

the profits of the business, if any were made, belonged to them, and the losses were to be borne by them.

While the property in the unfinished goods remained in the defendants, Webster & Co. had a lien on them for all advances, labor, and materials furnished. The stipulation in the contract that Webster & Co. should "keep a strict and exact account of all goods sold, and of all goods or things bought, upon books belonging to the said Austin, Johnson & Co.," did not give them authority to buy materials upon the defendants' credit.

The plaintiff claims to recover, upon the ground that the money borrowed by Webster & Co. went into the defendants' business and enured to their benefit. The referee reports that the money "went into the business at Lawrence of Webster & Co. carried on under this contract." It is true that the money was used by Webster & Co. in finishing the goods of the defendants; but the goods were in the hands of Webster & Co., under a contract to be finished at their expense. The finishing was their business and for their benefit. The money came to their use. The defendants are no more liable to the plaintiff, than a person who leaves cloth with a tailor to be made into a coat for a stipulated price is liable to the unpaid journeyman whom the tailor employs to sew it, or the person who takes his horse to the blacksmith to be shod is liable to the merchant for the iron used in the making of the shoes.

Whether the testimony as to the plaintiff's conversation with Johnson was admissible (G. L., c. 228, s. 16) need not be considered. There was no admission that the defendants were liable for the debt, and the elements of an estoppel are wanting. *Horn v. Cole*, 51 N. H. 287.

The defendants are entitled to judgment on the report.

Case discharged.

BLODGETT, J., did not sit: the others concurred.

WILSON v. MILLS.

Under the homestead act of 1851 a married woman did not release her homestead in the estate of her husband by signing his mortgage deed, without witnesses or seal, after its delivery and record.

Representations of a married woman, that a note signed by her husband will be paid in full, do not make her liable for the debt.

WRIT OF ENTRY. A referee reported as follows: On the 15th day of October, 1856, James Whitfield, then the husband of the defendant, Fannie E. Mills, gave to David Wilson a note for \$300,

secured by mortgage on the premises described in the writ. After the delivery and record of the mortgage, the defendant signed it without witnesses or seal. David Wilson died April 5, 1872. The plaintiff is a son of David Wilson, and received the note in question at its face value on account of his distributive share, upon the settlement of his father's estate. The plaintiff was requested by the defendant and her husband, James Whitfield, to take the note and allow them to pay in instalments, and was told by the defendant that if he would do so he should have his whole pay and lose nothing; and he was induced by this request and promise to take the note. Whitfield died August 3, 1878, and the premises described in the mortgage were set off to the defendant and her minor children in the settlement of Whitfield's estate as their family homestead.

J. W. Fellows, for the plaintiff.

Burnham & Brown, for the defendant.

CLARK, J. The defendant did not release her homestead by signing her husband's mortgage, without witnesses or seal, after it was delivered and recorded. Under the act of 1851 no release or waiver of the homestead exemption was valid, "unless made by deed executed by the husband and wife, with all the formalities required by law for the conveyance of real estate." The defendant has a life estate in the premises set off to her as a homestead, as against the plaintiff's mortgage. *Dickinson v. McLane*, 57 N. H. 31; *Lake v. Page*, 63 N. H. 318. The mortgage note was not signed by the defendant. It was neither her debt nor a contract respecting her property, and being a married woman she could not bind herself by a promise to pay it, either by way of contract or estoppel. *Farmington National Bank v. Bussell*, 60 N. H. 189.

Case discharged.

BLODGETT, J., did not sit: the others concurred.

66	316
68	324
66	316
69	620

HEALEY v. HUTCHINSON.

The valuation put upon personal property attached, in a receipt given therefor to the officer making the attachment, is conclusive against the receptor.

A receptor is not holden for property taken by a paramount title after the receipt.

TROVER, for certain articles of personal property taken by the plaintiff, sheriff of the county, on a writ against one McGregor,