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.

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## 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,

professing to act as its agent, entered into two written indentures with the Bailey Company, through its general agent, for the privilege of using their patent.

The execution of the agreements was in the following form:

"In witness whereof the said party of the first part have caused its seal to be hereunto affixed, and this instrument to be signed by S. A. Bailey, its general agent, thereto duly authorized; and the said party of the second part has affixed its seal and caused these presents to be signed by S. P. Rindge, its treasurer, thereunto duly authorized, this day and year first hereinabove written.

"Bailey Washing and Wringing Machine Co.,
"S. A. BAILEY, [SEAL.]
"General Agent.
"Eureka Clothes Wringing Machine Co.,
"By S. B. RINDGE, [SEAL.]
"Treasurer."

The seals above set were not corporate seals, but mere private seals.

The first of the agreements licensed the Eureka Company to use the patent of the Bailey Company during the existence of the patent, and of any renewal thereof, for which the Eureka Company was to pay a royalty of fifty cents for every machine manufactured by it in which the patent should be used. To secure the performance of this, and to prevent any misunderstanding, the Eureka Company furnished a sample of the machines, and agreed that its books should, at all times, be open to the examination of complainants, and that it would make monthly reports and payments; and it covenanted that it would not, directly or indirectly, infringe the reissued patent of the Bailey Company, or violate the conditions of their agreement.

The second agreement was made to arrange the prices at which the machines made by the parties should be sold, so as to prevent injurious competition.

Statement of the case.

The Eureka Company made a report and payment for one month after the agreement; but would make no more. Thereupon the Bailey Company filed a bill in the court below. The bill set out the covenants. It charged that they were the result of protracted negotiation, in which the original patent, the reissues, and the character of the invention were well considered, and that they were a fair adjustment of the interests of the parties. It then alleged that in the first month five hundred machines were made under the contract and paid for by defendant, but that it continued to make and sell the machines, and refused to account or to pay for them. It then prayed a discovery of the number made, and for an account and decree for the sum due, and for an injunction against the use of the patent until the sum found due should be paid.

The answer of the Eureka Company, which was somewhat vague in its allegation, denied that it had ever executed, or caused to be executed, or ever authorized any one in its name or behalf, to execute the indentures; asserted that ever since its organization the company had a corporate seal, duly adopted and established (an impression of which it affixed in the margin), and that it had never employed any other, or authorized any agent to use or employ any other; it denied the infringement, asserted that the reissued patent was obtained by fraud; that it was a device to cover matter not invented or claimed by Allender, and denied that the machines made by the defendants had anything in them covered by the patent of the complainant.

Replication was put in, and testimony taken. The complainant did not produce any minute from the books of the corporation, directing Rindge to make the covenant which he had undertaken to make. But Rindge's relations and action as agent to the company, and the report and payment for one month, were sufficiently proved.

The machine which the Eureka Company was making was before the court; the purpose of its exhibition being to show that it was not covered by the original patent to Allen-

der; but the patent was not in the record, nor were any of the reissues except the last.

The court below rendered a decree according to the prayer of the bill, and the Eureka Company brought this appeal.

*Mr. J. B. Robb, for the appellant; Mr. C. L. Woodbury, contra.*

Mr. Justice MILLER delivered the opinion of the court.

1. We are satisfied that the agreements set up in the bill are the valid contracts of the defendant. Though the plaintiff was unable to produce any resolution or order in writing by the trustees or board of directors of the defendant corporation, and though the seal used was the private seal of one of its officers, instead of the corporate seal, neither of these is essential to the validity of the contract. We entertain no doubt that Rindge, the agent and one of the directors and treasurer of the Eureka Company, was authorized to execute the agreement, and if any doubt existed on that point, the report and payment for five hundred machines, the first month's use of the patent under that agreement, would remove the doubt. If it did not, it would very clearly amount to a ratification.

2. The defendant company furnished a sample of the machine they were making. That machine is before us. We do not understand that it is seriously contended that this machine does not contain some part of the invention covered by the reissue of the Allender patent. The effort of defendant is to show that it is not covered by the original patent to Allender. This latter point will be noticed presently. After making the agreement in this case, an agreement made on due deliberation, the defendant being engaged in the business of making the machines before it took the license, an agreement manifestly intended to adjust conflicting rights, and after furnishing one of the machines as a sample of what it proposed to do under that agreement, and after having made and sold five hundred of them, there arises a very strong presumption that the denial that any-

thing in those machines is covered by plaintiff's patent is made to support an unwillingness to pay the royalty which it had agreed to pay. And we are not at all satisfied that, in equity, it can be permitted to set up this defence, while it makes no attempt by cross-bill, or even in the answer, to show that the agreements were obtained by fraud, surprise, or imposition.

But if this could be permitted, the testimony does not repel the presumption arising from the making of that contract and the defendant's action under it, that the machines made by it do contain matter covered by the reissued patent of plaintiff.

3. If the defendant means, by the very vague answer to the bill, to set up and to rely on a fraud by which the commissioner was misled and deceived and induced to reissue the patent, and that the plaintiff or its assignors were the guilty parties, that question cannot be raised in this collateral proceeding, and can only be considered in some direct suit to impeach and set aside the patent.*

But if it is meant merely to say that, in point of fact, the reissue embraces matter which was no part of Allender's original invention, then there is no evidence in the record by which we can determine that question, for neither the original patent to Allender, or any part of it, or any of the reissues of that patent, except the last, which is the one claimed to be wrongfully reissued, is in the record.

4. Some attempt is made to assail the novelty of Allender's invention, but as no notice was given of any such attempt, or of the witnesses or other evidence by which that charge was to be supported, it cannot be considered in this case.

On the whole case we concur with the Circuit Court, and its

JUDGMENT IS AFFIRMED.

* Rubber Company *v.* Goodyear, 9 Wallace, 788.