

be sawed and delivered at the rate of \$11 a thousand. There is apparently no question about the delivery of the lumber. The only question is as to the liability. The defendants, say they have nothing whateved to do with it,—that it is Ferguson's liability. The plaintiff claims that the defendants are liable. Ferguson left the province about the time this action was commenced and has not returned. Neither he nor McCartney, who was a clerk of his at the time the agreement was made, was examined at the trial, the latter having left the province some time before Ferguson did. The plaintiff's claim consists: (1) For lumber delivered, \$1,375; (2) for the board of some of defendants' men, \$13; and (3) for railway ties, \$263.90, making in all \$1,651.90. From this sum are to be deducted the following: (1) \$263.90 the value of the ties in reference to which the jury found against the plaintiff; (2) an order of Ferguson on defendants in favour of Kinney for \$38.75; (3) an order of Ferguson on defendants in favour of Crane for \$40.35; (4) a bill for goods sold by Ferguson to plaintiff of \$147.77; and (5) a cheque for \$62.38 sent to the plaintiff, but mislaid until found at the trial. This leaves the balance of \$1,098.75 for which the verdict for the plaintiff was entered.

The plaintiff places his right to retain his verdict on three grounds. First: he says his contract was made with the defendants by Ferguson who was their authorised agent. Second: he says, if Ferguson was not the defendants' agent he professed to act as such and they ratified the contract; and third: he says, that the defendants are estopped from denying such agency because they by their acts represented him to be their agent and on these representations he acted. Reliance is placed on the answers to the first three questions to sustain all or some of these propositions. Before referring to the evidence upon which the plaintiff relies it will be as well to point out that by their answer to the fourth question the jury say that in the work which Ferguson did on the railway he was acting as a sub-contractor with the defendants. And there is no doubt whatever that this very lumber supplied was ordered and used, so far as it was used, by Ferguson for the purposes of that sub-contract, and that the men to whom the meals were supplied were his men and not the defendants' men, for at that time they had no men at work there at all. The first question and answer are as follows: Q. "Was Ferguson in entering into the contract which he did with the plaintiff acting as agent for the Tor-