

balance of his equity, about a thousand dollars, in December, 1911, and June, 1912, at 7 per cent. interest, and the purchaser assume Mr. Keenan's payments under Mr. Keenan's agreement. I informed Mr. O'Brien, over the telephone, that if I could sell on those terms I would do so without consulting him further. He said that was satisfactory. Mr. Maybury came into the office a few minutes afterwards, and I told him I was able to sell Mr. O'Brien's property at the price of \$225 a foot under the terms as he stated to me. Mr. Maybury 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 grew the mutual rights and responsibilities of the relation. Down to the conversation over the telephone, there is not the very slightest room to even 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 over the down payment with the defendant, which he wished to have reduced. The defendant's impression of what occurred is set out in the memo. in his note-book before set out, 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 memo., fairly read, is utterly inconsistent with an agency such as that alleged, or of any other kind.