

in his opinion, is less than the fair value of the property, he was at liberty under the contract of sale to reclaim the property upon a return of the money paid, with interest. But he cannot keep the money and recover the property or its value from the innocent vendee. The fact that the market value of the property was \$4,207.62 is immaterial, in the absence of a finding of actual fraud. Upon that question, it might have been competent evidence for the plaintiff.

The defendant's motion that a verdict be directed in his favor should have been granted.

*Judgment for the defendant.*

PARSONS, J., did not sit: CHASE and PIKE, JJ., dissented: the others concurred.

Belknap, }  
Dec., 1896. }

IONA SAVINGS BANK v. BOYNTON.

A married woman may bind herself by a promissory note given to obtain money for her husband's use.

ASSUMPSIT, on the promissory note of the defendant, a married woman. Facts found by the court. The note was signed by her at the request of her husband, who told her he needed the money. She signed the note to help her husband in his business, and authorized him to secure its discount and dispose of the proceeds. The defendant's husband applied to the plaintiffs for a loan of \$5,000, with sixty shares of the capital stock of the Tilton Hosiery Company as collateral. They declined to make the loan, but told him that if his wife desired to borrow that amount with the same security, the loan would be made. Shortly afterward he brought to the bank the note in suit, with the collateral above named, and received the amount of the plaintiffs. He deposited the avails in the Citizens' National Bank to the credit of the Tilton Hosiery Company, of which he was treasurer. The defendant never met or had any talk with any officer of the bank relative to the loan. Upon the foregoing facts the court found a verdict for the plaintiffs for the amount due on the note, and the defendant excepted.

*William B. Fellows and Edward B. S. Sanborn, for the plaintiffs.*

*Walter D. Hardy, Fabius E. Elder, and Bingham, Mitchell & Batchellor, for the defendant.*

WALLACE, J. The case discloses that the plaintiffs refused to make the loan to the husband, but did make it to the wife alone upon a note signed by her to which the husband was not a party, and that the hiring of the money by the defendant from the plaintiffs was the independent contract of the wife as principal and not as the surety or guarantor of the husband. The fact that she hired the money with the intention of letting her husband have it to assist him in his business, and did so let him have it, did not impair or suspend her legal capacity to make the contract, or make it an undertaking for him or in his behalf within the meaning of the statute. *Parsons v. McLane*, 64 N. H. 478; *Jones v. Holt*, 64 N. H. 546; *Wells v. Foster*, 64 N. H. 585.

*Exception overruled.*

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

Belknap, }  
Dec., 1896. }

WEEKS v. LUND § a.

Payment of the consideration in personal services which can be adequately compensated in money is not sufficient part performance of an oral contract to convey land to take the case out of the statute of frauds.

BILL IN EQUITY, by Jennie M. Weeks against Edward A. Lund and Edwin P. Thompson, executor of the last will and testament of Horace P. Batchelder. The bill alleges that September 1, 1891, the plaintiff made a contract with Batchelder, by the terms of which she agreed to board and lodge him so long as he should live, to do his washing and ironing, to provide him with such a number of rooms in her dwelling-house, all lighted, heated, and furnished in a manner and style suited to his comfort and convenience, considering his feeble physical condition, as might be necessary for him to occupy, to care for him and nurse him in sickness, to allow him the entire use and occupancy of the barn connected with her dwelling-house, and to board and lodge free of charge all friends that might visit him from time to time; that Batchelder on his part, and in consideration of the foregoing agreements of the plaintiff, agreed with the plaintiff to pay her three dollars and a half for each week, and to devise to her the entire title to one of two tracts of land in each of which he then owned an undivided half; that Batchelder was at the time stated and long had been in feeble health and unable to care for himself,