

Province of Nova Scotia.

SUPREME COURT.

Full Court.]

CRAIG v. MATHESON.

[Feb. 7.

Building contract—Sub-contractor—Consideration—Burden of proof—Acceptance of order for payment—Authority—Bills of Exchange Act, s. 23—Money had and received—Costs.

Plaintiff contracted with F. for the sum of \$200 to do the plumbing of a house which F. had contracted to build for the defendant, W.E.M., according to specifications which included plumbing. F. having failed to complete his contract plaintiff sought to recover the amount due him from W.E.M., whose wife, M.M., was joined as a co-defendant, alleging that before he undertook the work he saw M.M., who was acting for W.E.M. in his absence, and that she agreed to pay him the \$200 and keep it out of the contract.

Held, that the promise alleged, if made, was gratuitous and not legally binding; that it would take strong evidence as to consideration and as to the intent of the parties to give the promise an effect which would make the party promising liable to pay plaintiff; that the burden of proof was on plaintiff, and the evidence on the point contradictory and unsatisfactory. The finding of the trial judge that plaintiff looked to defendants as his paymasters and did the work for them and not for F. must be set aside.

After the work which plaintiff contracted to do had been completed, F. drew an order on M.M. for the amount to which plaintiff was entitled, which M.M. accepted in these terms: "Accepted by Mrs. Matheson."

The trial judge found that M.M. had no authority to accept so as to bind her husband, but that the latter had ratified his wife's act and was liable on the order.

Held, 1. Reversing this finding, that the acceptance being one which purported to be binding only upon M.M. was incapable of ratification by the defendant W.E.M., and that the doctrine of ratification was inapplicable.

Held, 2. The document was governed by s. 23 of the Bills of Exchange Act and that no one could be made liable on it as acceptor who had not signed it as such.

Held, 3. The action for money had and received was inapplicable to the case under consideration, such action lying only where a person has received money under circumstances rendering the receipt of it a receipt by such person to the use of the plaintiff.

Appeal allowed and judgment entered for defendants with costs.

A. E. Silver, for appellant. F. J. Tremaine, Q.C., for respondent.