

to recover the price of goods alleged by the plaintiffs to have been sold to the defendants as a firm, upon the order of Neelin.

Neelin did not defend, and judgment had been entered against him.

Baird set up that he had sold his business to Neelin, and denied that he ever was a partner of Neelin.

J. F. Warne, for the plaintiffs.

W. L. Scott, for the defendant Baird.

BRITTON, J.:— . . . I find that Baird held himself out to the plaintiffs and the public as interested in the business. . . . He represented to the plaintiffs that the business, after Neelin should come in, would be a partnership business, and that he and Neelin would be partners. After that, and with no notice to the contrary, the plaintiffs were right in believing, as they did, that there was a partnership business. I find that the plaintiffs, in good faith and without any want of care or negligence on their part, gave credit to Baird, as the responsible party, upon the faith that he was a partner, and as such was carrying on the business that was in fact carried on in his name. . . .

At the trial counsel for Baird pressed the objection that, if he was liable at all, it was only by estoppel, and that, as the plaintiffs had in this action taken final judgment against Neelin, that was in law an election by the plaintiffs to look to Neelin alone, and so the action against Baird should be dismissed. *Scarfe v. Jardine*, 7 App. Cas. 345, was cited as authority for this proposition. In my opinion, that case is rather authority in favour of the plaintiffs. . . . Baird is estopped from denying a liability created by his conduct. That is all estoppel has to do with it. Baird and Neelin, being jointly liable, have been so sued. . . .

This, therefore, is not a case of election; it is a case where both are liable, and where the plaintiffs' proceeding in signing judgment against Neelin and proceeding against Baird is regular and in accordance with Con. Rule 605. This is not a case where the action can only be in the alternative against one or the other of the defendants. . . .

Judgment for the plaintiffs against Baird for \$1,138.93, with interest and costs.