livered and installed, had in their possession Pearson's acceptance of the proposal to sell, which was stated to be subject to confirmation by the company; that the company, at the time they received the proposal and acceptance, also received Pearson's $1,000 note, payable to their order, and bearing on its face the statement that it was on account of machinery agreed to be purchased; that the draft for $1,000 was made upon Pearson by the defendant company; that the $1,000 payment made by Pearson was by cheque payable to them; that the $2,000 note also was made payable to them; that the several letters clearly intimated that the plaintiffs believed that they were dealing with the defendant company; and that there was no repudiation of contractual relationship, or even a reply to many of these letters, until it became apparent that the machinery was not satisfactory—no other conclusion can be reached but that the defendant company must have known, and did know, that the plaintiffs were dealing on the understanding and in the belief that they were contracting with the defendant company . . .

On these facts, the defendant company is, in my opinion, liable. . . .

[Reference to Keen v. Priest, 1 F. & F. 314, 315; British Linen Co. v. Cowan, 8 F. 704, 710; Wiedemann v. Walpole, [1891] 2 Q.B. 534, 541; Freeman v. Cooke, 2 Ex. 653, 663; Carr v. London and North Western R.W. Co., L.R. 10 C.P. 307, 316, 317.]

In the present case there was much more than mere passivity; there were positive acts of the defendant company which have estopped them from denying liability.

The manager of the defendant company stated that he turned over to Moyer all communications which were received from the plaintiffs; Moyer did not in any way communicate this to the plaintiffs, and did nothing to remove any impression they had that they were contracting with the defendant company. I think I am not going too far in holding Moyer liable, as well as his co-defendants.

There will, therefore, be judgment in favour of the plaintiffs for re-payment of the $1,000 paid by Pearson to the defendant company, and interest thereon from the date of such payment; for a return of the $2,000 promissory note made to the defendant company, with costs of the action to the present time; and a reference to the Master in Ordinary to ascertain the damages sustained by the plaintiffs. Further directions and further costs are reserved until the Master shall have made his report.