

far as the plaintiff is concerned was to pay him the amounts on Ferguson's order which they charged to Ferguson on his contract.

The third question and answer are as follows: "Did the Toronto Construction Company knowingly permit Ferguson to so deal with the public as to lead the plaintiff to infer that he had authority to make contracts binding on the company?" A. "Yes." This question in its present form seems to me altogether irrelevant to the issues involved. How the public are interested in this simple transaction between two private individuals, I cannot see. There is really no evidence to sustain an estoppel; but if there was, the question omits an essential and important element. No estoppel in pais can arise unless the person to whom the representation is made acts upon the faith of its being true, and is prejudiced. There is no finding as to that, and the question and answer are therefore valueless. In *Carr v. London & N. W. Ry. Co.* (L. R. 10 C. P. 307) Brett, L.J., has formulated the question of estoppel in pais in four propositions. In all of them whether the representation is made expressly or arises from acts or conduct, there must be an intention by the party making it that it shall be acted upon by the party to whom it is made and he must act upon it on the belief that it is true. The representation relied on here arises out of dealings between Fraser & Sons and one or two others with Ferguson acting, as they say, on the defendants' account. These were private transactions with which the plaintiff had nothing whatever to do, of which he knew nothing when he made the contract, and the most of which he only heard of after this action had been brought.

It seems difficult to see how any intelligent jury, properly instructed, could have answered these questions as this jury did. There has been a gross miscarriage of justice; so gross that it can only be attributed to some strong bias on the part of the jury, or a misconception of the real points for their consideration, or a want of appreciation of the true effect of the evidence. I have discussed the evidence at much greater length than was necessary for the determination of the case, but I was desirous of ascertaining whether there was anything in it that would justify the charge made at the argument and also on the trial that the defendants had used the plaintiff and other creditors of Ferguson harshly, and that they were seeking to avoid a liability