

ing Ferguson to be the general agent of the defendants at the time. That is to say, because the Tobique Manufacturing Company made out an account against the defendants in which was included the price of some lumber purchased by Ferguson, it established him as the defendants' agent authorised to contract for them with any one who happened casually to see the account. There is nothing to sustain any such proposition. The plaintiff further says after he had sawn and delivered the lumber which was about the fifteenth of March, 1909, he went to the same office where he met Ferguson, told him that he wanted to be paid for the lumber, and that Ferguson replied: "I am going to the head office to-morrow. I will look right after it. Ferguson went away the next day, and the plaintiff has not seen him since. The plaintiff's method of dealing with Ferguson as to the lumber is only consistent with the theory that the contract was with Ferguson himself. The memos of lumber delivered from time to time, with the exception of one or two, are made out to Ferguson. And the only payments made on account are the orders given by Ferguson on the defendants to pay Kinney and Crane amounts due them by the plaintiff, and the bill for goods sold from the same office or store to the plaintiff and charged him. And in a letter written by him to the defendants less than a month before this action was brought, the plaintiff said as follows: "Is there anything due me at your office from Mr. Ferguson? If there is, please send it as soon as you can." On his cross-examination, the plaintiff was asked as to this letter the following questions: "What did you mean by that. Didn't you mean you had been working for Mr. Ferguson." A. "I wanted pay for my lumber." Q. "You wanted your pay from him?" A. "That is what I wanted." Q. "That is why you wrote that letter?" A. "Yes." Q. "You knew the Toronto Construction Company had been in the habit of paying Ferguson's bills for goods shipped and for labour?" A. "Yes." Q. You thought if there was anything belonging to Mr. Ferguson you wanted your money out of it?" A. "I wanted my pay."

It is impossible to construe this letter as a demand made by a creditor upon his debtor. It not only recognises the direct liability of Ferguson, but it shews the knowledge the plaintiff had as to the mode of dealing between the defendants and their sub-contractors, of which the plaintiff had himself been one, and seeks only to get such money as