

agents of both parties, but apart from such a special relation dependent upon a specific consent of each party, holds true that a person cannot at one and the same time represent both of two persons adverse in interest to one another so as to make a contract between them.

"The legal relation is described in a modern treatise as follows: "A broker is primarily the agent of the party "by which he is originally employed, and he becomes the "agent of the other party only when the bargain or contract is definitely settled as to its terms between the "principals, in which case he may act as the agent of both "parties in making the memorandum of sale. A broker "cannot act as the agent of both parties when their "interests are conflicting. Thus a broker employed to "sell cannot act at the same time as the agent of the "purchaser, for, in that case, the duty he owes to one "principal to sell for the best price obtainable, is essentially "inconsistent with and repugnant to the duty he owes to "the other to buy at the lowest possible price, and there "would necessarily be danger that the rights of one principal would be sacrificed to promote the interests of "the other" (*Am. and Eng. Enc. of Law, 2nd edn., Vo. Brokers, p. 966*).

"And further on, in development of the legal consequences, it is said in the same treatise:—"A broker, to be "entitled to commissions, must be actually employed "by the principal as broker." (*Ib. p. 970*). And in further amplification it is said:—"As has already been "stated, a broker cannot act as the agent of both parties, "when their interests are adverse, without their knowledge and consent. . . . It is well settled that when the double agency is unknown to either party, the broker cannot recouper from both: that is, he cannot enforce the payment of commissions from the party ignorant of his double employment, even upon an