

the learned trial Judge's statement that he prefers the evidence of Mr. Pardee to that of the defendant, when they differ.

The onus was upon the plaintiff to prove, by reasonable evidence, an agency in fact. There were and are no circumstances in the case to justify a finding that the alleged agency was an agency in law, or in other words, arose by estoppel, and, indeed, no such contention is advanced.

Now, what is the evidence? And I will take Mr. Pardee's own statement for it. He says he had frequently acted for the plaintiff in buying lands. He acted for him in making a re-sale of the same lands to Mr. Plummer at an advanced price. At the opening of the negotiations in question, he went to the defendant on behalf of the plaintiff. No claim is made that at or prior to that time, he was acting or had any authority to act, either personally, or for his firm, for the defendant. He did not inform the defendant for whom he was acting, but the conversation implied that he was acting for a principal. "I mentioned that my purchaser would like to have an answer at once."

"Q. He never said anything to you about two hundred dollars, did he? A. No, I do not think he did.

"Q. And he never said anything to you about signing any receipt, did he? A. No.

"Q. You and Mr. O'Brien were dealing at arms' length, were you not? A. We were dealing in the office there.

"Q. You know what I mean? A. No, I do not know what you mean by arms' length.

"Q. You were dealing as one man would with another in a business transaction? A. Exactly.

"Q. There was no association between you? A. No.

"Q. There was no common interest? A. No.

"Q. You were trying to get the best terms you could for your client? A. Yes.

"Q. And he was trying to get the best terms he could for himself? A. Yes.

"Q. You for Maybury, he for O'Brien? A. Exactly.

"Q. He told you he would not sell unless he had a third cash? A. Exactly.

"Q. Which was what you understood? A. Yes.