

an agreement for a principal, when he really had no principal, or who exceeded his authority as agent, might be proceeded against in one of two ways:—

(1) He might be sued on the contract as if he were, in fact principal himself, and had made the contract as principal, without pretending to be an agent at all. In *Collen v. Wright*, supra during the argument, Watson, B., said:—"In the argument in *Jenkins v. Hutchinson* you will find a great mass of authority to shew that, in such a case as this, the person professing to be an agent is liable personally on the contract. Till that case it was generally supposed that the manner in which he might be made liable was by treating him as principal in the contract he professed to make."

The doctrine of Story that "wherever a party undertakes to do any act, as the agent of another, if he does not possess any authority from the principal, or if he exceeds the authority delegated to him, he will be personally responsible therefor to the person with whom he is dealing for on account of his principal," was held by the Court of Queen's Bench, in an action ex contractu, to be "supported by numerous authorities" and "founded on plain justice:" *Jones v. Downman* (1843) 4 Q.B. 235.

(2) He might, as an alternative, be sued for damages in an action on the case for false representation. See *Randall v. Trimen* (1856) 18 C.B. 786, and judgment of Cockburn, C.J., in *Collen v. Wright*, supra.

In neither of these forms of action did it make any difference whether he honestly believed that he had the authority of the principal to make the agreement in question or not. Fraud or dishonesty was not then considered so essential an element in an action for false representation as it is at the present day. To make an agreement, as an agent for another, when no agency existed, or when although it existed, the agreement was in excess of the actual authority, was treated as a false representation of authority, even when the party honestly believed that he had the full authority he professed to have.

The plaintiff thus had two remedies open to him.

But the situation was illogical as far as the remedy in contract was concerned. When the contract was made there was no intention that the professed agent should be treated or bound as principal, or held to performance of the contract. The intention,