

The plaintiff sues (1) the Arts and Crafts, (2) Sherman T. Sutton, (3) Menzie, (4) Grace Sutton, (5) Carscallen, and (6) Sutton & Co. The Arts and Crafts in their statement of defence and counterclaim set up an acceptance of the second offer; that the plaintiff took possession; that they have never received the sum of \$325 sued for, "but their agents the . . . firm of S. T. Sutton & Co., by their manager . . . Sherman T. Sutton, received the same on their behalf." They counterclaim for damages for the non-acceptance by the plaintiff of the premises. Sherman T. Sutton sets up that he is a mere employee of S. T. Sutton & Co.; S. T. Sutton & Co. and Grace Sutton, that the offer had been accepted, and therefore the plaintiff had no claim; and Menzie and Carscallen say that Sherman T. Sutton had no right to act and did not act for them.

Upon these facts the plaintiff is entitled to a judgment against the firm S. T. Sutton & Co. and the members thereof for \$325, with interest thereon from the day upon which the return was demanded and promised, 22nd October, 1907.

Admittedly Grace Sutton was a member of the firm at the time; the judgment will, therefore, be against her, as well as the firm.

The plaintiff does not press for judgment against Sherman T. Sutton; the action will therefore be dismissed against him, but without costs.

Boyd not being a party to the action and no amendment being asked, he cannot be dealt with here.

The position of the Arts and Crafts being that the offer was accepted and the money properly was retained by S. T. Sutton & Co., they must also pay the costs of action, and their counterclaim must be dismissed with costs. I cannot give judgment against them for the \$325, as they did not receive it, even by implication, though they narrowly escape from placing themselves in an awkward position by their pleadings.

The other defendants, Menzie and Carscallen, now must be dealt with. If the statute R. S. O. 1897 ch. 152, secs. 1, 7, apply, there can be no escape for them, but does it apply? Section 1 (1) provides that "all persons associated in partnership for trading, manufacturing, or mining pur-