The action was first tried by CLUTE, J., on the 7th June, 1909, and dismissed. A new trial was directed by a Divisional Court, ante 342, on the ground mainly that the point in reference to the estoppel of the defendant Zepherina Longtin had not been fully presented to or considered by the trial Judge.

The new trial took place before BRITTON, J., without a jury, at Ottawa, on the 14th April, 1910.

N. A. Belcourt, K.C., for the plaintiff.

D. Danis, for the defendants.

BRITTON, J.:— . . . I find as a fact that in the negotiation and at the time the deed was signed by the defendants it was no part of the agreement that the plaintiff should immediately clear the west half of the west half from the $2,800 mortgage, any more than that Longtin should immediately clear the east half from the $1,000 mortgage. Neither party was able to do this. The plaintiff was simply to assume and eventually pay the trusts corporation mortgage, and Longtin was to assume and eventually pay the Magee mortgage. . . .

As to estoppel, the general rule is "that if a person by his conduct induces another to believe in the existnce of a particular state of facts, and the other acts thereon to his prejudice, the former is estopped as against the latter to deny that that state of facts does not in truth exist." There are qualifications to this rule. To create estoppel there must be knowledge of the facts as they really exist.

When the defendant stood by and heard her husband discuss the sale to the plaintiff, she, acting honestly, was for the time in ignorance of the true state of the title. She is an illiterate woman. There was no reason why she should remember as there were no creditors, and nothing special to cause her to keep it in mind. They lived together, the husband managing the farm and paying the interest upon the mortgages.

I find as a fact that there was no fraud on the part of either defendant. . . . It was not a case of standing by and allowing her husband to sell, she knowing the property was hers. She is not, therefore, estopped from setting up any defence that is available to her.

There was no contract in fact with her; therefore nothing upon which to found this action, unless it be estoppel, and that fails. See Bigelow on Estoppel, 5th ed., p. 448, et seq.

The plaintiff does not contend that the conveyance to him operates as a conveyance of the wife's land. That is why he