to many of these letters, until it became apparent that the machinery was not satisfactory, no other conclusion can be reached but that defendant company must have known, and did know, that plaintiffs were dealing on the understanding and in the belief that they were contracting with the defendant company.

It is beyond belief that any business man could be so obtuse as not to have realized from plaintiffs' course of dealings and Pearson's correspondence, that plaintiffs believed their contract was with defendant company. I think, too, that until the position of vendor became undesirable owing to the unsatisfactory working of the machines, defendant company was quite satisfied to be a party to the contract with plaintiffs and so intended it; they were satisfied to take the benefit without bearing the burden.

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

In *Keen* v. *Priest* (1858), 1 F. &. F. 314 (at p. 315) Bramwell, B., says:—"Silence may sometimes be conduct," the meaning of which I assume to be that there must be some act or circumstance which can be considered in connection with silence. This is borne out by what is said in *British Linen Co.* v. *Cowan* (1906) 8 F. 704 (at p. 710):—"Passivity can never constitute an unreal obligation into a real, can never make a man into a debtor who has neither said nor done anything to make him a party to the obligation, which has no existence apart from some action on his part. What action might be sufficient is a different question. It is possible that very little in the way of overt action, if it was unmistakable, might be sufficient."

Kay, L.J., in *Weidemann* v. *Walpole*, [1891] 2 Q. B. 534 (at p. 541), lays it down that "the only fair way of stating the rule of law is that in every case you must look at all the circumstances under which the letter was written, and you must determine for yourself whether the circumstances are such that the refusal to reply alone amounts to an admission."

Reference may also be made to *Freeman* v. *Cooke*, 2 Ex. 653 (particularly at 663); *Carr* v. *London & North Western Railway Co.*, L. R. 10 C. P. 307 (at 316 and 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.