

led the plaintiff, or which ought reasonably to have led him to infer that the town, in taking the stone, was under the impression it belonged to Price. True, the plaintiff then knew Price had contracted to supply the town with a quantity of curbing which he was getting from his own quarry near McAdam. But what is there in this which would necessarily, or even reasonably, lead the plaintiff to suppose that the town believed Price had bought this stone in question? He might well conclude that the town required more stone than Price was supplying, and therefore took, and intended to pay for this stone. Indeed there is nothing in the evidence to indicate that when the defendants took the stone they did in fact believe it belonged to Price. There can arise, therefore, no question of estoppel against the plaintiff from his merely standing by. The defendants in taking the stone were guilty of a conversion of the plaintiff's property. If afterwards the plaintiff had agreed with Price that the latter should pay him for all the stone taken, such agreement might possibly be construed as an authority to Price to settle with the town for the stone taken, and would therefore protect the defendants, after they had settled with Price, from being liable for the stone to the plaintiff. But there was no such contract. It is true, the plaintiff demanded payment for the stone from Price. But it requires the agreement of both parties to make a contract; and, though Price was willing to agree, and did ultimately agree, with the plaintiff, to pay for forty feet of the stone taken, he never agreed to pay for the remaining 134 feet. Nor could the plaintiff have recovered from him the value of this 134 feet under an implied contract, because it does not appear that Price ever took, or used, such 134 feet, or authorized the town to take or use it. Unless, therefore, the plaintiff can recover from the town, he is without remedy as to this 134 feet.

The learned Judge refers to the conversation above quoted, had by the plaintiff with the mayor, as an admission by the plaintiff that he had sold to Price all the stone taken by the town, and seems to think this would estop the plaintiff afterwards claiming from the town, though he does not expressly say so. But it is quite clear the defendants were in no degree induced by this conversation to pay Price. Indeed, but for it, they would have paid him earlier than they did. They paid him, because they recognised he was entitled to enforce payment by suit; and paid him, not through