

onto Construction Co., or on his own behalf? A. As agent." Assuming that the answer is intended to convey the idea that Ferguson was not only acting as the defendants' agent but that he was in fact their agent duly authorised to make this contract, it will be seen on an examination of the evidence that there is really none to support the finding. As the same evidence refers to the second question, it will be convenient to discuss the two together. The question is as follows: "Did Ferguson in entering into the contract with the plaintiff profess to act as the agent of the Toronto Construction Co.? A. He did." It is admitted that whatever contract was made arose out of a conversation between the plaintiff on the one side and Ferguson on the other. Ferguson was not an official of the company. He had nothing whatever to do with the defendants, except what arose out of his contract. The conversation alluded to took place at Ferguson's office or store at Beaver Brook, apparently in the presence of McCartney his clerk. He made no inquiry as to whether it was the office of the defendants, and there is absolutely nothing in the evidence that I can find to lead the plaintiff to suppose he was either conducting a conversation with an agent of the defendants or that the place where the conversation took place was in any way under the control of the defendants or other than it really was, that is, the place of business of Ferguson. In order, apparently to give some evidence connecting the defendants with the place and Ferguson with them as their agent, the plaintiff gave the following testimony, which for accuracy I will quote from the record. He says that in August, 1908, he saw a man by the name of McCartney get off the Tobique train at Arthurette siding. He says: "He" (McCartney) "got off the Tobique train, he called out and wanted to know if there was any teams there to hire; some of the crew asked him what to do, what the work was. He said it was to haul gravel for the Toronto Construction Company, and named the wages. That day he wanted to hire teams to haul gravel for the Toronto Construction Company." Mr. Carvell: "Was Mr. Ferguson present? A. "No." Mr. Carter: "At this time McCartney was employed in this office,—the office of the Toronto Construction Company?" A. "Yes." Q. "Which was spoken of?" A. "I had not met him in the office; but it was after that that I saw him in the office." Q. "Subsequently to