FORSYTH *v.* WOODS.

1. *Semble*, that a debt incurred by the members of a partnership individually, even in a matter where the firm is to profit, will not, in case of bankruptcy of the firm, let the person to whom the debt was incurred come for a dividend upon the assets of the firm as distinguished from the assets of the individual partners.
2. The acceptance of letters of administration being a trust—(granted because of the confidence reposed in the grantee)—a loss sustained by a surety in the administration bond, who has entered into the suretyship under a representation from a firm of which the administrator was a member, that they intended to take into the possession of the partnership all the assets of the intestate, to make the administration a matter of partnership business, and to share as partners the gains and losses resulting from the administration, so that in signing the bond he would become the surety of the firm and not of the individual partner, cannot be recovered by the surety from the firm. Such a transaction is against the policy of the law.

ERROR to the Circuit Court for the District of Missouri; the case being thus:

Woods, assignee in bankruptcy of the firm of E. P. Tesson & Co. (which was composed of E. P. & E. M. Tesson) sued Forsyth *in assumpsit* to recover from him a balance in account.

Forsyth pleaded a special plea in bar. The plea averred a joint request made by the *individuals* who composed the firm of E. P. Tesson & Co. to him, soliciting him to become a surety of *one* of those individuals in an administration bond. It also averred a joint representation made to him by them, that they intended to make the administration a matter of partnership business, to take into the possession of the partnership all the assets of the intestate, and to share as partners the gains and losses resulting from the administration, so that in signing the bond he would in effect become the surety of the firm, and not merely a surety of the partner to whom the grant of letters of administration might be made. The plea further averred that, moved by the joint request, and relying upon the joint representations aforesaid, he did become a surety in the administration bond, and that

afterwards (the partnership having taken possession of all the assets of the deceased intestate, and having become bankrupt), he was compelled to pay to the legal representatives and next of kin of such intestate a large sum of money, in consequence of the default of the administrator. It still further averred, that under similar circumstances, after like request and representations, the defendant became a surety in an administration bond of the other partner, to whom administration of another estate was committed by the probate court, and that he was compelled to pay money for that administrator's default. The plaintiff demurred generally, and the court below sustained the demurrer. The defendant, Forsyth, now brought the case here. Whether the facts pleaded showed a legal liability of the partnership, as such, to repay what the defendant had been compelled to pay in consequence of his suretyship, was the question presented by the record. If they did, the defendant had a set-off to the plaintiff's demand; if they did not, the demurrer to the plea was rightly sustained.

The Bankrupt Act, whose provisions were a good deal discussed in the argument, provides that "the net proceeds of the joint stock shall be appropriated to pay the creditors of the partnership, and the net proceeds of the separate estate of each partner shall be appropriated to pay his separate creditors." The joint stock does not go to pay the separate creditors, except when there is a balance of such stock after payment of the joint debtors.

Messrs. T. T. Gantt, J. M. Carlisle, and J. D. McPherson, for the plaintiff in error, argued:

That the defendant having assumed a liability for and at the express request of the bankrupts, and the defendant having had to pay money in discharge of this liability, the money so paid was in contemplation of law paid for them, and at their request.

That the liability of the firm had occurred before bankruptcy, viz., at the time when the defendant became surety for the partner.

That the payment made by the defendant could be, and ought to be, properly set off in this action.

Mr. S. S. Boyd, contra.

Mr. Justice STRONG delivered the opinion of the court.

If it be conceded that such a joint request as is pleaded, followed by an assumption of obligation and a consequent payment of money in pursuance of it, raised an implied promise on the part of those who joined in the request to reimburse the defendant, it is, perhaps, still not clear that it was a partnership promise, creating a debt of the partnership, and therefore entitled to priority in bankruptcy over private debts of the partners. It is not pleaded that the firm of E. P. Tesson & Co. requested the defendant to assume the obligation he took, though it is averred that the persons who constituted the firm made that request, and it is not certain that a promise by a partnership and a promise by the individual partners collectively have the same effect. If a firm be composed of two persons, associated for the conduct of a particular branch of business, it can hardly be maintained that the joint contract of the two partners, made in their individual names, respecting a matter that has no connection with the firm business, creates a liability of the firm as such. The partnership is a distinct thing from the partners themselves, and it would seem that debts of the firm are different in character from other joint debts of the partners. If it is not so, the rule that sets apart the property of a partnership exclusively, in the first instance, for the payment of its debts may be of little value. That rule presumes that a partnership debt was incurred for the benefit of the partnership, and that its property consists, in whole or in part, of what has been obtained from its creditors. The reason of the rule fails when a debt or liability has not been incurred for the firm as such, even though all the persons who compose the firm may be parties to the contract.

But the substantial fault of the plea in this case is, that, at best, it sets up an illegal contract, which the law will not

enforce. The promise, if any, of the firm was to indemnify the defendant for doing an act planned and intended to enable his principal in the administration bond to commit a gross breach of trust. The arrangement was entered into in order that the partnership might obtain the possession of all the effects, goods, chattels, rights, and credits which had belonged to the intestate decedent, and which were assets that the administrator only had the right to hold. It was also a part of it that the administration should be conducted by the firm and not by the person to whom the probate court committed it. To this arrangement the defendant became a party, and he signed the bond in view of it, and in order that it might be carried out. This appears from the plea. It needs no argument to show that the transaction was against the policy of the law and plainly illegal.

Letters of administration are a trust. They are granted by the probate court or ordinary because of confidence reposed in the grantee. They require him to take exclusive charge of the personal property of his intestate and to bring to its administration his own personal attention and judgment. He has no right to allow others to control it or to share in its administration. If he does, he exposes it to unnecessary hazards and subjects it to the disposition of persons in whom the officer of the law has reposed no confidence. To permit a mercantile or a banking firm, of which the administrator is a partner, to take the assets of the decedent's estate into its possession and to share in the disposition of them is to invite what the plea shows happened in this case, misappropriation and loss. It is a gross breach of trust, a violation of legal duty. It must be, therefore, that any contract which has for its object such a faithless abandonment of the duties of an administrator cannot be enforced in a court of law.

It is not to be said that the implied promise of the partners or the firm was only collateral to the illegal arrangement. It was a part of it. The signing of the bond and the promise to indemnify were both not only in view of a contemplated transfer of the administrator's duties to the

partnership, but they were means avowedly selected for that end.

It follows that the plea set up no debt to the defendant due from the bankrupt firm which is recoverable at law and which can be made available as a set-off. The demurrer was therefore correctly sustained.

JUDGMENT AFFIRMED.

EUREKA COMPANY *v.* BAILEY COMPANY.

1. A contract in writing may be binding on a corporation though a private seal of one of its officers was used instead of the corporate seal, and though no record may be found authorizing the officer to make the contract, if other evidence proves that he had such authority, or that the company ratified his act afterwards.
2. A patent from the government cannot be impeached for fraud in procuring its issue in any other mode than by a direct proceeding to set it aside. But it may be shown in a suit on a reissued patent that it covers matter not part of the original invention.
3. When parties have, after long negotiation, with full opportunities for knowing what they are doing, entered into contracts for the use of inventions covered by rival patents, and no fraud or imposition is alleged, the case of a party sued in such a contract must be very clear, who denies the validity of the patent for which he has agreed to pay a royalty.
4. And when such a party has furnished under the contract a model of the machines which he proposes to make, on which he agrees to pay a royalty, he cannot deny that such machine contains matter covered by the patent, unless he alleges and proves circumstances which would set aside the contract for fraud, mistake, or surprise.

APPEAL from the Circuit Court for the District of Massachusetts; the case being thus:

The Bailey Company was the owner of a reissued patent for an improved washing and wringing machine, the original of which had been issued to John Allender. There had been several surrenders and reissues of this patent, the last of which was on the 22d July, 1865. The Eureka Company being engaged in the manufacture of clothes-wringing machines under other patents, one S. B. Rindge, its treasurer,