the inducement, but against the express protest, of the plaintiff. They do not even claim that they were in the slightest degree induced to pay Price because of this conversation. What is necessary to constitute estoppel in cases of this character is settled by the well known and long established rule laid down in Pickard v. Sears, 6 A. & E. 469, as explained in Freeman v. Cooke, 2 Ex. 654; and for the reasons stated the plaintiff does not come within that rule.

As to the forty feet of curbing—parcel of the 174 feet taken—which it was agreed between the plaintiff and Price the latter should pay for, I think the plaintiff cannot recover in this action. For this 40 feet Price could enforce payment from the town by suit, because the defendants accepted it as part of the 637 feet he had contracted to supply, and by his agreement with the plaintiff this 40 feet became Price's property so that he was authorised to dispose of it to the town.

I think the verdict rendered should be set aside and a verdict be entered for the plaintiff for $160.80, that is to say, for 134 feet of curbing at $1.20 per foot.

NEW BRUNSWICK.

FULL COURT. FEBRUARY 5TH, 1909.

HARRIS v. JAMIESON.

Negligence—Fatal Injury to Workman—Fellow-servant—Action by Widow—Lord Campbell's Act—Trial—Jury—Misdirection—Practice—New Trial.

This action, which was founded on the alleged negligence of the defendant causing the death of an employee, the husband of the plaintiff, had its third trial at the St. John Circuit held in August, 1908, before LANDRY, J., and a special jury. Verdict for plaintiff, as had also been the result on both the former trials.

Motion for a new trial (that is that the cause be sent down for a fourth trial) was argued in Michaelmas Term last.

D. Mullin, K.C., for plaintiff.

M. G. Teed, K.C., for defendant.