

express promise. . . . Nor is evidence of a custom for brokers in such cases to claim commissions from both parties admissible in favor of the broker, such custom being invalid as against public policy." (*Ib.* p. 984)

"And in a note, the case of *Carroll vs. O'Shea* (18 N.Y. Supp. 146) is cited as being a holding that "a broker, employed by the purchaser only, has no right "to claim commissions from the seller."

"The above stated propositions, taken from English law writers, are quite in accord with our law. The formation of any contract must necessarily be accomplished by a meeting of the wills of two parties, and the process of approach to that meeting or mutuality of consent cannot, in the nature of things, proceed through the agency of one intermediary.

"While it is true, as declared in the code, that a broker may be the agent of both parties, one can accordingly readily see that it is only to a very limited extent that he can thus be the agent of both parties. He cannot be the agent of both buyer and seller where their interests conflict, as in settling the price, but, as stated in Benjamin on Sale (5th Ed. p. 284). "as soon as the bargain is struck, he is, as a general rule, the agent of both parties "to make and sign a memorandum of the terms." Reference may also be made to *Blackburn on Sale*. (2nd Ed., p. 78) Now, upon the facts above stated, the services rendered by the appellant in this action and which brought about the sale were rendered to the buyers and not to the defendants.

"While it was legally possible within the narrow limits above indicated to have been agent at the same time both for the plaintiffs and the defendants, that is to say, to see that the preliminary contract was put in proper form, it happens that he did not act for the defendants in formulating the contract, but, on the contrary, he