

bury stated to me that he would take the property. I then called up Mr. O'Brien, got him on the 'phone in Mr. Maybury's presence, and told him that I had sold the property. Mr. O'Brien answered, 'All right.' I asked him who was looking after his interests in the matter, and he informed me that Boyce & Hayward—Q. What next? A. Mr. Maybury then gave me \$200—a cheque for \$200—to bind the bargain, and I gave him a receipt for it."

I am wholly unable, even without the defendant's denial, to see in this evidence, which is the whole story upon that branch of the case, any reasonable evidence that the defendant appointed or agreed to appoint Mr. Pardee or his firm his agents. A man is not to have an agent thrust upon him in that way. The appointment necessarily results from a contract, in which there must appear in some shape an offer upon the one hand and an acceptance upon the other, out of which there grow the mutual rights and responsibilities of the relation. Down to the conversation over the telephone there is not the very slightest room even to pretend that either party contemplated the alleged agency. Mr. Pardee was there, in the defendant's office, as the representative of the plaintiff, and of him alone. He was the "purchaser" who wanted an immediate answer, and it was in his interests, and not the defendant's, that Mr. Pardee haggled with the defendant over the down-payment, which he wished to have reduced. The defendant's impression of what occurred is set out in the memorandum in his note-book, . . . put in by the plaintiff, which he says he read over to Mr. Pardee, who does not, so far as I see, deny the statement, in which the defendant states that the sale was to Mr. Pardee himself. This memorandum, fairly read, is utterly inconsistent with an agency such as that alleged, or of any other kind.

Then, in the conversation by telephone, the expressions "I informed Mr. O'Brien that, if I could sell on these terms, I would do so," and "I told him I had sold the property," and the defendant's reply, "all right," are to be read in conjunction with the earlier course of the negotiations, and are, I think, perfectly consistent with Mr. Pardee still being, in the defendant's opinion, the agent only of the purchaser, and are wholly insufficient, in the light of all the evidence, to create, in such an obscure and indirect manner, the important relation now claimed for them of also making him the agent of the vendor.

Then, upon the second question, as to the alleged authority to make the particular agreement which was made, the instruc-