

such evidence and nothing from which an intention of the kind can be properly inferred. Fawcett was introduced to defendant, and he looked over the place, and said to defendant that if he did not buy it himself he could perhaps induce his nephew, Falconer, to do so. Plaintiff was standing alongside of him at the time; a single statement would have settled the matter, but he no where hints that what he did or said was on behalf of plaintiff. He was asked: "Through whom did your nephew purchase the Richardson House?" A. "I do not know who he purchased it through, any more than I was the man who spoke to him first about it, and suggested to him that he should buy it, for he would have a good place, and there would be no danger of a cut-off." On cross-examination he does not mention that plaintiff was even present. He is asked: "Was there anybody else present with Mrs. Richardson?" A. "No, she just stayed in the office by herself." Falconer was asked: "Did you receive any communication from plaintiff in connection with this?" A. "No, I did not receive any personally." It seems that he saw a letter from plaintiff to Fawcett; but the letter was not produced, and no foundation was laid for secondary evidence. The result is that there is nothing that I can find which connects Fawcett with plaintiff as his agent, or that Fawcett assumed to act on behalf of plaintiff.

Plaintiff's counsel relied upon *Wilkinson v. Auston*, 48 L. J. N. S. Q. B. 733, and *Lincoln v. McClatchie*, 36 Conn. 136. A careful reading of *Wilkinson v. Auston* will shew, I think, that there is an essential difference between that case and the present. The continuity there was not broken. It could be in point if it could be shewn that in the present case Falconer had engaged Fawcett to act as his agent, and, acting as the agent of Falconer, Fawcett had purchased through plaintiff.

The trial Judge expressly found, and I think the evidence fully supports the finding, that Fawcett was not acting as plaintiff's agent in the communication that he made to Falconer, and that it was not even at plaintiff's request that Falconer was spoken to by Fawcett. That, in my opinion, entirely distinguishes the present case from the cases relied upon by plaintiff.

Appeal dismissed with costs.