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We are unable to find any case directly in point, but the following principles are generally recognized: Consent may be express, or inferred from the acts of the agent. *MECHEM, AGENCY*, § 108; *Levaridais v. Perrit*, 11 La. 294; *George v. Sandel*, 9 Ill. App. 19. Thus when an agent is found performing the agency his acceptance will be presumed. *Mueller, Admx., etc., v. Bethesda Mineral Spring Co.*, 88 Mich. 390; *First National Bank of Albia v. Free*, 67 Iowa 11. The court pointed out that the agent did not promise to secure any particular leases, or any particular number of leases, or any leases at all, and holds that the words "some leases" are words of limitation, and do not include every lease to be secured; i. e., that the words show an intention to reserve the right to take leases in the agent's own name. Having taken this view of the conversation which took place when the offer was made, the court of course did not consider that the taking of the leases in his own name were acts of performance. The trial court took a slightly different view; it held, in substance, that the offer was not expressly accepted, and that the further act of taking the leases did not unequivocally show an intention to perform the agency. In conformity to the ruling of the trial court, at least, we may limit the rule of acceptance by performance to this extent: when an agent is found performing the agency, his acceptance will be presumed, provided the act of performance manifests an unequivocal intention to accept the offer.

RESCISSION OF CONTRACT—VENDEE'S EQUITABLE LIEN DESTROYED.—Bill by vendee to rescind a contract for the sale of land on account of the vendor's fraud and to have a lien declared on the land for the purchase money paid. *Held*, that the contract be rescinded, but the lien refused. *Davis v. William Rosenzweig Realty Operating Co.* (1908), — N. Y. —, 84 N. E. 943.

The court said: "The contract is the essential basis of the lien. * * * Rescission * * * destroys the contract *ab initio*. * * * Under these circumstances there can be no lien." GRAY, J., in a dissenting opinion in which HISCOCK and CHASE, JJ., concurred, said: "The lien is decreed independently of the contract, which does not give it, but furnishes the reason for the decree." The authorities sustain the dissenting opinion. FRY, SPECIFIC PERFORMANCE (4th Ed.), § 1480, says: "The purchaser has a lien for his deposit * * * when it (the contract) is rescinded," citing *Whitbread & Co. v. Watt* [1902], 1 Ch. 835; 29 AM. & ENG. ENCY. OF LAW (2nd Ed.) 730, is as follows: "If the contract * * * is avoided because of * * * fraud in the contract * * * not due to the * * * vendee, he is given a lien upon the land as security for * * * what he has paid." In a note in 80 Am. Dec. 791 it is stated that "a purchaser who has advanced any portion of the purchase money has an equitable lien on the land as security, where the contract is rescinded on the default of the vendor." Citing *Taft v. Kessel*, 16 Wis. 291. Accord, *Shirley v. Shirley*, 7 Blackf. (Ind.) 452. Although in a sense dependent upon the contract, the right to a lien depended essentially upon the possession of the purchase money by the vendor. The complainant was entitled to a lien on the land to secure the repayment of that money, regardless of the continued existence of the contract.