

the deal. The defendant did not let the house to Jerou; but thinking, and justifiably thinking that the deal was off, she went again to Mr. Ponton and reappointed him, instructed him to try and sell it again as he puts it.

About December 27th Mrs. Jerou apparently without the knowledge of her husband came into Ponton's office and made inquiry about the property—she said she had seen it—and it was arranged that Ponton's representative Dunlop should call and see Mr. Jerou in the evening. He did so: and negotiations commenced Dunlop asking a rather high price. The Jerous then said they had been offered the property for \$4,600: and Dunlop agreed to submit that figure—he saw the defendant, the terms were accepted and a contract signed—without much if any delay. The sale was carried out on practically the same terms as had been arranged through the plaintiff.

The plaintiff had September 27th rendered his bill to the defendant for \$115, and her solicitors had the next day written an answer "You are no doubt aware that Mr. Jerou declined to purchase" and no reply was made by the plaintiff.

After the sale in December the defendant paid Ponton a commission for the sale: 15th February, 1912, the plaintiff issued his writ: the trial Judge has given him judgment for \$115 and costs, and the defendant now appeals.

The trial Judge finds that Jerou never abandoned his intention to buy—that may be so; I doubt it but certainly he gave his solicitor to understand that the sale was off, the plaintiff gave the defendant to understand that the sale was off. No intimation was given to anyone by Jerou that the sale was not off—and if he had still the intention to buy he carried that around in his head without making any external or visible manifestation of its existence, and "*de non apparentibus et de non existentibus eadem est ratio.*" The plaintiff cannot set up that the sale was not off, that Jerou had not refused to purchase, he told the defendant that the sale was off and the defendant acted accordingly.

It cannot in any event I think be considered that the intention if any which Jerou had in reference to this property was to buy on the basis of the arrangement made through the plaintiff, but to enter into new negotiations and buy if he could make satisfactory terms.

It is to my mind in every respect as though he had no intention in the matter: but had simply refused to carry out his purchase.