposing it to have been untainted with fraud, conveyed no interest in the extended patent to Judson, or to Goodyear and his licensees. There is no word of grant or conveyance in it. It does not purport to give a license directly to Goodyear or his licensees. It gives Judson no power to grant licenses to any one.

II. The paper of the 5th September, 1850, offered a license to no persons except those who had a right to use the Chaffee patent at the time of its extension.

Hartshorn had no license to use the inventions of either Goodyear or Chaffee during the original term of the Chaffee patent. His license to use Goodyear's inventions was given on the 1st of February, 1851.

III. The legal title of the patent remained in Chaffee, and any action at law for an infringement must have been brought in his name, before his assignment to the defendant in error.

IV. The instrument bearing date November 12th, 1851, being between the same parties, and having relation to the same subject-matter, and purporting to be made for the purpose of correcting errors and omissions in the instrument of September 5th, 1850, the two must be taken togother as one instrument, and be so construed.

V. This instrument makes clear what was of doubtful construction in the former paper, and defines and limits the power of Judson, and the rights and interests which Goodyear and his licensees were to receive, and sets forth the conditions on which they were to receive them.

Judson is, for the first time, empowered to grant licenses as Chaffee's attorney, and Goodyear and his licensees are to have licenses through Judson, solely upon the condition of their severally contributing their share of the amount due Judson for services and expenses.

Judson was not empowered to license any others but the Goodyear licensees.

With respect to all other persons, the power to license was annexed to the legal title which remained in Chaffee. Judson was authorized to sue infringers, but he was not required to do so. If the Goodyear licensees should not comply with the condition on which they were to receive a license to use the

Chaffee patent, they might be sued as infringers, and Judson could reimburse himself out of the damages, or by compromising the suit by giving them a license on the terms required. Chaffee had a right to impose this or any other condition, and he was interested in having this condition performed, as he would thereby be relieved from his debt to Judson.

VI. So far as regards the rights of Chaffee, Goodyear and his licensees, and Judson, this instrument is a substitute for the provisions respecting the same subject-matter in that of September 5th, 1850.

These parties are bound by the facts recited in it, or which are necessarily to be inferred from it.

VII. Neither of these instruments gives Judson any interest in the patent itself, or in the profits of the patent, nor do they give him a right to use it, or to license others to use it, except upon conditions precedent, clearly and distinctly specified. Chaffee intended to give him security for the debt due him, and pointed out the fund from which the debt was to be paid, if the parties named should keep their agreement; and Judson took for his security a mere power to collect his dues out of this fund by selling licenses, or by suing for damages. The only interest which Judson took was in the money which might be produced by licenses or by suit, and to the extent of his claim for money advanced for services and expenses.

VIII. This instrument of November 12, 1851, was also executory, and is governed by the rules of law applicable to contracts executory in their nature, and to powers.

So far as the licenses were concerned, Chaffee was the contracting party on the one part, and Goodyear and his licensees on the other. The contract was not executed until the licensees had complied with the conditions under which they were to have a license, and Chaffee parted with nothing until such performance by them. If they neglected or refused to comply, his right of rescission was perfect.

So far as Judson was concerned, he held merely a power, from the proceeds of the execution of which he was to be paid, and to that extent the power operated as a security, and such power was revocable at any time, upon payment of the amount of the debt.

Powers to sell on mortgages are declared to be irrevocable in terms, but the deed and power together are cancelled by payment of the mortgage debt.

A power taken for security is revocable by the death of the grantor of the power. (Hunt *v.* Rousmaniere's Executors, 8 Wheat., 174.)

It is also revocable by the party giving it. (Mansfield *v.* Mansfield, 6 Conn., 559.)

In this case, the principles of the former case are adopted and carried out to their legitimate conclusions.

A power is irrevocable only when there is an express stipulation that it shall be irrevocable, *and* when the agent has an interest in its execution. Both of these circumstances must concur. (Story on Agency, sec. 476.)

The interest ceased, when Judson was offered the money for all his disbursements and services. There is no stipulation in the power of the 12th of November, 1851, that it shall be irrevocable.

IX. If the paper of the 5th September, 1850, be construed to give a license directly to Goodyear and his licensees, upon their paying the expenses and annuity, then such license is revocable if the conditions be not performed.

The instrument contains no words of grant or conveyance known to the common law. There are no covenants which would create an estoppel. The Goodyear licensees obtained nothing more than a license, not connected with any grant, or made part of any grant. Such a license is revocable at common law. (Thomas *v.* Lovell, Vaughan, 351.)

"A dispensation or license properly passeth no interest nor alters nor transfers property in anything, but only makes an action lawful, which without it would have been unlawful." (Wood *v.* Leadbitter, 13 Mees. and W., 843.)

"A license is in its nature revocable."

X. Hartshorn & Co. were not within the class of persons described in the paper of the 5th of September, 1850, nor in the class to whom Judson was authorized to give licenses by the paper of the 12th of November, 1851.

XI. The question of the performance of the condition of the papers of September 5, 1850, and November 12, 1851, after the papers had been construed by the court, was a question of fact for the jury.

XII. If the jury had found that there was a failure on the part of Judson and of Goodyear and his licensees to perform their part of the agreement of September 5, 1850; that the annuity had not been paid; that the Shoe Associates knew of the non-payment; that Judson was the agent of Goodyear and his licensees in making the paper of 12th of November, 1851, and of the Shoe Associates in all matters relating to the Chaffee patent since its extension; and that there had been an offer in good faith to repay Judson all that had been expended by himself or advanced by the Shoe Associates, on account of this extended patent; then, upon these facts, the revocation of the

powers given to Judson and the rescission of those contracts was proper on the part of Chaffee.

The instrument of revocation, the tender of all sums due to Judson, and the notice to Hartshorn & Co., were sufficient.

XIII. The title did not pass from Chaffee by the contracts of May 23, 1850, September 5, 1850, and November 12, 1851, in connection with the instrument executed between Goodyear and his licensees, dated July 1, 1848, in consideration of Judson's agreement in the paper of September 5, 1850, according to the prayer for instruction to the jury, which is made the subject of Exception 1.

XIV. One test of the right of rescission or revocation is, to inquire whether the contract is one that a court of equity would specifically enforce, under the circumstances existing at the time the rescission or revocation is sought to be made.

"The rules of law relating to specific performance, and those applied to the rescission of contracts, although not identically the same, have a near affinity to each other." (Boyce's Executors *v.* Grundy, 3 Peters, 210, 216.)

The remaining points are omitted.

Mr. Justice NELSON delivered the opinion of the court.

This is a writ of error to the judgment of the Circuit Court of the United States, holden by the district judge in and for the district of Rhode Island.

The action was brought by Day against the defendants below, for an alleged infringement of a patent for the preparation and application of India-rubber to cloths, granted to E. M. Chaffee, August 31, 1836, and renewed for seven years from the 31st August, 1850. The plaintiff claimed to be the assignee of the patent from Chaffee. The defendants sought to protect themselves under a license derived from Charles Goodyear, whom they insisted was the owner, and not Day, of the renewed patent. Goodyear became the owner of the unexpired term of the original patent on the 28th July, 1844, and on the same day granted to certain persons, called "The Shoe Associates," the exclusive use of all his improvements in the manufacture of India-rubber, patented, or to be patented, during the term of any patents or renewals which he might own, or in which he might be interested, "so far as the same are, or may be, applicable to the manufacture of boots and shoes."

The defendants claimed a license under the Shoe Associates.

Chaffee, the original patentee, made application to the Commissioner of Patents, the 22d May, 1850, for the renewal of his patent, in which he states that the then present owners were willing and desirous that it should be renewed, and in

that event that they ought to make him further compensation for the invention. And on the next day, 23d May, 1850, he entered into an agreement with Goodyear, in which he stipulated to convey to him the patent, on its renewal for the extended term, in consideration of three thousand dollars.

There seems to have been some agreement or understanding that the then owners of the patent, and their licensees, should be at the expense of the renewal.

William Judson had become interested in one-eighth of the patent in 1846, by an assignment from Goodyear; and in 1848 he, in conjunction with Seth P. Staples, was appointed by Goodyear his attorney and agent, in taking out, renewing, extending, and defending his patents; and a fund was provided by Goodyear for defraying the expenses of these proceedings, and placed in the hands of Judson. By the consent of Goodyear, Judson subsequently became his sole agent and trustee of the fund for the purposes mentioned.

The patent was renewed, in pursuance of the application, on the 30th August, 1850. Soon after this renewal, to wit, on the 5th September, 1850, an agreement was entered into between Chaffee and Judson, which recites the renewal, and that the expenses were large, and also that at the time of the renewal the patent was held by Goodyear for the benefit of himself and his licensees; and, further, that he had agreed with Chaffee, for himself and those using the patent under him, that they would be at the expense of the extension, and make an allowance to him, Chaffee, of $1,200 per annum, payable quarterly, during the period of the extension; and reciting also that Judson had had the management of the application for the renewal, and had paid, and became liable to pay, the expenses thereof, and had agreed to guaranty the payment of the annuity of $1,200; and the agreement then provided as follows: "Now, I (Chaffee) do hereby, in consideration of the premises, and to place my patent so that in case of my death, or other accident or event, it may enure to the benefit of said Charles Goodyear, and those who hold a right to the use of said patent, under and in connection with his licensees, according to the understanding of the parties interested, nominate, constitute, and appoint said William Judson my trustee and attorney, irrevocable, to hold said patent, and have the control thereof, so as no one shall have a license to use said patent or invention, or the improvements secured thereby, other than those who had a right to use the same when said patent was extended, without the written consent of said Judson first had and obtained."

At the close of the agreement, Judson stipulates with Chaf-

fee to pay all the expenses of the renewal, and also the annuity of $1,200; and also to be at all the expense of sustaining and defending the patent; and Chaffee reserves to himself the right to use the improvement in his own business.

This contract was entered into without the privity of Goodyear, and changed materially the terms and conditions of that made by him with Chaffee on the 23d May. He was at first dissatisfied with the change when it came to his notice, but afterwards acquiesced.

The contract continued in operation down to the 12th November, 1851, when a modification of the same took place.

This last contract recites that there was an omission in that of 6th September, in not stating that if the said licensees continued to use the improvements, they should pay their just proportion of the expenses and services in obtaining the renewal, which it was intended they should pay to Judson; and recites also that there was no stipulation on the part of Judson to pay Chaffee $1,500 per annum, as claimed by him; and it is then agreed that the licensees shall pay their share of the expenses to Judson, as a condition to the granting of a license by him to them; and that, on the payment of such share of the expenses, a license shall be granted to them. And it was further agreed, that Judson should pay Chaffee the $1,500 per annum; and also that Judson might use Chaffee's name in the prosecution of infringements of the patent, or for any other purpose in relation to the use of it, he holding Chaffee harmless from all costs, &c., and he, Judson, to have all the benefits to be derived from said suits.

It will be perceived that the only provision in this agreement differing from that of 6th September, in which Chaffee has any interest, is the one providing for an annuity of $1,500, instead of the $1,200. All the other provisions are for the benefit of Judson. This annuity was paid down to the 1st December, 1852, when some difficulty arose between Judson and Chaffee, and the payment ceased.

And on the 1st July thereafter, Chaffee undertook, in consequence of this default, to revoke and annul the power and control of Judson over the patent, and to forbid his acting in any way or manner under the agreements of the 6th September, and of the 12th November, above referred to. And on the same day, for the consideration of $11,000, assigned the renewed patent to Day, the plaintiff in this suit. Day, on the 2d July, 1853, gave notice to Judson of the assignment, offering to pay, at the same time, all sums there might be due him, if any there were, for moneys advanced in procuring the extension of the patent, or in any other way paid for Chaffee on

account of said patent. The above is the substance of the case, as appears from the written agreements of the parties in the record. The questions involved turn essentially upon the points:

1. As to the operation and effect to be given to the three agreements which have been referred to, and especially of that of the 6th September, 1850, between Chaffee and Judson; and

2. The force and effect of the attempted rescindment of these agreements by Chaffee, on the 1st July, 1853, on account of the neglect or refusal of Judson to pay the annuity of $1,500.

1. It is not important to examine particularly the agreement between Goodyear and Chaffee of 23d May, as that was, in effect, superseded by the one entered into with Judson, the 6th of September, to which Goodyear afterwards assented.

It is important only as leading to the latter agreement, and may therefore assist in explaining its provisions.

By this first agreement, Chaffee bound himself to assign to Goodyear the renewed patent, as soon as it was obtained, for the consideration of $3,000. Goodyear became thus equitably entitled to the entire interest in the patent during the extended term, and could have invested himself with the legal title on the payment, or offer to pay the three thousand dollars, had he not subsequently acquiesced in the modification of it with Judson. Judson was the owner, jointly with Goodyear, of one-eighth of the patent. He was also the agent and attorney of Goodyear, generally, in his applications for patents, in obtaining renewals, and in the litigation growing out of the business; and was the trustee of a fund provided by Goodyear to meet the expenses. It was, doubtless, on account of this interest of Judson in the improvement, and his general authority from Goodyear in the management of his patent concerns, that led him to enter into the new arrangement with Chaffee, of the 6th September, in the absence of his principal. Goodyear might have repudiated it, and insisted upon the fulfilment of the first agreement. He thought fit, however, after a full knowledge of the facts, to acquiesce; and his rights, therefore, and those claiming under him, must depend upon this second agreement.

In respect to this agreement, whether the title which passed from Chaffee, in the renewed patent to Judson, was legal or equitable, the court is of opinion that the entire interest and ownership in the same passed to him for the benefit of Goodyear, and those holding rights and licenses under him. The instrument is very inartificially drawn, but the intent and

object of it cannot be mistaken. Chaffee, in consideration of the premises, which included the annuity of $1,200, "and (in his own language) to place my (his) patent so that in case of death, or other accident or event, it (the patent) may enure to the benefit of said Charles Goodyear, and those who hold a right to the use of said patent, under and in connection with his licensees," &c., nominates and appoints "said William Judson, my trustee and attorney irrevocable, to hold said patent, and have the control thereof, so that no one shall have a license, &c., other than those who had a right to use the same when said patent was extended, without the written consent of said Judson;" and at the close of the agreement, he reserves the right to use the improvement in his own business. At this time, as we have seen, Judson was the owner of one-eighth of the patent, and was the general agent and attorney of Goodyear in all his patent business transactions. It is apparent that the only interest in the patent, left in Chaffee, was the right reserved for his own personal use. The annuity and indemnity against the expenses of the renewal were the compensation received by him for parting with the improvement. The contract of the 12th November has no material bearing upon this part of the case. Most of the provisions were for the benefit of Judson, in relation to the licensees under Goodyear. The only provision important to Chaffee is the stipulation for the increased annuity of $1,500.

2. Then, as to the attempted rescindment of the contracts. The agreement of 6th September had been in force from its date down to the 1st July, 1853, a period of two years and nearly ten months. During all this time, the licensees of Goodyear, at the date of the renewal of the patent, and those whom Judson may have granted a license to since the renewal, had a right to use the improvement, and especially the Shoe Associates, referred to in their agreement with Goodyear, 1st July, 1848. Besides this stipulation with Goodyear, their right was expressly recognised by Chaffee himself, in the agreement with Judson of 6th of September.

The effect of the rescindment as claimed, and which would be necessary to enable the plaintiff to succeed in his action against the defendants, would be to break up the business of these licensees, by divesting them of their rights under this agreement—rights acquired under it from all parties connected with or concerned in the patent, and especially from Chaffee, the patentee, who placed it in the hands of Judson, for the benefit of Goodyear and those holding under him. The effect would also be to deprive Goodyear or Judson, or whichever of them had paid the expenses of obtaining the renewal, of the

equivalent for those expenses, except as they might have a personal remedy against Chaffee. To the extent above stated, the agreement of the 6th September was already executed, and, in respect to parties concerned, the abrogation would work the most serious consequences.

As we have already said, the ground upon which the right to put an end to the agreement is the refusal to pay the annuity of $1,500 after December, 1852. Judson proposed to Chaffee to resume the payment in June, 1853, which was declined; but we attach no importance to this fact, especially as we are in a court of law. But, in looking into the agreements of the 6th of September, and also the one of the 12th of November, the court is of opinion that the payment of the annuity was not a condition to the vesting of the interest in the patent in Judson, and of course that the omission or refusal to pay did not give to Chaffee a right to rescind the contract, nor have the effect to remit him to his interest as patentee. The right to the annuity rested in covenant, under the agreement of the 12th of November. One of the objects of that agreement was, to obtain from Judson this covenant. From the terms and intent of the agreement, the remedy for the breach could rest only upon the personal obligation of Judson, as, by the previous one of the 6th of September, the interest in the patent had passed to Goodyear and his licensees, and no default or act of Judson could affect them. Chaffee chose to be satisfied with the covenant of Judson, without stipulation or condition as it respected the other parties, and he must be content with it.

The cases of Brooks *v.* Stolly, (3 McLean, 526,) and Woodworth *v.* Weed, (1 Blatchford, 165,) have no application to this case.

The attempt to rescind the contracts, being thus wholly inoperative and void, in the opinion of the court, of course no interest in the patent passed to Day, under the assignment of the 1st July, 1853.

Evidence was given on the trial in the court below, for the purpose of proving that the agreement of the 6th of September was procured from Chaffee by the fraudulent representations of Judson, which was objected to, but admitted.

The general rule is, that in an action upon a sealed instrument in a court of law, failure of consideration, or fraud in the consideration, for the purpose of avoiding the obligation, is not admissible as between parties and privies to the deed; and, more especially, where there has been a part execution of the contract. The difficulties are in adjusting the rights and equities of the parties in a court of law; and hence, in the States where the two systems of jurisprudence prevail, of

equity and the common law, a court of law refuses to open the question of fraud in the consideration, or in the transaction out of which the consideration arises, in a suit upon the sealed instrument, but turns the party over to a court of equity, where the instrument can be set aside upon such terms as, under all the circumstances, may be equitable and just between the parties. A court of law can hold no middle course; the question is limited to the validity or invalidity of the deed.

Fraud in the execution of the instrument has always been admitted in a court of law, as where it has been misread, or some other fraud or imposition has been practised upon the party in procuring his signature and seal. The fraud in this aspect goes to the question whether or not the instrument ever had any legal existence. (2 J. R., 177; 13 Ib., 430; 5 Cow., 506; 4 Wend., 471; 6 Munf., 358; 2 Rand., 426; 10 S. and R., 25; 14 Ib., 208; 1 Alab., 100; 7 Misso., 424; 4 Dev. and Bat., 436; C. and H., Notes, part 2, p. 615, Note 306, ed. Gould & Banks, 1850.)

It is said that fraud vitiates all contracts, and even records, which is doubtless true in a general sense. But it must be reached in some regular and authoritative mode; and this may depend upon the forum in which it is presented, and also upon the parties to the litigation. A record of judgment may be avoided for fraud, but not between the parties or privies in a court of law.

The case in hand illustrates the impropriety and injustice of admitting evidence of fraud to defeat agreements of the character in question in a court of law. We have a record before us of 1,055 closely-printed pages of evidence submitted to the jury, and a trial of the duration of some six weeks. Goodyear and his licensees had acquired vested and valuable rights under the agreements in this patent, and who were in no way privy to, or connected with, the alleged fraud, nor parties to this suit; and yet it is assumed, and without the assumption the fraud would be immaterial, that the effect of avoiding the agreements would be to abrogate these rights. They had been in the enjoyment of them for nearly three years, and may have invested large amounts of capital in the confidence of their validity. They were derived from Chaffee himself, the patentee of the improvement. A court of equity, on an application by him to set aside the agreements on the ground of fraud, would have required that these third parties in interest should have been made parties to the suit, and would have protected their rights, or secured them against loss, if it interfered at all, upon the commonest principles of equity jurisprudence.

Some slight evidence was given in the court below, upon the question whether the agreement of the 6th of September was sealed at the time of the execution. But the instrument produced was sealed, and is recited in the subsequent agreement of the 12th November, as an agreement signed and sealed by the parties.

A question was also made, as to the authority of the Shoe Associates to grant a license to the defendants. But they held under Goodyear the right to the exclusive use of the improvement for the manufacture of boots and shoes. They were competent, therefore, to confer the right upon the defendants. Besides, the point is not material in the view the court have taken of the case, as upon that view no interest in the patent vested in the plaintiff under the assignment from Chaffee.

It will be seen, by a reference to the bill of exceptions, that upon our conclusions in respect to several points raised in the case, the rulings in the court below were erroneous, and consequently the judgment must be reversed, and a venire de novo awarded.

HORATIO N. SLATER, PLAINTIFF IN ERROR, *v.* CHARLES EMERSON.

Where a railroad company became embarrassed, and were unable to pay the contractor, and a person interested in the company agreed to give the contractor his individual promissory notes if he would finish the work by a certain day, the contractor cannot recover upon the notes, unless he finishes the work within the stipulated time.

THIS case was brought up, by writ of error, from the Circuit Court of the United States for the district of Massachusetts.

The facts are stated in the opinion of the court.

It was argued by *Mr. Bates* and *Mr. Bartlett* for the plaintiff in error, and by *Mr. Hutchins* upon a brief filed by himself and *Mr. Choate* for the defendant.

The following points on behalf of the plaintiff in error are taken from the brief of *Mr. Bartlett*, as being more condensed than those stated in the brief of *Mr. Bates:*

I. The single question is, whether by the true and rational construction of the contract it was agreed and understood between the parties that the doing the work within the time pre-